

Health Savings Account Answer Book

Seventeenth Edition

Christine L. Keller, Esq.
Gary S. Lesser, Esq.
William F. Sweetnam, Jr., Esq.
Ellen M. Goodwin, Esq.



Wolters Kluwer

This publication is designed to provide accurate and authoritative information in regard to the subject matter covered. It is sold with the understanding that the publisher and the author(s) are not engaged in rendering legal, accounting, or other professional services. If legal advice or other professional assistance is required, the services of a competent professional should be sought.

—From a *Declaration of Principles* jointly adopted by
a Committee of the American Bar Association and
a Committee of Publishers and Associations

Copyright © 2021 CCH Incorporated. All Rights Reserved.

No part of this publication may be reproduced or transmitted in any form or by any means, including electronic, mechanical, photocopying, recording, or utilized by any information storage or retrieval system, without written permission from the publisher. For information about permissions or to request permissions online, visit us at www.WoltersKluwerLR.com/policies/permissions-reprints-and-licensing, or email us at LRUSpermissions@wolterskluwer.com.

Published by Wolters Kluwer in New York.

Wolters Kluwer Legal & Regulatory U.S. serves customers worldwide with CCH, Aspen Publishers and Kluwer Law International products.

Printed in the United States of America

ISBN 978-1-5438-3689-9

1 2 3 4 5 6 7 8 9 0

About Wolters Kluwer Legal & Regulatory U.S.

Wolters Kluwer Legal & Regulatory U.S. delivers expert content and solutions in the areas of law, corporate compliance, health compliance, reimbursement, and legal education. Its practical solutions help customers successfully navigate the demands of a changing environment to drive their daily activities, enhance decision quality and inspire confident outcomes.

Serving customers worldwide, its legal and regulatory portfolio includes products under the Aspen Publishers, CCH Incorporated, Kluwer Law International, ftwilliam.com and MediRegs names. They are regarded as exceptional and trusted resources for general legal and practice-specific knowledge, compliance and risk management, dynamic workflow solutions, and expert commentary.

WOLTERS KLUWER SUPPLEMENT NOTICE

This product is updated on a periodic basis with supplements and/or new editions to reflect important changes in the subject matter.

If you would like information about enrolling this product in the update service, or wish to receive updates billed separately with a 30-day examination review, please contact our Customer Service Department at 1-800-234-1660 or email us at: *customer.service@wolterskluwer.com*. You can also contact us at:

**Wolters Kluwer
Distribution Center
7201 McKinney Circle
Frederick, MD 21704**

Important Contact Information

- To order any title, go to *www.WoltersKluwerLR.com* or call 1-800-638-8437.
- To reinstate your manual update service, call 1-800-638-8437.
- To contact Customer Service, e-mail *customer.service@wolterskluwer.com*, call 1-800-234-1660, fax 1-800-901-9075, or mail correspondence to: Order Department—Wolters Kluwer, PO Box 990, Frederick, MD 21705.
- To review your account history or pay an invoice online, visit *www.WoltersKluwerLR.com/payinvoices*.



Wolters Kluwer

About the Authors

Ellen M. Goodwin, Esq., is Of Counsel to Groom Law Group, Chartered, the nation's largest employee benefits specialty law firm. Ms. Goodwin works in Groom's Fiduciary Practice Group, primarily focusing on investment, fiduciary, and prohibited transaction issues. She also has significant expertise in the reporting, disclosure, and coverage areas of Title I of the Employee Retirement Income Security Act (ERISA). Before joining Groom, Ms. Goodwin served as a regulation attorney in the Solicitor's Office of the U.S. Department of Labor (DOL) and as a Pension Law Specialist in the Office of Fiduciary Interpretations of the DOL's Employee Benefits Security Administration. At the DOL, Ms. Goodwin devoted a significant amount of time to working with the DOL's claims procedure regulations in addition to drafting and issuing interpretive guidance under ERISA's fiduciary provisions.

Ms. Goodwin earned her J.D., *magna cum laude*, from Washington College of Law-American University in 1998 and graduated from the University of Virginia with a B.A. in 1989. She has also received a certificate in Employee Benefits Law from Georgetown University Law Center. Ms. Goodwin is admitted to practice in the District of Columbia.

Christine L. Keller, Esq., LL.M., is a principal at Groom Law Group, Chartered, the nation's largest employee benefits specialty law firm. She joined the firm in 2001 after practicing for six years at the Internal Revenue Service (IRS), Office of Chief Counsel (Tax-Exempt and Government Entities Division). At the Office of Chief Counsel, Ms. Keller worked first in the qualified plans litigation branch and later in the health and welfare branch. She is one of the principal authors of two sets of final cafeteria plan regulations published by the IRS in 2000 and 2001. At Groom, Ms. Keller advises a wide range of clients on all aspects of health and welfare plan design, administration and funding, including compliance with federal tax, ERISA, other federal and state law requirements, plan document drafting, Voluntary Employee Beneficiary Association trust document drafting, participant disclosure, change in election issues, wellness program compliance, claims and appeals, and rules pertaining to flexible spending arrangements, health reimbursement arrangements, and health savings accounts (HSAs). Her clients include employers, insurers, health plans, and service providers of all sizes.

Ms. Keller draws on her prior IRS experience to provide practical advice about risk and to assist clients with obtaining informal guidance and rulings from the IRS and other federal agencies. Ms. Keller is actively helping clients understand the ramifications of legislative and regulatory changes to health and tax laws and state and local leave laws and frequently speaks to clients and professional groups on those topics. She has published articles in *RIA Pension & Benefits Week* on the Uniformed Services Employment and Reemployment Rights Act of 1994, the Soldiers' and Sailors' Civil Relief Act (Dec. 2001), defined contribution health plans (Sept. 2002); in the *Society for Human Resource Management (SHRM) Legal Report* on the Consolidated Omnibus Budget Reconciliation Act's (COBRA's) notice rules (July–Aug. 2004) and HSAs (July–Aug. 2007); in *Employee Benefits News* on HSA funding issues (Jan. 2006); in *Benefits Law Journal* on health reimbursement arrangements and individual health insurance coverage (Winter 2008); and in *Practical Law Journal* on health care reform (May 2010, Oct. 2011, and Aug. 2012). Ms. Keller is a member of the Technical Advisory Council of the Employers Council on Flexible Compensation (ECFC) and the Women's Bar Association of the District of Columbia. She is a fellow of the American College of Employee Benefits Counsel and is listed in: *Chambers USA: America's Leading Lawyers for Business, Employee Benefits & Executive Compensation* (2014–2018), *The Legal 500 US, Employee Benefits and Executive Compensation* (2013–2014), and *The Legal 500 US, Healthcare* (2011).

Ms. Keller earned an LL.M. (Taxation) with distinction and a Certificate in Employee Benefits Law from Georgetown University Law Center in February 2000. Ms. Keller earned her J.D. from the State University of New York at Buffalo Law School in 1995 and graduated, *cum laude*, from Alfred University in 1990 with a B.S. in Business Administration and a minor in Industrial Engineering. She is admitted to practice in New York and the District of Columbia.

Gary S. Lesser, Esq., is the principal of GSL Galactic Publishing, LLC, located in Indianapolis, Indiana. Mr. Lesser maintains a consulting practice providing technical consulting and publishing services to other professionals and business owners. Mr. Lesser is a nationally known author, educator, and speaker on retirement plans for individuals and smaller businesses. Mr. Lesser has broad technical and practical knowledge of both qualified and nonqualified retirement plans.

Mr. Lesser is the technical editor and co-author of *SIMPLE, SEP, and SAR-SEP Answer Book*; *Roth IRA Answer Book*; and *457 Answer Book* (all Wolters Kluwer). In addition, he is a co-author of *Basic Accounting Simplified* (GSL Galactic Publishing). Mr. Lesser has developed several software programs that are used by financial planners, accountants, and other pension practitioners to design and market retirement plans for smaller businesses. His two software programs—*QP-SEP Illustrator*TM and *SIMPLE Illustrator*SM—are

About the Authors

marketed and distributed nationally. His works have also been published in the *EP/EO Digest*, *Journal of Taxation of Employee Benefits*, *Journal of Compensation and Benefits*, *Journal of Pension Benefits*, *Life Insurance Selling*, *Rough Notes*, and *NAPFA Advisor*.

In 1974, Mr. Lesser started his employee benefits career with the IRS as a Tax Law Specialist/Attorney in the Employee Plans/Exempt Organizations Division. He later managed and operated a pension administration and actuarial service organization, was an ERISA marketing attorney for a national brokerage firm and was a senior vice-president/director of retirement plans for several nationally known families of mutual funds and variable annuity products. Mr. Lesser graduated from New York Law School and received his B.A. in accounting from Fairleigh Dickinson University. He is admitted to the bars of the State of New York and the United States Tax Court. Mr. Lesser can be reached at GSL Galactic Publishing, LLC, 944 Stockton St., Indianapolis, IN 46260-4925, (317) 254-0385, at QPSEP@aol.com, or at <https://www.garylesser.com>.

William F. Sweetnam, Jr., Esq., is the Legislative and Technical Director of the ECFC, an organization dedicated to the advocacy, education, advancement, and innovation of tax-advantaged benefit programs that facilitate choice for employers and their employees. Prior to accepting his position with ECFC, he was a principal at Groom Law Group, Chartered, the nation's largest employee benefits specialty law firm, for ten years until his retirement in May 2015. Before joining Groom Law Group, Chartered, he was the Benefits Tax Counsel in the Office of Tax Policy at the U.S. Department of the Treasury. The Benefits Tax Counsel is the principal legal advisor to the Secretary of the Treasury and the Assistant Secretary for Tax Policy with regard to all aspects of employee benefits taxation and related matters, including pensions, health care, and executive compensation. Mr. Sweetnam was the Treasury's primary contact with Congress with regard to the individual retirement arrangement (IRA) and pension provisions in the Economic Growth and Tax Relief Reconciliation Act of 2001. Mr. Sweetnam also led the team at the Treasury in its guidance efforts with regard to consumer-directed health care (such as health savings accounts and health reimbursement arrangements) and the new executive deferred compensation rules.

Prior to his tenure at the Treasury Department, Mr. Sweetnam was Tax Counsel on the Majority Staff of the U.S. Senate Committee on Finance under the chairmanship of Senator William V. Roth of Delaware. At the Committee, he was responsible for tax matters in the areas of employee benefits (pensions, medical plans, and executive compensation), retirement savings vehicles (such as IRAs), insurance, and tax-exempt organizations (including charitable giving). During his tenure, Mr. Sweetnam was involved with the Retirement

Savings and Security Act, the Patients' Bill of Rights, and the IRS personnel flexibility provisions in the IRS Reform and Restructuring Act.

Mr. Sweetnam is a graduate of Rutgers University and Fordham University School of Law. He is admitted to practice in the District of Columbia, New York, and Pennsylvania. Mr. Sweetnam is a fellow of the American College of Employee Benefits Counsel and is listed in *Best Lawyers in America* for tax law in 2011–2015. Mr. Sweetnam can be reached at (202) 465-6397 or at wsweetnam@ecfc.org.

Preface

Health Savings Account Answer Book, Seventeenth Edition, provides an up-to-the-minute tutorial on this emerging form of consumer-directed health plan. This publication will benefit a wide variety of professional markets, including pension consultants, plan sponsors, health and insurance agents, financial planners and investment advisers, plan administrators, attorneys, custodians, trustees, brokers, and accountants, as well as those institutions that promote, market, service, or provide technical support to health and/or retirement plans, products, and related services.

Health Savings Account Answer Book, Seventeenth Edition, is a decision-making tool. Its combination of theory and practice-based advice provides a clear course of action to increase the subscriber's understanding of all aspects of the creation, administration, and operation of health savings accounts (HSAs), as mandated by the Internal Revenue Code (Code), Department of Treasury regulations, and Internal Revenue Service notices, procedures, and announcements.

Written by a team of practicing experts, preeminent in their fields, *Health Savings Account Answer Book, Seventeenth Edition*, provides step-by-step guidance on the creation, operation, and administration of HSAs. Topics covered include medical coverage and insurance; contributions and deductions; rollovers and transfers to HSAs; distributions, administration, and compliance; estate and gift tax aspects; HSAs under a Code Section 125 cafeteria plan; prohibited transaction rules; coordination with flexible spending accounts (FSAs), Archer medical savings accounts (Archer MSAs), and health reimbursement arrangements (HRAs); spousal limits, family coverage, and embedded deductibles; and federal and state laws that affect HSAs. Subscribers will find answers to commonly asked questions such as the following:

- What is an HSA?
- Who is eligible to establish an HSA?
- What are the differences between an HSA, an HRA, and a health FSA?
- Which federal government agencies regulate HSAs?

- What state laws apply to HSAs?
- How are deductions claimed? How are excludable contributions handled?
- Do the prohibited transaction provisions of the Employee Retirement Income Security Act (ERISA) and/or Code Section 4975 apply to an HSA? Does the prohibited transaction penalty tax apply to an HSA?
- What is a high deductible health plan (HDHP)? What is the HDHP requirement?
- What are the exceptions to the rule requiring that the eligible individual not be covered under any other health plan?
- What factors should an employer consider before offering an HSA with HDHP coverage? What factors should an individual consider before enrolling?
- How does an HSA protect an owner in the event of catastrophic financial loss due to unforeseen illness or injury?
- How are Medigap policies treated?
- When are employer HSA contributions deductible, and when are they excluded from income?
- Are employer contributions to an HSA eligible for the small business health insurance tax credit under the Patient Protection and Affordable Care Act?
- Do debit cards used with HSAs that use an omnibus or a pooled account structure, with subaccounts to track individual cardholder funds, fit within the “prepaid card exemption”?
- What are “comparable” employer contributions? What is the testing period used to determine “comparable” contributions?
- Are HSA contributions made under a cafeteria plan subject to the comparability rules?
- Will pre-tax contributions made through a cafeteria plan affect the amount of an employee’s ultimate Social Security benefit?
- Do employer contributions count as fringe benefits under the Davis-Bacon Act?
- How are contributions made by a Subchapter S corporation treated by the corporation and its shareholders?
- What are the rules relating to rollovers and transfers? When can a trustee or custodian refuse to accept rollovers and transfers?
- How is Form 8889—*Health Savings Accounts (HSAs)*—completed?

- Is an HSA subject to Health Insurance Portability and Accountability Act privacy regulations? Would the electronic standards apply?
- When is an HSA a security subject to regulation by the Securities and Exchange Commission?
- When are HSA distributions subject to tax—and to penalty?
- What are the special rules if one or both spouses have family coverage?
- How is the maximum deductible computed when spouses have separate health plans?
- What are the estate and gift tax aspects of an HSA of key interest to attorneys and CPAs?
- Do community property rules affect the HSA contribution limitations?
- What are the exceptions to the rule that requires that an employee not be covered under any other HDHP?
- Are penalty payments or flat dollar charges for failure to obtain provider recertification counted toward the \$7,000/\$14,000 out-of-pocket limits for 2021?
- How are Medicare-eligible individuals or those receiving Veteran Affairs benefits treated for contribution purposes?
- What are qualified medical expenses eligible for tax-free treatment?
- When are payments for insurance treated as qualified medical expenses?
- Do the “use-it-or-lose-it” rules apply to an HSA or affect eligibility to make contributions?
- Can an employer get back contributions made by mistake?
- Are HSA rollovers and transfers subject to a “one in 12-month” or “60-day” rule?

List of Questions. The detailed List of Questions that follows the Contents helps the reader to locate areas of immediate interest. The List of Questions is similar to a detailed table of contents, providing the question number and the page on which the question appears. Within each chapter, section headings group and organize questions by topic.

Examples. Numerous examples and practice pointers are interspersed with textual discussion to illustrate important concepts.

Practice Pointers. These paragraphs offer tips and advice to practitioners in the effective design, implementation, and administration of employee benefit plans.

Citations. Case citations and references to statutes and authorities are included to help readers who wish to research specific issues.

Appendices. Updated appendix material includes charts on state laws affecting HSAs, as well as coverage of pertinent legislation and regulation.

Abbreviations and Acronyms. A number of the terms and statutory references that appear repeatedly in this publication are referred to by their abbreviations and/or acronyms after the first mention. The most common of the abbreviations and acronyms are:

- Ann.—IRS Announcement
- BAPCPA—Bankruptcy Abuse Prevention and Consumer Protection Act of 2005
- C.B.—Cumulative Bulletin of the IRS
- CCA—Consolidated Appropriations Act of 2016
- Code; I.R.C.—Internal Revenue Code
- Dodd-Frank—Dodd-Frank Wall Street Reform and Consumer Protection Act
- DOL—Department of Labor
- DOL Adv. Op.—Department of Labor Advisory Opinion
- DOMA—Defense of Marriage Act
- ERISA—Employee Retirement Income Security Act of 1974
- FAB—Department of Labor Field Assistance Bulletin
- FBI—Federal Bureau of Investigation
- FCSIA—Fostering Connections to Success and Increasing Adoptions Act of 2008.
- GOZA—Gulf Opportunity Zone Act of 2005
- HDHP—High Deductible Health Plan
- IR—IRS Information Release
- IRA—Individual retirement arrangement (account and annuity)
- I.R.B.—Internal Revenue Bulletin
- IRS or I.R.S.—Internal Revenue Service
- Ltr. Rul.—Private Letter Ruling
- MHPAEA—Mental Health Parity and Addiction Equity Act of 2008
- PHSA—Public Health Service Act

Preface

- PPA—Pension Protection Act of 2006
- PPACA—Patient Protection and Affordable Care Act (2010)
- Prop. Treas. Reg.—Proposed Treasury Regulation
- P.T.E.—Prohibited Transaction Exemption
- Pub. L.—Public Law
- Rev. Proc.—Revenue Procedure
- Rev. Rul.—Revenue Ruling
- RIN—Regulation Identification Number
- RUUPA—Revised Uniform Unclaimed Property Act (2016)
- SBJA—Small Business Jobs Act of 2010
- SECURE—Setting Every Community Up for Retirement Enhancement Act of 2019
- TCJA—Tax Cuts and Jobs Act (2017)
- Temp. Treas. Reg.—Temporary Treasury Regulation
- Treas. Reg.—Treasury Regulation
- Treasury Department—Department of the Treasury
- TRHCA—Tax Relief and Health Care Act of 2006
- WFTRA—Working Families Tax Relief Act of 2004
- WRERA—Worker, Retiree, and Employer Recovery Act of 2008

It is the authors' hope that *Health Savings Account Answer Book, Seventeenth Edition*, will become an essential research tool for practitioners in the field of employee benefits.

Christine L. Keller
Gary S. Lesser
William F. Sweetnam, Jr.
Ellen M. Goodwin
May 2021

Introduction

Health savings accounts (HSAs), enacted as part of the Medicare Modernization Act of 2003, have become a part of the landscape of healthcare financing. In the more than 15 years of its existence, we have seen the continued acceptance of consumer-directed health plans by employees, employers, and health care policy makers. In addition, the marketplace for health insurance is trending toward more health insurance policies with high deductibles—a major requirement for individuals to contribute to an HSA.

After four years of an HSA-friendly Trump Administration, Joseph R. Biden, a Democrat, is the new President, and the Senate and House of Representatives are controlled by Democrats by the slimmest of margins. The Biden Administration is advocating an ambitious legislative agenda. Part of that agenda will involve addressing flaws in America's health care system. Some in the Democratic caucus advocate fixing the provisions of the Affordable Care Act (often referred to as "Obamacare") while others look toward a more expansive role of government in providing health care (often referred to as "Medicare for all"). Unlike Republicans, enhancement of the HSA market will probably not be an important priority of Congressional Democrats, they may not have the votes to enact legislation which substantially limits the availability of HSAs in the future.

To understand why HSAs provide a cost-effective alternative to traditional health insurance, it is useful to review how health insurance works. Traditional health insurance pays for medical costs after a deductible is met, usually requiring a co-pay with each visit or prescription drug. Health maintenance organizations (HMOs) contain costs by limiting the health care professionals and procedures that an HMO will pay for. HSAs require that an HSA owner participates in a high deductible health plan (HDHP) before he or she can contribute to the HSA. High deductible health insurance is less expensive than traditional health insurance and HMO coverage because it insures only major catastrophic health care services; the consumer pays for all other medical services, either directly or through a vehicle such as an HSA. Thus, there are two ways in which high deductible health insurance reduces costs: the premium for such insurance is lower, and there is more prudent health care spending because consumers directly see the costs they are charged for medical procedures.

Another important feature of HSAs is that they provide for a tax-effective means to pay for out-of-pocket medical costs, because all contributions made to an HSA that meet the contribution limits are fully tax deductible by the HSA owner. Many of the rules and regulations that impact HSAs and HDHPs are designed to make sure that the tax incentives provided for HSAs are properly utilized. The *Health Savings Account Answer Book* will provide for you an excellent guide as to how to meet these rules.

As the Benefits Tax Counsel at the Department of the Treasury, when the HSA legislation was initially enacted, I led the team that developed the initial guidance that implemented HSAs. Our main objective was to offer guidance, consistent with the legislation, which would facilitate the offering of qualifying high deductible health insurance and the accounts themselves. This was a good start as we quickly provided the industry with the rules they needed to effectively offer these products.

Average HSA balance at the end of 2019 was \$2,672, up from \$2,187 at the beginning of 2019. [EBRI Issue, HSA Balances, Contributions, Distributions, and Other Vital Statistics, 2019: Estimates from the EBRI HSA Database,¹ January 21, 2021] The EBRI HRA Database shows that contributions to an HSA and the average account balance increased with the age of the owner of the account and the longer an HSA owner had opened an account. As people get more involved (and more comfortable) with HSAs, they will contribute more and have more saved. Similarly, the 2020 Midyear Devenir HSA Research Report² found HSA accounts exceeded 30 million, holding over \$82.2 billion, a year-over-year increase of 25 percent for HSA assets and 6 percent for accounts for the period of December 31, 2020. I also believe that the demand for HSAs and HDHPs will continue to be strong and that *Health Savings Account Answer Book* provides the answers to questions that you and your clients may have in participating in this important financing tool in the health care marketplace.

William F. Sweetnam, Jr.*

¹ Available at <https://www.ebri.org/health/hsa-database/content/health-savings-account-balances-contributions-distributions-and-other-vital-statistics-2019-statistics-from-the-ebri-hsa-database> (visited on May 3, 2021).

² Available at <http://www.devenir.com/research/2020-year-end-devenir-hsa-research-report> (visited on May 3, 2021).

* Mr. Sweetnam was the Benefits Tax Counsel at the U.S. Department of the Treasury from April 2001 to February 2005.

Contents

List of Questions	xxv
CHAPTER 1	
Overview of HSAs	1-1
Introduction	1-2
HSA/HDHP Providers	1-4
Other Defined Contribution Health Care Arrangements	1-6
Regulation	1-7
Advantages and Disadvantages	1-7
Future of HSAs	1-13
CHAPTER 2	
General HSA Rules	2-1
In General	2-1
Eligible Individual for Establishing an HSA	2-4

Establishment and Effective Dates	2-13
Divorced Parents	2-16
Qualified Medical Expenses	2-17
Dependents	2-20
Advantages and Disadvantages of HSAs	2-26
 CHAPTER 3	
Medical Coverage and Insurance	3-1
HDHP Requirements	3-2
Plan Deductible	3-8
Limitation on Benefits	3-21
Family Coverage vs. Self-Only Coverage	3-26
Other Health Plan Coverage	3-26
Interaction with Qualified Small Employer Health Reimbursement Arrangements	3-67
Miscellaneous Issues	3-69
 CHAPTER 4	
Contributions and Deductions	4-1
Making HSA Contributions	4-2
Eligibility for HSA Contributions	4-10

Contents

Other Employee Health Plans	4-12
Cafeteria Plan Grace Period and Carryover Rules ...	4-16
Interaction Between HSAs and Health FSAs	4-30
Contribution Limitations	4-37
Catch-Up Contributions	4-56
Computing Annual Contributions	4-58
Special Computation Rules for Married Individuals ...	4-62
Deductions for Individual Contributions	4-71
Employer Contributions in General	4-74
Employer Responsibility	4-77
Exclusion and Deductibility of Employer Contributions	4-78
Timing of Contributions	4-80
Excess Contributions	4-81
Employer Contributions and ERISA	4-91
Comparability of Employer Contributions	4-92
IRS Reporting by Individuals	4-128
Partnership Considerations	4-129
S Corporation Considerations	4-132

CHAPTER 5

HSA Rollovers and Transfers	5-1
Rollovers and Transfers from IRAs and HSAs	5-2
Qualified HSA Funding Distributions (IRA to HSA) ...	5-13
Qualified HSA Distributions (One-Time HRA and FSA Transfers to an HSA) Before 2012	5-24

CHAPTER 6

Distributions	6-1
Taxation of HSA Distributions	6-2
Responsibility	6-8
Restrictions on Distributions	6-9
Medical Care Paid from an HSA	6-12
Medicine and Drugs	6-23
Distributions Used for Long-Term Care Insurance Premiums	6-30
Deemed Distributions Due to Prohibited Transactions	6-31
The 20 Percent Additional Tax—IRC § 223(f)	6-32
Returning Distributions Mistakenly Made	6-36
Death Distributions to Designated Beneficiaries	6-37
Income Tax Withholding on HSA Distributions	6-39

Contents

CHAPTER 7

Administration and Compliance	7-1
In General	7-1
HSA Documents	7-2
Permissible Investments	7-5
Account Fees	7-7
Trustees and Custodians	7-8
Reports	7-11
Form Filing Requirements	7-13

CHAPTER 8

Federal and State Laws Affecting HSAs	8-1
ERISA	8-2
HIPAA Privacy	8-22
Medicare Part D	8-23
State Benefit Mandates	8-24
State Tax Consequences	8-27
Unclaimed Property	8-30
Davis-Bacon Act	8-33
Fair Labor Standards Act	8-33

USA Patriot Act	8-34
Securities Law	8-35
Use of Electronic Media	8-36
Creditor Protection	8-37
PPACA	8-38
 CHAPTER 9	
Prohibited Transactions and Fiduciary Responsibility	9-1
Deemed Distributions Due to Prohibited Transactions	9-1
Personalized Investment Advice	9-7
 APPENDIX A	
Extracts from Relevant Code Sections	A-1
 APPENDIX B	
Treasury Regulations	B-1
 APPENDIX C	
IRS Notices	C-1
 APPENDIX D	
IRS Announcements	D-1

Contents

APPENDIX E

IRS Revenue Rulings	E-1
----------------------------------	------------

APPENDIX F

IRS Information Letters	F-1
--------------------------------------	------------

APPENDIX G

Department of Labor Releases	G-1
---	------------

APPENDIX H

Annual HSA Limitations	H-1
-------------------------------------	------------

APPENDIX I

How Health Savings Accounts (HSAs) Compare to Health Flexible Spending Arrangements (FSAs) and Health Reimbursement Arrangements (HRAs) in 2021	I-1
--	------------

List of Questions

Chapter 1 Overview of HSAs

Introduction

- Q 1:1** What is a health savings account? **1-2**
- Q 1:2** Must an HSA be offered in the form of a trust? **1-2**
- Q 1:3** What is the difference between an HSA trustee and an HSA
custodian? **1-2**
- Q 1:4** Does federal or state law determine whether an arrangement is a
trust or custodial account? **1-3**
- Q 1:5** Is the HSA an entirely new creation by Congress? **1-3**
- Q 1:6** What factors contributed to the enactment of the HSA
legislation? **1-3**
- Q 1:7** Why do proponents of HSAs consider HSAs to be an improvement
over the current health insurance system? **1-4**

HSA/HDHP Providers

- Q 1:8** Did companies offer HSAs with accompanying HDHPs on
January 1, 2004, the date the law became effective? **1-4**
- Q 1:9** Do some companies offer their services as HSA trustees or
custodians only, without offering an accompanying HDHP? ... **1-5**
- Q 1:10** How many HSA accounts have been established and how much
assets do they hold? **1-5**

Other Defined Contribution Health Care Arrangements

- Q 1:11** In addition to HSAs, what types of health accounts are considered
defined contribution or consumer-driven arrangements? **1-6**
- Q 1:12** What are the main differences among an HSA, an HRA, and a
health FSA? **1-6**

Regulation

- Q 1:13** Which federal government agencies regulate HSAs? **1-7**
- Q 1:14** Are states permitted to regulate HSAs? **1-7**

Advantages and Disadvantages

- Q 1:15** What are the primary advantages to an individual of participating in an HSA? **1-7**
- Q 1:16** What are the advantages to an employer of offering an HSA option to employees? **1-8**
- Q 1:17** What are the advantages to an employer of allowing employees to contribute to an HSA on a pretax basis through the employer's cafeteria plan? **1-8**
- Q 1:18** Will the HSA serve as a good vehicle to set aside funds for retiree health? **1-9**
- Q 1:19** What are the primary *disadvantages* to an individual of participating in an HSA? **1-9**
- Q 1:20** What are the disadvantages to an employer of offering an HSA? **1-10**
- Q 1:21** What factors should an individual consider before enrolling in an HSA with HDHP coverage? **1-10**
- Q 1:22** How will a spouse's health coverage affect an HSA owner's ability to contribute to an HSA? **1-11**
- Q 1:23** How will an unmarried domestic partner's health coverage affect the HSA contribution limits? **1-11**
- Q 1:24** What factors should an employer consider before offering an HSA with HDHP coverage? **1-12**
- Q 1:25** What are the potential consequences to an individual of enrolling in an HSA but failing to follow the applicable rules? **1-12**
- Q 1:26** What are the potential consequences to an employer of failing to follow the applicable HSA rules? **1-13**

Future of HSAs

- Q 1:27** How were HSAs affected by the Patient Protection and Affordable Care Act and subsequent regulations? **1-13**
- Q 1:28** What will be the agenda of President Biden and Congress with regard to health care and HSAs in 2021? **1-15**

Chapter 2 General HSA Rules

In General

- Q 2:1** What is an *HSA*? **2-1**
- Q 2:2** Who is the account beneficiary, account owner, or HSA owner? ... **2-3**
- Q 2:3** How and when were HSAs created? **2-3**

List of Questions

- Q 2:4** When are the HSA rules effective? **2-3**
Q 2:5 Do HSAs replace Archer Medical Savings Accounts? **2-3**

Eligible Individual for Establishing an HSA

- Q 2:6** Who is an *eligible individual* for purposes of establishing an HSA? **2-4**
Q 2:7 If an employee begins HDHP coverage midmonth, when does the employee become an eligible individual? **2-6**
Q 2:8 Are there any exceptions to the rule that prohibits an employee who is an “eligible individual” from having coverage under any other non-HDHP? **2-7**
Q 2:9 May an ineligible individual establish an HSA if his or her spouse is an eligible individual? **2-8**
Q 2:10 May a joint HSA be established by a married couple? **2-8**
Q 2:11 Are HSAs available to residents of the U.S. Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa? **2-8**
Q 2:12 Are HSAs available to residents of Puerto Rico? **2-9**
Q 2:13 Are HSAs available to residents of Hawaii? **2-9**
Q 2:14 Will an individual be treated as participating in an HDHP and no other non-HDHP if he or she elects HDHP coverage but also has the option to choose a plan that is not an HDHP? **2-9**
Q 2:15 Are individuals who are eligible for Medicare but who are not enrolled in Medicare Part A or B eligible to establish HSAs? ... **2-10**
Q 2:16 When does eligibility to contribute to an HSA end for a Medicare-eligible individual? **2-10**
Q 2:17 Are individuals who are eligible for medical benefits through the Department of Veterans Affairs (VA) eligible to make contributions to an HSA? **2-12**
Q 2:18 Are individuals who are eligible to receive medical services at an Indian Health Service (IHS) facility eligible to make contributions to an HSA? **2-12**
Q 2:19 Is a government retiree who is enrolled in Medicare Part B (but not Part A) an eligible individual for HSA purposes? **2-13**
Q 2:20 May an otherwise HSA-eligible individual who is age 65 or older and thus eligible for Medicare, but who is not enrolled in Medicare Part A or Part B, make the additional catch-up contributions for individuals age 55 or older? **2-13**
Q 2:21 May active duty or retired service members receiving medical coverage under TRICARE contribute to an HSA? **2-13**

Establishment and Effective Dates

- Q 2:22** When is an HSA *established*? **2-13**
Q 2:23 Can HSA contributions be made as soon as the HSA is established? **2-14**

Health Savings Account Answer Book

- Q 2:24** Can an HSA be *established* before the HDHP becomes effective? **2-14**
- Q 2:25** May a trustee treat an HSA as established before the date of establishment determined under state law, such as the date when HDHP coverage began? **2-15**
- Q 2:26** If an individual sends in paperwork and an initial deposit to the HSA trustee, is the HSA considered established as of the date of mailing? **2-15**
- Q 2:27** When is an HSA established if the funds in the HSA were rolled over or transferred from an Archer MSA or another HSA? **2-16**
- Q 2:28** On what date is an HSA established if the owner had previously established an HSA? **2-16**

Divorced Parents

- Q 2:29** Which rules apply to determine whether a child of divorced parents may be covered under a parent's HSA or HDHP on a tax-free basis? **2-16**

Qualified Medical Expenses

- Q 2:30** Which distributions from an HSA are excludable from gross income? **2-17**
- Q 2:31** What are qualified medical expenses? **2-17**
- Q 2:32** What is included in *medical care*? **2-18**
- Q 2:33** Are payments for insurance qualified medical expenses? **2-19**
- Q 2:34** May qualified medical expenses be incurred before the HSA is established? **2-19**
- Q 2:35** May an HSA be used to pay for an individual's qualified medical expenses on a tax-free basis even if such individual is not covered by an HDHP? **2-19**

Dependents

- Q 2:36** What technical corrections were made to the definition of *dependent* in 2005 for HSA purposes? **2-20**
- Q 2:37** How did WFTRA change the definition of *dependent*? **2-20**
- Q 2:38** How did GOZA change the definition of *dependent*? **2-20**
- Q 2:39** Who is a dependent for HSA purposes? **2-21**
- Q 2:40** What relationship must the individual have to the taxpayer to be treated as a qualifying relative? **2-22**
- Q 2:41** Who is a qualifying child? **2-23**
- Q 2:42** Does an individual's age affect his or her status as a qualifying child? **2-23**
- Q 2:43** Does an individual's disability affect his or her status as a qualifying child? **2-23**
- Q 2:44** When does a child attaining a specified age cease to be a qualifying child? **2-23**

List of Questions

- Q 2:45** Who is a qualifying relative for purposes of an HSA? **2-24**
Q 2:46 Can a child of divorced or separated parents be claimed as a dependent of both parents if the custodial parent has not released the claim to the exemption for a dependent under Code Section 152(e)(2)? **2-25**

Advantages and Disadvantages of HSAs

- Q 2:47** What are the potential advantages of an HSA to an individual? ... **2-26**
Q 2:48 What are the potential disadvantages of an HSA for an individual? **2-29**
Q 2:49 Who is best suited for adopting an HSA? **2-31**
Q 2:50 How might an HSA work for an individual? **2-31**

Chapter 3 Medical Coverage and Insurance

HDHP Requirements

- Q 3:1** What is a high deductible health plan? **3-2**
Q 3:2 Can an insured or self-insured medical reimbursement plan sponsored by an employer be an HDHP? **3-4**
Q 3:3 Is a limited coverage plan treated as an HDHP? **3-4**
Q 3:4 Must an HDHP provide meaningful medical coverage in order to be considered an HDHP under Code Section 223? **3-4**
Q 3:5 Could a short-term, limited-duration insurance plan be treated as an HDHP? **3-5**
Q 3:6 Does a state high-risk health plan qualify as an HDHP? **3-5**
Q 3:7 Would a health plan that negotiates discounted prices for services qualify as an HDHP if an HSA owner receives services at a discount? **3-5**
Q 3:8 Would HSA eligibility be impacted when a third party pays an HDHP participant's cost sharing expenses but the participant is still responsible for making payment to the third party? **3-6**
Q 3:9 Are the minimum annual deductible and maximum out-of-pocket expense amounts applicable to the HDHP under Code Section 223 adjusted for inflation? **3-6**
Q 3:10 Must an HDHP be offered on a calendar year basis? **3-7**
Q 3:11 How are changes to the deductibles and out-of-pocket expense limits applied? **3-7**

Plan Deductible

- Q 3:12** What is the plan deductible? **3-8**
Q 3:13 Are plan deductibles for out-of-network services required to be taken into account when determining the HDHP maximum out-of-pocket limitation? **3-8**

Health Savings Account Answer Book

- Q 3:14** What medical expenses may be taken into account in determining when the minimum deductible under the Code is satisfied for purposes of a post-deductible HRA or post-deductible health FSA? **3-8**
- Q 3:15** Can a health plan's deductible period last longer than 12 months? **3-9**
- Q 3:16** How is the plan's annual deductible limit adjusted when the deductible period lasts longer than 12 months? **3-9**

Transitional Rule (for months before 2006)

- Q 3:17** Can a health plan that would otherwise qualify as an HDHP but for an annual deductible that does not satisfy the rules for periods of more than 12 months be treated as an HDHP? **3-11**

Out-of-Pocket Expenses

- Q 3:18** What are out-of-pocket expenses? **3-11**
- Q 3:19** What are the limits for out-of-pocket expenses? **3-11**
- Q 3:20** Are amounts paid by the HSA owner toward covered medical expenses for out-of-network services required to be applied toward the out-of-pocket limit? **3-11**
- Q 3:21** Must a plan specify an out-of-pocket maximum in order to be considered an HDHP? **3-12**
- Q 3:22** How did the PPACA requirement pertaining to out-of-pocket maximums relate to the out-of-pocket maximum requirement under Code Section 223? **3-13**

Transitional Rule

- Q 3:23** What transitional relief was granted by the IRS to HDHPs relative to out-of-pocket expenses when the health plan does not provide any maximum on payments above the deductible? **3-15**
- Q 3:24** What transitional relief was provided for a health plan that complies with state laws that mandate benefits without regard to a deductible or a deductible below the minimum annual deductible? **3-15**
- Q 3:25** Why was the transitional relief provided in IRS Notice 2005-83 extended for non-calendar-year health plans? **3-16**
- Q 3:26** When did the additional transitional relief for a coverage period of 12 months or less in a non-calendar-year health plan expire? ... **3-16**

Other Out-of-Pocket Issues

- Q 3:27** Must a penalty payment or flat-dollar charge paid by the covered individual for failure to obtain pre-certification for a specific provider be treated as an out-of-pocket expense? **3-16**
- Q 3:28** Are cumulative embedded deductibles under family coverage subject to the out-of-pocket maximum? **3-17**

List of Questions

Q 3:29	Are cumulative embedded deductibles under family coverage subject to the out-of-pocket maximum if the plan contains an umbrella deductible of \$14,000 or less for 2021?	3-17
Q 3:30	Are cumulative embedded deductibles under family coverage subject to the minimum annual deductible limit of \$2,800 for 2021?	3-18
Q 3:31	Are amounts incurred by an individual for medical care for noncovered expenses included in computing the plan's out-of-pocket expenses?	3-18
Q 3:32	If an employer changes health plans midyear, is the minimum annual deductible of \$1,400/\$2,800 (for 2021) satisfied if the new HDHP provides a credit toward the deductible for expenses incurred during the previous health plan's short plan year? ...	3-19
Q 3:33	If an eligible individual changes coverage during the plan year from self-only HDHP coverage to family HDHP coverage, does the individual fail to be covered by an HDHP merely because the family HDHP coverage takes into account expenses incurred while the individual had self-only coverage?	3-19
Q 3:34	If an eligible individual changes coverage during the plan year from family HDHP coverage to self-only HDHP coverage, does the individual fail to be covered by an HDHP merely because the self-only HDHP coverage takes into account expenses incurred while the individual had family coverage?	3-19

Limitation on Benefits

Q 3:35	May an HDHP impose a lifetime limit on benefits?	3-21
Q 3:36	Are amounts paid by a covered individual above a lifetime limit treated as out-of-pocket expenses?	3-23
Q 3:37	If a plan imposes reasonable annual or lifetime limits for non-essential health benefits, are amounts paid by covered individuals beyond these annual or lifetime limits subject to the maximum out-of-pocket limitations?	3-23
Q 3:38	May a plan limit covered benefits?	3-23
Q 3:39	If a health plan imposes a separate or higher deductible for specific benefits, are amounts paid by covered individuals to satisfy the separate or higher deductible treated as out-of-pocket expenses?	3-23
Q 3:40	May an HDHP restrict benefits to expenses for hospitalization or inpatient care expenses and still satisfy the requirements under Code Section 223?	3-24
Q 3:41	When is a restriction or exclusion on benefits reasonable?	3-25
Q 3:42	If a plan limits benefits to UCR amounts, are amounts paid by covered individuals in excess of UCR included in determining the out-of-pocket expenses paid for purposes of calculating the maximum out-of-pocket limit?	3-25

Family Coverage vs. Self-Only Coverage

- Q 3:43** What is self-only coverage under an HDHP? **3-26**
- Q 3:44** What is family coverage under an HDHP? **3-26**
- Q 3:45** May a family-coverage HDHP plan cover only the eligible individual? **3-26**
- Q 3:46** Can benefits under a family-coverage plan be paid before the family incurs annual covered medical expenses in excess of the minimum annual deductible under Code Section 223? **3-26**

Other Health Plan Coverage

- Q 3:47** Are there exceptions to the rule requiring that the eligible individual not be covered under any other health plan? **3-26**

Permitted Insurance

- Q 3:48** What is permitted insurance? **3-28**
- Q 3:49** What does permitted insurance include? **3-28**
- Q 3:50** May an otherwise eligible individual who is covered by both an HDHP and insurance contracts for one or more specific diseases or illnesses contribute to an HSA if the insurance provides benefits before the deductible of the HDHP is satisfied? **3-29**
- Q 3:51** Must coverage for permitted insurance be provided under an insurance contract? **3-29**

Prescription Drug Coverage

- Q 3:52** May an individual who is covered by a health plan that provides prescription drug benefits before the deductible of the HDHP is satisfied contribute to an HSA? **3-30**

Preventive Care

- Q 3:53** What is the IRS preventive care safe harbor? **3-30**
- Q 3:54** What benefits and services are permitted under the IRS preventive care safe harbor? **3-31**
- Q 3:55** Are prescription drugs, or medications that are used to prevent a disease or the recurrence of a disease from which an HSA owner, spouse, or dependent has recovered, eligible for IRS safe-harbor treatment? **3-33**
- Q 3:56** To what extent do drugs or medications come within the IRS safe harbor for preventive care services as “preventive care?” **3-33**
- Q 3:57** Must an HDHP provide preventive care benefits? **3-33**
- Q 3:58** Does preventive care include the treatment of an existing illness? **3-34**
- Q 3:59** Does preventive care include the treatment of an individual with a chronic condition? **3-34**

List of Questions

- Q 3:60** Does a preventive care service or screening that also includes the treatment of a related condition during that procedure come within the safe harbor for preventive care in IRS Notice 2004-23? **3-36**
- Q 3:61** May an HDHP offer preventive care health services required under Section 2713 of the Public Health Service Act? **3-37**
- Q 3:62** Are preventive health services required under the Public Health Service Act treated as preventive care for purposes of an HDHP offered with an HSA? **3-37**
- Q 3:63** What are preventive health services under the Public Health Service Act? **3-38**
- Q 3:64** Is a health plan that provides benefits for male sterilization or male contraceptives without a deductible, or with a deductible below the minimum deductible, even if required by state law, an HDHP? **3-46**
- Q 3:65** Is a health plan that provides medical care services and items purchased related to testing for and treatment of COVID-19 without a deductible, or with a deductible below the minimum annual deductible, an HDHP? **3-48**
- Q 3:66** Is a health plan that provides telehealth and remote care without a deductible, or with a deductible below the minimum annual deductible, an HDHP? **3-48**
- Q 3:67** Is a plan or an issuer required to provide benefits for preventive services provided out-of-network? **3-48**
- Q 3:68** Are grandfathered health plans subject to the PPACA preventive care requirements? What is a grandfathered health plan? **3-49**
- Q 3:69** Are there examples of permitted insurance, permitted coverage, and preventive care? **3-49**
- Q 3:70** Does the characterization of a benefit required by state law determine whether health care is preventive? **3-58**

Medical Discount Cards & Manufacturer's Discount

- Q 3:71** May an individual who is covered by an HDHP, and also has a discount card that enables the user to obtain discounts for health care services or products, contribute to an HSA? **3-59**
- Q 3:72** May an individual who is covered by an HDHP, and also receives a drug manufacturers' support (drug manufacturers' coupons or rebates) that enables the user to obtain discounts on specific brand drugs contribute to an HSA? **3-59**

Provider Incentive Payments

- Q 3:73** Could a provider incentive payment be viewed as coverage that makes an individual ineligible to contribute to an HSA? **3-60**

Employee Assistance, Disease Management, and Wellness Programs

- Q 3:74** Does coverage under an Employee Assistance Program (EAP), a disease management program, or a wellness program make an individual ineligible to contribute to an HSA? **3-60**
- Q 3:75** Would services provided by a nurse practitioner at an employer’s on-site clinic be considered a health plan that makes an individual ineligible to contribute to an HSA? **3-61**
- Q 3:76** Does access to free health care or health care at charges below fair market value from an employer’s on-site clinic affect an individual’s eligibility to contribute to an HSA? **3-62**

Health Reimbursement Arrangements

- Q 3:77** Can an HSA owner who participates in an HDHP and a health reimbursement arrangement (HRA) be considered an eligible individual? **3-63**

Long-Term Care Insurance

- Q 3:78** May an HSA owner pay for long-term care premiums from an HSA? **3-63**
- Q 3:79** May an HSA owner pay for long-term care services from an HSA (i.e., services that are provided without regard to insurance)? **3-63**

HSAs Under a Code Section 125 Cafeteria Plan

- Q 3:80** May an HSA be funded by salary reduction contributions through a cafeteria plan? **3-64**
- Q 3:81** Must a cafeteria plan document be amended to allow employees to fund an HSA with salary reduction contributions? **3-64**
- Q 3:82** May the employer offer negative elections for an HSA if offered through a cafeteria plan? **3-64**
- Q 3:83** Which requirements that apply to health flexible spending arrangements (FSAs) under a Code Section 125 cafeteria plan do not apply to HSAs? **3-64**
- Q 3:84** Do the Code Section 125 change-in-status rules apply to elections of HSA contributions through a cafeteria plan? **3-66**
- Q 3:85** Can an employer place additional restrictions on the election of HSA contributions under a cafeteria plan? **3-66**
- Q 3:86** Can an employer permit employees to elect an HSA midyear if offered as a new benefit under the employer’s cafeteria plan? ... **3-66**
- Q 3:87** When the HSA is offered as a new benefit under the employer’s cafeteria plan midyear, are there circumstances that will prevent the employee from being an eligible individual? **3-66**

List of Questions

- Q 3:88** If an employee elects to make contributions to an HSA through an employer's cafeteria plan, may the employer contribute amounts to the employee's HSA to cover qualified medical expenses incurred by the employee that exceed the employee's current HSA balance? **3-67**

Retiree Health Coverage

- Q 3:89** Are HSA distributions qualified medical expenses if used to pay for the retiree portion of contributions or premiums for health care coverage once the HSA owner reaches age 65? **3-67**

Interaction with Qualified Small Employer Health Reimbursement Arrangements

- Q 3:90** What is a Qualified Small Employer Health Reimbursement Arrangement (QSEHRA)? **3-67**
- Q 3:91** Does an otherwise eligible individual that is covered by a QSEHRA that may reimburse any medical expense, including cost sharing, remain eligible to contribute to an HSA? **3-68**
- Q 3:92** Does an otherwise eligible individual that is covered by a QSEHRA that may reimburse only health insurance premiums remain eligible to contribute to an HSA? **3-68**
- Q 3:93** Does an otherwise eligible individual that is covered by a QSEHRA that only reimburses expenses that qualify as permitted insurance or disregarded coverage under Code Section 223(c) remain eligible to contribute to an HSA? **3-68**
- Q 3:94** If an employer terminates its group health plan, may the unreimbursed medical expenses incurred by the employee while covered under the group health plan before termination be taken into account for purposes of the HDHP's deductible? **3-68**

Miscellaneous Issues

- Q 3:95** Is an HSA a group health plan under Code Section 5000(b)(1) for purposes of the 25 percent excise tax on nonconforming group health plans? **3-69**
- Q 3:96** Do HIPAA privacy and security rules apply to an HSA? **3-69**
- Q 3:97** Is there an IRS correction program for resolving errors in HDHP design that are discovered after the close of the year? **3-69**

Chapter 4 Contributions and Deductions

Making HSA Contributions

- Q 4:1** In what form must contributions be made to a health savings account (HSA)? **4-2**

Health Savings Account Answer Book

Q 4:2	Can a transfer to an HSA be made from an employer’s health FSA or HRA after 2011?	4-3
Q 4:3	Can a transfer to an HSA be made from a traditional IRA or Roth IRA?	4-3
Q 4:4	May an HSA be fully funded in the beginning of a year?	4-4
Q 4:5	When may an individual who becomes an eligible individual after January 1 make a contribution to an HSA?	4-4
Q 4:6	How is the maximum contribution determined if an individual was, or was considered, an eligible individual for the entire year, and changes HDHP coverage during the year?	4-5
Q 4:7	Can an eligible individual be deemed to have self-only or family coverage for the entire year based on his/her HDHP enrollment on December 1?	4-6
Q 4:8	What happens if the individual makes contributions under the last-month rule and does not remain an eligible individual during the testing period?	4-7
Q 4:9	Does the additional 10 percent tax apply if the individual does not remain an eligible individual during the testing period?	4-7
Q 4:10	What is the testing period during which the individual must remain an eligible individual?	4-8
Q 4:11	What is the last date for making annual contributions to an HSA?	4-8
Q 4:12	May an individual who ceases to be an eligible individual during a year still contribute to an HSA with respect to the months of the year when the individual was an eligible individual?	4-9
Q 4:13	May employer contributions to employees’ HSAs made between January 1 and the date for filing the employees’ return, without extensions, be allocated to the prior year?	4-9
Q 4:14	For contributions to be made on behalf of an eligible individual, is the individual required to have compensation?	4-10
Q 4:15	May HSA contributions be made into an IRA?	4-10
Q 4:16	Must contributions be made into an HSA established at the same institution that provides the HDHP?	4-10

Eligibility for HSA Contributions

Q 4:17	Who may contribute to an HSA?	4-10
Q 4:18	May contributions to an HSA be made through a cafeteria plan?	4-11
Q 4:19	May a state government make an HSA contribution on behalf of an eligible individual?	4-11

Other Employee Health Plans

Q 4:20	May an employee covered by an HDHP and a health FSA or an HRA make contributions to an HSA?	4-12
---------------	---	-------------

List of Questions

Cafeteria Plan Grace Period and Carryover Rules

- Q 4:21** May a cafeteria plan permit employees to carry over unused contributions to a subsequent year? **4-16**

Cafeteria Plan Grace Period Rules

- Q 4:22** How do the grace period rules permit employees in a cafeteria plan to carry over unused contributions to a subsequent year? **4-18**
- Q 4:23** How can an employer provide a grace period in a cafeteria plan? **4-19**
- Q 4:24** Is it permissible for a plan to impose a cap on the amount of benefits that are subject to the grace period? **4-19**
- Q 4:25** How long may the grace period last? **4-20**
- Q 4:26** May unused benefits be cashed out or converted? **4-20**
- Q 4:27** How may an employer adopt a grace period? **4-21**
- Q 4:28** How long does a grace period remain in effect? **4-21**

Cafeteria Plan Carryover Rules

- Q 4:29** May employees who participate in a health FSA carry over unused contributions to a subsequent year? **4-22**
- Q 4:30** What is the “amount remaining unused” as of the end of the plan year in a health FSA? **4-23**
- Q 4:31** What is the “run-out period” in a cafeteria plan? **4-23**
- Q 4:32** Is the maximum \$2,750 salary reduction limit under the health FSA reduced by a carryover amount? **4-24**
- Q 4:33** May a cafeteria plan adopting a health FSA carryover provision also provide a grace period? **4-24**
- Q 4:34** How much may be carried over under a health FSA from one year to the next? **4-24**
- Q 4:35** Are amounts that cannot be carried over under the carryover rules forfeited? **4-25**
- Q 4:36** Does the uniform coverage rule require that the maximum amount of reimbursement from the health FSA be available for claims incurred at all times during the period of coverage? **4-25**
- Q 4:37** How may the unused health FSA balance at the end of the prior plan year be used in a cafeteria plan adopting a carryover provision? **4-25**
- Q 4:38** May unused amounts relating to a health FSA be converted or cashed out? **4-26**
- Q 4:39** How may a cafeteria plan adopting a carryover provision treat reimbursements of claims for expenses that are incurred in the current plan year? **4-26**
- Q 4:40** How may a cafeteria plan adopt a carryover provision? **4-28**

Health Savings Account Answer Book

- Q 4:41** What factors or consideration should an employer consider before adopting carryover provisions? **4-29**
- Q 4:42** If an amount is carried over, will it affect a participant's eligibility to make HSA contributions? **4-29**

Interaction Between HSAs and Health FSAs

- Q 4:43** May an individual who is otherwise eligible for an HSA be covered under certain types of health FSAs and remain eligible to contribute to an HSA? **4-30**
- Q 4:44** Who has the responsibility for verifying that the FSA has a zero balance? **4-31**
- Q 4:45** How did the Consolidated Appropriations Act, 2021 change the rules for Health FSAs and what guidance did the IRS issue? ... **4-31**
- Q 4:46** What are the rules regarding carryovers for Health FSAs for 2020 and 2021? **4-32**
- Q 4:47** What are the rules for extended grace periods in 2021 and 2022? **4-33**
- Q 4:48** What post-termination rules apply to employees who cease participation in a Health FSA in 2021 or 2022? **4-34**
- Q 4:49** What additional cafeteria plan election changes are permitted in 2021? **4-35**
- Q 4:50** How do the rules regarding carryovers and extended grace periods in 2021 and 2022 impact HSAs? **4-36**

Contribution Limitations

- Q 4:51** What is the maximum annual contribution that can be made to an HSA? **4-37**
- Q 4:52** Are the HSA annual contribution limitations coordinated with contributions made to an Archer MSA? **4-39**
- Q 4:53** Are the maximum annual contribution amounts indexed for inflation? **4-39**
- Q 4:54** How are the statutory annual contribution and deduction limits indexed for inflation? **4-43**
- Q 4:55** May an eligible individual have more than one HSA, and do contribution limits apply? **4-43**
- Q 4:56** How are contributions treated if the eligible individual has more than one HSA? **4-44**
- Q 4:57** How do the maximum annual HSA contribution limits apply to an eligible individual with family HDHP coverage for the entire year if the family HDHP covers spouses or dependent children who also have coverage by a non-HDHP, Medicare, or Medicaid? ... **4-44**
- Q 4:58** How is the contribution limit computed for an individual who begins coverage under an HDHP midyear and continues to be covered under the HDHP for the rest of the year? **4-44**

List of Questions

- Q 4:59** What is the contribution limit for an individual who is an eligible individual on the first day of the last month of his or her taxable year (generally December 1)? **4-45**
- Q 4:60** When is the annual contribution made under the last-month rule subject to the additional 10 percent tax under Code Section 223 (b)(8)(B)? **4-51**
- Q 4:61** What is the contribution limit for an eligible individual covered by an HDHP and also by an HRA or health FSA that does not meet the post-deductible requirements? **4-52**
- Q 4:62** What are the HSA contribution limits for unmarried domestic partners? **4-53**
- Q 4:63** What are the maximum annual deductible contribution limits for a same-sex married couple? **4-54**
- Q 4:64** Is an individual in a same-sex marriage treated as a “spouse” for federal tax purposes? **4-55**

Catch-Up Contributions

- Q 4:65** Are catch-up contributions permitted? **4-56**
- Q 4:66** May an otherwise HSA-eligible individual who is age 65 or older and thus eligible for Medicare, but is not enrolled in Medicare Part A or Part B, make the additional catch-up contributions for individuals age 55 or older? **4-56**
- Q 4:67** What are the catch-up contribution limits? **4-57**
- Q 4:68** Are the maximum catch-up amounts indexed for inflation? **4-58**

Computing Annual Contributions

- Q 4:69** How are catch-up contributions computed? **4-58**
- Q 4:70** How is the annual contribution limit determined for an individual, who is an eligible individual, where coverage changes during the year? **4-58**
- Q 4:71** How will the annual contribution limit be computed if the individual did not have the same coverage on the first day of every month during 2021 or is not an eligible individual on December 1, 2021? **4-60**

Special Computation Rules for Married Individuals

- Q 4:72** If one or both spouses have family coverage, how is the contribution limit computed? **4-62**
- Q 4:73** How do the maximum annual HSA contribution limits apply to a married couple if both spouses are eligible individuals and each spouse has family HDHP coverage that does not cover the other spouse? **4-63**
- Q 4:74** Which plan deductible limit was used for 2006 and before for computing contributions when each spouse had family coverage under a separate health plan? **4-64**

Health Savings Account Answer Book

Q 4:75	What is the catch-up contribution limit for spouses?	4-64
Q 4:76	What is an umbrella deductible?	4-65
Q 4:77	What is an embedded individual deductible?	4-65
Q 4:78	How was the maximum annual HSA contribution limit determined for 2006 and before for an eligible individual with family coverage under an HDHP that included embedded individual deductibles and an umbrella deductible?	4-66
Q 4:79	How do the maximum annual HSA contribution limits apply to family HDHP coverage that may include an ineligible individual?	4-67
Q 4:80	How may spouses agree to divide the annual HSA contribution limit between themselves?	4-68
Q 4:81	How does an employer report HSA contributions?	4-70
Q 4:82	How is an employer's contribution to an HSA reflected on Form W-2— <i>Wage and Tax Statement</i> ?	4-70

Deductions for Individual Contributions

Q 4:83	Are an eligible individual's HSA contributions deductible?	4-71
Q 4:84	Are employer contributions to the HSA of an employee's spouse (who is not an employee of this employer) excluded from the employee's gross income and wages?	4-72
Q 4:85	How is the deduction taken on the individual's federal income tax return?	4-72
Q 4:86	Is the deduction for contributions to a self-employed individual's own HSA taken into account in determining net earnings from self-employment (NESE) under Code Section 1402(a)?	4-72
Q 4:87	If a C corporation makes a contribution to the HSA of a shareholder who is not an employee of the C corporation, what are the tax consequences to the shareholder and to the C corporation? ...	4-73
Q 4:88	Must an individual itemize deductions in order to claim a deduction for HSA contributions?	4-73
Q 4:89	Can HSA contributions be claimed as an itemized expense on the federal income tax return?	4-73
Q 4:90	Are contributions made by a family member or other person on behalf of an eligible individual deductible?	4-73
Q 4:91	May an individual who may be claimed as a dependent on another person's tax return deduct contributions to an HSA?	4-74
Q 4:92	Do community property rules apply in determining limitations on contributions or their deductibility?	4-74

Employer Contributions in General

Q 4:93	May employer contributions exceed the maximum allowable amount for the individual?	4-74
Q 4:94	How are employer payments to an HSA treated?	4-74

List of Questions

- Q 4:95** What tax advantages does an employer receive by allowing employees to make HSA contributions through the employer's cafeteria plan? **4-75**
- Q 4:96** Can an employer make higher contributions to the HSAs of participants with chronic health conditions? **4-75**
- Q 4:97** Are contributions to an HSA subject to the nonqualified deferred compensation rules under Code Section 409A? **4-76**
- Q 4:98** Are employer contributions to an HSA eligible for the small business health insurance tax credit added by the PPACA? ... **4-76**

Employer Responsibility

- Q 4:99** Is the employer responsible for determining employee eligibility for an HSA? **4-77**
- Q 4:100** May the employer rely on an employee's representation of his/her age? **4-77**
- Q 4:101** Is the employer responsible for determining whether HSA distributions are used exclusively for qualified medical expenses? **4-77**
- Q 4:102** Is an employer permitted to structure cafeteria plan elections for HSAs as negative elections? **4-77**

Exclusion and Deductibility of Employer Contributions

- Q 4:103** What is the tax treatment of employer contributions on behalf of an eligible individual? **4-78**
- Q 4:104** Are employer contributions on behalf of an eligible individual excluded from the employee's income? **4-78**
- Q 4:105** Are contributions to an employee's HSA through a cafeteria plan treated as made by the employer or employee? **4-78**
- Q 4:106** Are employer contributions subject to Railroad Retirement taxes? **4-79**
- Q 4:107** Are employer contributions subject to income withholding from wages? **4-79**
- Q 4:108** Are employer contributions subject to FICA taxes? **4-79**
- Q 4:109** Are employer contributions made under a cafeteria plan subject to FICA taxes? **4-79**
- Q 4:110** Are employer contributions subject to FUTA taxes? **4-79**
- Q 4:111** May an employee deduct employer contributions made on his or her behalf on his or her federal income tax return? **4-80**
- Q 4:112** What is the tax treatment of an HSA? **4-80**

Timing of Contributions

- Q 4:113** When may HSA contributions be made? **4-80**
- Q 4:114** Is there a deadline for contributions to an HSA for a taxable year? **4-81**

Excess Contributions

Q 4:115	How may an excess HSA contribution be created?	4-81
Q 4:116	What is an excess contribution for purposes of the 6 percent excise tax?	4-82
Q 4:117	Is it permissible for an individual to deduct an HSA contribution that exceeds the maximum amount that may be contributed in a taxable year?	4-84
Q 4:118	How are employer contributions and excess employer contributions reported by the employer?	4-84
Q 4:119	May an employer's HSA contribution to an ineligible individual be deducted by the employee?	4-84
Q 4:120	Are excess contributions subject to penalty?	4-84
Q 4:121	Can the excess contribution penalty be avoided?	4-84
Q 4:122	When is the net income attributable to the excess contribution taxable?	4-85
Q 4:123	What is the result if the net income is not distributed in a correcting distribution?	4-86
Q 4:124	Is the excess contribution distributed in a correcting distribution subject to tax?	4-86
Q 4:125	How are earnings attributable to the excess HSA contribution calculated?	4-86
Q 4:126	What is the adjusted closing balance used in computing earnings on an excess contribution?	4-87
Q 4:127	What is the adjusted opening balance used in computing earnings on an excess contribution?	4-87
Q 4:128	What is the computation period used in computing earnings on an excess contribution?	4-87
Q 4:129	How is the account valued when correcting an excess HSA contribution?	4-87
Q 4:130	May an excess contribution be corrected after the extended due date of the individual's federal income tax return?	4-87
Q 4:131	How are excess HSA contributions corrected after the due date of the owner's return?	4-89
Q 4:132	May an individual who has not made excess HSA contributions treat a distribution from an HSA other than for qualified medical expenses as the withdrawal of excess HSA contributions? ...	4-91

Employer Contributions and ERISA

Q 4:133	Is an HSA established in connection with an employment-based group health plan treated as an employee welfare benefit plan under Title I of ERISA?	4-91
Q 4:134	Is an employer required to make COBRA continuation coverage available with respect to an HSA?	4-91
Q 4:135	Do the rules under Code Section 419 regarding funded welfare benefit plans affect contributions by an employer to an HSA? ...	4-92

List of Questions

- Q 4:136** Do the minimum funding standards under Code Section 412 apply to an HSA? **4-92**
- Q 4:137** Are employer contributions to an HSA subject to the 10 percent tax on nondeductible employer contributions? **4-92**

Comparability of Employer Contributions

- Q 4:138** When did the IRS publish final comparability regulations (final rules) governing employer contributions to an HSA? **4-92**
- Q 4:139** What are the comparability rules that apply to employer contributions to an HSA? **4-93**
- Q 4:140** Who are comparable participating employees? **4-94**

Categories of Coverage Relating to Comparability

- Q 4:141** What are the categories of HDHP coverage for purposes of applying the comparability rules? **4-94**
- Q 4:142** May an employer make larger HSA contributions for employees with self plus two HDHP coverage than employees with self plus one HDHP coverage even if the employees with self plus two HDHP coverage are all HCEs and the employees with self plus one HDHP coverage are all NHCEs? **4-97**
- Q 4:143** What is family HDHP coverage? **4-97**

Testing Period for Comparability

- Q 4:144** What is the testing period for making comparable contributions to employees' HSAs? **4-97**

The Excise Tax and Comparability

- Q 4:145** What are the consequences of violating the comparability rules? **4-98**

Employer Contributions

- Q 4:146** Do the comparability rules apply to amounts rolled over from an employee's HSA or Archer Medical Savings Account (Archer MSA)? **4-99**
- Q 4:147** If an employee requests that his or her employer deduct after-tax amounts from the employee's compensation and forward these amounts as employee contributions to the employee's HSA, do the comparability rules apply to these amounts? **4-99**

Employee for Comparability Testing

- Q 4:148** Do the comparability rules apply to contributions that an employer makes to the HSAs of independent contractors or self-employed individuals? **4-99**

Health Savings Account Answer Book

- Q 4:149** May a sole proprietor who is an eligible individual contribute to his or her own HSA without contributing to the HSAs of his or her employees who are eligible individuals? **4-99**
- Q 4:150** Do the comparability rules apply to contributions by a partnership to a partner's HSA? **4-100**
- Q 4:151** How are members of controlled groups treated when applying the comparability rules? **4-101**

Comparable Contributions

- Q 4:152** What are the categories of employees for comparability testing? **4-101**

Collectively Bargained Employees

- Q 4:153** Do the comparability rules apply to unionized employees or groups of collectively bargained employees? **4-101**

Coverage Requirements Under HDHPs

- Q 4:154** Is an employer permitted to make comparable contributions only to the HSAs of comparable participating employees who have coverage under the employer's HDHP? **4-103**
- Q 4:155** If an employee and his or her spouse are eligible individuals who work for the same employer and one employee-spouse has family coverage for both employees under the employer's HDHP, must the employer make comparable contributions to the HSAs of both employees? **4-104**
- Q 4:156** Does an employer that makes HSA contributions only for one class of non-collectively bargained employees who are eligible individuals but not for another class of non-collectively bargained employees who are eligible individuals (for example, management vs. nonmanagement) satisfy the requirement that the employer make comparable contributions? **4-105**

Comparability and Former Employees

- Q 4:157** If an employer contributes to the HSAs of former employees who are eligible individuals, do the comparability rules apply to these contributions? **4-106**
- Q 4:158** What action must an employer take to locate former employees? **4-106**
- Q 4:159** Is an employer permitted to make comparable contributions only to the HSAs of comparable participating former employees who have coverage under the employer's HDHP? **4-107**

List of Questions

- Q 4:160** If an employer contributes only to the HSAs of former employees who are eligible individuals with coverage under the employer's HDHP, must the employer make comparable contributions to the HSAs of former employees who are eligible individuals with coverage under the employer's HDHP because of an election under a COBRA continuation provision (as defined in Code Section 9832(d)(1))? **4-108**

Comparability Rules Relating to Archer MSAs

- Q 4:161** How do the comparability rules apply if some employees have HSAs and other employees have Archer MSAs? **4-108**

Calculating Comparable Contributions

- Q 4:162** What are comparable contributions under Code Section 4980G? **4-108**

The Comparability Rules in Relation to Full-Time and Part-Time Employees

- Q 4:163** How does an employer comply with the comparability rules when some non-collectively bargained employees who are eligible individuals do not work for the employer during the entire calendar year? **4-111**
- Q 4:164** How do the comparability rules apply to employer contributions to employees' HSAs if some non-collectively bargained employees work full-time during the entire calendar year, and other non-collectively bargained employees work full-time for less than the entire calendar year? **4-114**
- Q 4:165** May an employer make contributions for the entire year to the HSAs of its employees who are eligible individuals at the beginning of the calendar year (on a pre-funded basis) instead of contributing on a pay-as-you-go or on a look-back basis? ... **4-114**
- Q 4:166** Must an employer use the same contribution method for all employees who were comparable participating employees for any month during the calendar year? **4-115**
- Q 4:167** How can an employer comply with the comparability rules if an employee has not established an HSA at the time the employer contributes to its employees' HSAs? **4-116**

Notice to Employees Regarding Employer Contributions to HSAs

- Q 4:168** If an employer bases its contributions on a percentage of the HDHP deductible, how is the correct percentage or dollar amount computed? **4-120**

Health Savings Account Answer Book

- Q 4:169** Does an employer that contributes to the HSA of each comparable participating employee in an amount equal to the employee's HSA contribution or a percentage of the employee's HSA contribution (matching contributions) satisfy the rule that all comparable participating employees receive comparable contributions? **4-120**
- Q 4:170** If an employer conditions contributions by the employer to an employee's HSA on the employee's participation in health assessments, disease management programs, or wellness programs, and makes the same contributions available to all employees who participate in the programs, do the contributions satisfy the comparability rules? **4-121**
- Q 4:171** If an employer makes additional contributions to the HSAs of all comparable participating employees who have attained a specified age or who have worked for the employer for a specified number of years, do the contributions satisfy the comparability rules? **4-121**
- Q 4:172** If an employer makes additional contributions to the HSAs of all comparable participating employees who are eligible to make the additional contributions (HSA catch-up contributions), do the contributions satisfy the comparability rules? **4-121**
- Q 4:173** If an employer's contributions to an employee's HSA result in noncomparable contributions, may the employer recoup the excess amount from the employee's HSA? **4-121**
- Q 4:174** What constitutes a reasonable interest rate for purposes of making comparable contributions? **4-122**

HSA Comparability Rules and Cafeteria Plans

- Q 4:175** If an employer makes contributions through a cafeteria plan to the HSA of each employee who is an eligible individual, are the contributions subject to the comparability rules? **4-122**
- Q 4:176** If an employer makes contributions through a cafeteria plan to the HSA of each employee who is an eligible individual in an amount equal to the employee's HSA contribution or a percentage of the employee's HSA contribution (matching contributions), are the contributions subject to the Code Section 4980G comparability rules? **4-126**
- Q 4:177** If under the employer's cafeteria plan, employees who are eligible individuals and who participate in health assessments, disease management programs, or wellness programs receive an employer contribution to an HSA and the employees have the right to elect to make pretax salary reduction contributions to their HSAs, are the contributions subject to the comparability rules? **4-126**

Waiver of Excise Tax

- Q 4:178** May all or part of the excise tax imposed under Code Section 4980G be waived? **4-127**

List of Questions

Tax Treatment of Contributions

- Q 4:179** What are the main areas to consider relative to taxation of contributions? **4-127**

IRS Reporting by Individuals

- Q 4:180** How are HSA contributions reported to the IRS by the taxpayer? **4-128**
- Q 4:181** Who must file Form 8889—*Health Savings Accounts (HSAs)*? ... **4-128**

Partnership Considerations

- Q 4:182** May a partnership make HSA contributions on behalf of a partner or guaranteed payment partner? **4-129**
- Q 4:183** Are contributions by a partnership that are treated as distributions to the partner under Code Section 731 treated as contributions to an HSA? **4-129**
- Q 4:184** What is the tax treatment of contributions to an HSA by a partnership that are considered distributions to the partner under Code Section 731? **4-129**
- Q 4:185** How are contributions by a partnership that are treated as distributions to the partner under Code Section 731 reported to the partner? **4-129**
- Q 4:186** Are contributions by a partnership that are treated as distributions to the partner under Code Section 731 included in a partner's NESE? **4-129**
- Q 4:187** Are contributions by a partnership that are treated as distributions to the partner under Code Section 731 deductible by the partner? **4-130**
- Q 4:188** Are contributions by a partnership that are treated as guaranteed payments under Code Section 707(c), are derived from the partnership's trade or business, and are for services rendered to the partnership treated as contributions to an HSA? **4-130**
- Q 4:189** Are contributions by a partnership that are treated as guaranteed payments under Code Section 707(c) deductible by the partnership? **4-130**
- Q 4:190** Are contributions by a partnership that are treated as guaranteed payments under Code Section 707(c), are derived from the partnership's trade or business, and are for services rendered to the partnership included in a partner's gross income? **4-130**
- Q 4:191** How are contributions by a partnership to a partner's HSA that are treated as guaranteed payments under Code Section 707(c) reported by the partnership to the partner? **4-131**
- Q 4:192** Are contributions by a partnership that are treated as guaranteed payments under Code Section 707(c), are derived from the partnership's trade or business, and are services rendered to the partnership treated as NESE? **4-131**

Q 4:193 How are contributions by a partnership that are treated as guaranteed payments under Code Section 707(c), derived from the partnership’s trade or business, and are for services rendered to the partnership included in a partner’s gross income? **4-131**

S Corporation Considerations

Q 4:194 How is an S corporation treated with respect to contributions made by the S corporation to the HSA of a 2 percent shareholder, who is also an employee (2 percent shareholder-employee), in consideration for services rendered to the S corporation? **4-132**

Q 4:195 How is a 2 percent shareholder treated with respect to contributions made by the S corporation to the HSA of the 2 percent shareholder, who is also an employee (2 percent shareholder-employee), in consideration for services rendered to the S corporation? **4-133**

Q 4:196 What is the tax treatment of an S corporation’s contributions to an HSA of a 2 percent shareholder who is also an employee (2 percent shareholder-employee)? **4-133**

Q 4:197 Are contributions by an S corporation to an HSA of a 2 percent shareholder-employee in consideration for services rendered deductible by the S corporation? **4-133**

Q 4:198 Are contributions by an S corporation to an HSA of a 2 percent shareholder-employee in consideration for services rendered excluded from the 2 percent shareholder-employee’s gross income? **4-133**

Q 4:199 Are contributions made by an S corporation to an HSA of a 2 percent shareholder-employee subject to FICA tax? **4-134**

Q 4:200 Is there an exception relative to FICA taxes for a contribution made by an S corporation to an HSA of a 2 percent shareholder-employee? **4-134**

Q 4:201 Are contributions made by an S corporation to an HSA of a 2 percent shareholder-employee subject to Self-Employed Contributions Act (SECA) taxes? **4-134**

Q 4:202 May a 2 percent shareholder-employee who is an eligible individual deduct the amount of the contributions made to an HSA by his or her employer during the taxable year as an adjustment to gross income on his or her federal income tax? ... **4-134**

Chapter 5 HSA Rollovers and Transfers

Rollovers and Transfers from IRAs and HSAs

General Rules

Q 5:1 Are rollovers permitted between HSAs? **5-2**

Q 5:2 Are rollovers permitted from an Archer MSA to an HSA? **5-2**

List of Questions

Q 5:3	May distributions from an individual retirement account (IRA) or Roth IRA be rolled over into an HSA?	5-3
Q 5:4	May distributions from a health reimbursement arrangement (HRA) or a health care flexible spending account (FSA) be rolled over into an HSA?	5-3
Q 5:5	May an individual claim a deduction for the amount rolled over? ...	5-3
Q 5:6	Must rollover contributions be made in cash?	5-3
Q 5:7	Must the same property received in a distribution from an HSA or Archer MSA be rolled over?	5-3
Q 5:8	Must all of the cash or property received in a distribution from an HSA or Archer MSA be rolled over?	5-3
Q 5:9	Is an HSA trustee or custodian required to accept rollover contributions?	5-4
Q 5:10	What are the tax consequences with respect to the portion of an HSA distribution that is not rolled over to an HSA?	5-4
Q 5:11	Are rollovers from an Archer MSA or another HSA subject to the annual contribution limits?	5-4
Q 5:12	May an HSA holder make a rollover contribution more than once during a one-year period?	5-4
Q 5:13	How is a second rollover from an HSA treated if it is made before the one-year period has expired?	5-5
Q 5:14	Does a rollover of a distribution from an Archer MSA into another Archer MSA affect eligibility to roll over a distribution from an HSA?	5-5
Q 5:15	If an Archer MSA is rolled over into an HSA, when does the one-year rule pertaining to HSAs apply?	5-5
Q 5:16	Must the rollover be completed within 60 days?	5-6
Q 5:17	Must the total amount be distributed in order to roll over an HSA to another HSA?	5-7
Q 5:18	Must the same property received in a distribution from an Archer MSA be rolled over?	5-7
Q 5:19	May an HSA trust or custodial agreement restrict the HSA owner's ability to roll over amounts from that HSA?	5-7
Q 5:20	How does a taxpayer report a rollover contribution from an Archer MSA or another HSA?	5-7
Q 5:21	How are rollover contributions reported by the trustee or custodian of the distributing HSA on Form 1099-SA?	5-8
Q 5:22	When must Form 5498-SA be provided to participants?	5-8

Inherited HSAs

Q 5:23	How is an HSA treated when the HSA owner dies?	5-9
Q 5:24	May an inherited HSA be rolled over?	5-9
Q 5:25	How is an HSA treated when the surviving spouse is not the sole designated beneficiary?	5-9

Health Savings Account Answer Book

- Q 5:26** How is the value of an HSA reported if the HSA owner's estate is the beneficiary? **5-10**
- Q 5:27** How are earnings after the date of death treated? **5-10**
- Q 5:28** Are earnings after death subject to the additional 20 percent tax? **5-10**

HSA Transfers

- Q 5:29** Is there a limit on the number of trustee-to-trustee transfers permitted between HSAs? **5-10**
- Q 5:30** How are trustee-to-trustee transfers between HSAs treated? **5-10**
- Q 5:31** Are HSA trustees or custodians required to accept trustee-to-trustee transfers? **5-10**
- Q 5:32** May the trust or custodial agreement contain restrictions concerning transfers from one HSA to another? **5-10**
- Q 5:33** Must trustee-to-trustee transfers be made in cash? **5-11**

Transfer Incident to Divorce

- Q 5:34** Under what circumstances may an HSA be transferred to a spouse or former spouse? **5-11**
- Q 5:35** Is a transfer incident to a divorce or a separation agreement treated as a taxable distribution? **5-11**
- Q 5:36** What is a divorce or separation instrument? **5-12**
- Q 5:37** Is a transfer incident to a divorce or a separation agreement treated as a taxable transfer? **5-12**
- Q 5:38** How is an HSA treated after a transfer incident to divorce? **5-12**
- Q 5:39** May a trustee-to-trustee transfer be made to an HSA from an IRA, an HRA, or a health care FSA? **5-12**

Other Issues

- Q 5:40** May the health coverage tax credit be claimed for premiums paid with tax-free distributions from an HSA? **5-13**

Qualified HSA Funding Distributions (IRA to HSA)

- Q 5:41** May an individual rollover or transfer an amount from a traditional IRA to an HSA? **5-13**
- Q 5:42** Do the qualified HSA funding distribution rules apply to a Roth IRA? **5-14**
- Q 5:43** May a qualified funding distribution be made from a SEP IRA or SIMPLE IRA? **5-15**

Tax Treatment

- Q 5:44** Can a deduction be taken for the amount distributed from an IRA or Roth IRA and transferred to an HSA in a qualified HSA funding distribution? **5-15**

List of Questions

- Q 5:45** To what extent are the amounts transferred in a qualified HSA funding distribution not included in the IRA or Roth IRA owner's gross income? **5-15**
- Q 5:46** Does a qualified HSA funding distribution count toward the maximum annual contribution limit? **5-16**
- Q 5:47** What happens if the individual does not remain an eligible individual during the testing period? **5-16**

No Pro-Rata Recovery

- Q 5:48** Do the pro-rata recovery rules apply in determining how much of the qualified HSA funding distribution would otherwise have been includible in income? **5-17**

Maximum Lifetime Distribution Rules

- Q 5:49** Is there a limit on the amount that can be transferred to an HSA in a qualified HSA funding distribution? **5-18**
- Q 5:50** May an individual make more than one qualified HSA funding distribution? **5-18**

Testing Period

- Q 5:51** What is the testing period for an IRA transfer to an HSA? **5-19**

Examples of Qualified HSA Funding Distributions

- Q 5:52** Must an individual that fails to remain an eligible individual during the testing period have to remove the amount transferred in the qualified HSA funding distribution? **5-24**

Qualified HSA Distributions (One-Time HRA and FSA Transfers to an HSA) Before 2012

In General

- Q 5:53** What is a qualified HSA distribution? **5-24**
- Q 5:54** What were the steps an employer and employee had to follow to transfer amounts from a health care FSA or an HRA to an HSA on a tax-free basis? **5-25**
- Q 5:55** May a qualified HSA distribution be made from limited purpose or post-deductible FSA/HRA arrangements before 2012? **5-26**
- Q 5:56** May a qualified HSA distribution be made from a dependent care FSA? **5-26**
- Q 5:57** Could an employer unilaterally decide to make a qualified HSA distribution? **5-26**
- Q 5:58** Was the option to make a qualified HSA distribution required to be offered to all employees? **5-26**

Health Savings Account Answer Book

- Q 5:59** Could an individual have requested more than one qualified HSA distribution before 2012? **5-26**

Plan Amendment Required

- Q 5:60** Was an employer required to offer a qualified HSA distribution option? **5-26**
- Q 5:61** Was the FSA or HRA required to contain provisions allowing qualified HSA distributions? **5-27**

Other Rules (After 2005 and Before January 1, 2012)

- Q 5:62** May the opportunity to make a qualified HSA distribution be provided on a one-time basis? **5-27**
- Q 5:63** Must an employer with an FSA and an HRA who wishes to allow for qualified HSA distributions do so for both the FSAs and the HRA? **5-27**
- Q 5:64** May a qualified HSA distribution be made in property? **5-28**

Treatment of Qualified HSA Distributions

- Q 5:65** How were qualified HSA distributions treated? **5-28**
- Q 5:66** Was a qualified HSA distribution taken into account for purposes of determining the HSA annual contribution limitation? **5-28**
- Q 5:67** May an individual who makes a qualified HSA distribution claim a deduction for the amount transferred to the HSA? **5-28**

Comparability Rule

- Q 5:68** Must an employer that allowed an employee to make a transfer from an HRA or FSA to an HSA offer the same right to all eligible individuals? **5-28**

Transfer Amount

- Q 5:69** Is there a limit to the amount that may have been transferred to an HSA in a qualified HSA distribution before 2012? **5-29**
- Q 5:70** May the September 21, 2006 balance be based on the balance in the FSA or HRA account of a former employer? **5-29**

Minimum Transfer Amount

- Q 5:71** What is the minimum amount that must be transferred in a qualified HSA distribution? **5-30**

Timing Issues

- Q 5:72** Was it possible for an employee to do a tax-free transfer during the year? **5-30**

List of Questions

- Q 5:73** Was it possible to make a mid-year transfer from a limited purpose FSA or HRA before 2012? Must the transfer result in a zero balance? **5-31**

Testing Period

- Q 5:74** What was the testing period for a qualified HSA distribution? ... **5-31**
- Q 5:75** What happens if the individual does not remain an eligible individual during the testing period following a qualified HSA distribution? **5-32**
- Q 5:76** Was withdrawal of the transferred amount required if an individual failed to remain an eligible individual during the testing period? **5-32**
- Q 5:77** Was an employer responsible for reporting whether an employee who made an FSA or HRA transfer remained an eligible individual during the testing period? **5-32**

Access to Funds

- Q 5:78** Does an employee have immediate ability to access the HSA funds that are transferred in a qualified HSA distribution? **5-33**

Disregarded FSA Coverage

- Q 5:79** Was there an exception to the zero balance requirement following a qualified HSA distribution? **5-33**

Permanent Rule Under IRS Notice 2007-22 (After March 15, 2007)

- Q 5:80** Must an employer adopt a grace period extension and must the qualified HSA distribution result in a zero balance? **5-34**
- Q 5:81** Must the participant have a zero balance after a qualified HSA distribution is made? **5-34**
- Q 5:82** Is a participant with a zero balance treated as having coverage during the grace period? **5-34**
- Q 5:83** What happened if the steps identified in IRS Notice 2007-22 were not followed? **5-35**
- Q 5:84** What must an employer have done under the permanent rule of IRS Notice 2007-22 to allow qualified HSA distributions before 2012? **5-35**

HRA/FSA-Compatible Coverage Rules

- Q 5:85** May an employer convert a general purpose HRA or FSA to an HSA-compatible arrangement only for HSA-eligible individuals who elect to make qualified HSA distributions? **5-42**
- Q 5:86** May an employer convert a general purpose HRA or FSA to an HSA-compatible arrangement? **5-42**

Treatment of Qualified HSA Distributions

- Q 5:87** Were qualified HSA distributions taken into account in computing the maximum HSA contribution limit? **5-42**
- Q 5:88** Was a participant permitted to deduct qualified HSA distributions on his or her federal income tax return? **5-43**

Reporting FSA/HRA Transfers

- Q 5:89** How did an employer report a qualifying HSA distribution to the trustee or custodian of the HSA? **5-43**
- Q 5:90** Does an employer report a qualifying HSA distribution to the participant? **5-43**

Chapter 6 Distributions

Taxation of HSA Distributions

- Q 6:1** When is an individual permitted to receive distributions from an HSA? **6-2**
- Q 6:2** May an employer request a distribution from an employee's HSA? **6-2**
- Q 6:3** If an employer contributes to the account of an employee who was never an eligible individual, can the employer recoup the amounts? **6-3**
- Q 6:4** May an employer recover amounts contributed in excess of the maximum annual contribution limit? **6-4**
- Q 6:5** If an employer contributes to the HSA of an employee who ceases to be an eligible individual during a year, can the employer recoup amounts that the employer contributed after the employee ceased to be an eligible individual? **6-4**
- Q 6:6** If contributions are the result of the employer's or trustee's administrative or process error, can the employer recoup amounts that the employer contributed? **6-4**
- Q 6:7** May an HSA be administered through a debit card that restricts payments and reimbursements to health care? **6-5**
- Q 6:8** Must HSA distributions commence when the HSA owner attains a specified age? **6-6**
- Q 6:9** May an HSA owner authorize someone else to withdraw funds from his or her HSA? **6-6**
- Q 6:10** How are distributions from an HSA taxed? **6-6**
- Q 6:11** May an HSA owner claim an investment loss if his or her HSA declines in value? **6-7**
- Q 6:12** Can tax-free distributions be received by an individual who is not an HSA-eligible individual (e.g., an individual who does not have HDHP coverage)? **6-8**

List of Questions

Responsibility

- Q 6:13** Is the trustee responsible for determining whether HSA distributions are used exclusively for qualified medical expenses? **6-8**
- Q 6:14** Who is responsible for determining whether HSA distributions are used exclusively for qualified medical expenses? **6-8**

Restrictions on Distributions

- Q 6:15** May a trustee or custodian place reasonable restrictions on withdrawals from an HSA? **6-9**
- Q 6:16** May an HSA trust or custodial agreement restrict HSA distributions to pay or reimburse only the HSA owner's qualified medical expenses? **6-9**
- Q 6:17** Must distributions from an HSA that are not used exclusively for qualified medical expenses be included in the HSA owner's gross income? **6-9**
- Q 6:18** How are distributions from an HSA that are not used exclusively for qualified medical expenses reported by the HSA owner to the IRS? **6-9**
- Q 6:19** How are distributions from an HSA that are subject to the 20 percent additional tax reported to the IRS by the HSA owner? **6-10**
- Q 6:20** Are amounts distributed to an individual not currently eligible to make contributions excluded from gross income if used exclusively for qualified medical expenses? **6-10**
- Q 6:21** Will tax-free treatment apply to a distribution made directly from the HSA to a third party if the distribution is used exclusively to pay for qualified medical expenses incurred by the HSA owner, spouse, or dependent? **6-10**
- Q 6:22** May qualified medical expenses incurred before establishment of an HSA be reimbursed from an HSA? **6-10**
- Q 6:23** Are distributions from an HSA for expenses that were already reimbursed by another health plan excludable from gross income? **6-10**
- Q 6:24** In cases where both spouses have an HSA and one spouse (i.e., the HSA owner) uses distributions from his or her HSA to pay or reimburse the qualified medical expenses of the other spouse, are the distributions excluded from the HSA owner's gross income? **6-11**
- Q 6:25** What is the time limit for taking a distribution from an HSA to pay for a qualified medical expense incurred during the current year? **6-11**
- Q 6:26** Do the Code Section 105(h) discrimination rules, which apply to self-insured plans, apply to a distribution from an HSA? **6-11**

Medical Care Paid from an HSA

Q 6:27	Who must incur the expense in order to qualify for tax-free distributions from the HSA?	6-12
Q 6:28	What are qualified medical expenses for purposes of an HSA under Code Section 223?	6-12
Q 6:29	What types of expenses are deductible under Code Section 213(a) as medical expenses?	6-12
Q 6:30	Can a personal expenses be qualified medical expenses?	6-14
Q 6:31	Are HSA distributions coordinated with the medical expense deduction?	6-14
Q 6:32	May a payment or distribution from an HSA for a qualified medical expense also be deducted as an expense for medical care under Code Section 213(a)?	6-14
Q 6:33	What requirements must medical care expenses satisfy to be deductible?	6-15
Q 6:34	Are Medicare Part D premiums qualified medical expenses? ...	6-16
Q 6:35	Are premiums for continuation coverage required under federal law for the spouse or dependent of an HSA owner qualified medical expenses?	6-17
Q 6:36	Are premiums for health coverage for a spouse or dependent during a period when the spouse or dependent is receiving unemployment compensation under any federal or state law qualified medical expenses?	6-17
Q 6:37	Do qualified medical expenses for HSA purposes include the Code Section 213(d) medical expenses and menstrual care products incurred by an HSA owner's child who is claimed as a dependent by the HSA owner's former spouse?	6-17
Q 6:38	Are transportation expenses related to medical care qualified medical expenses?	6-18
Q 6:39	Are lodging expenses related to medical care qualified medical expenses?	6-18
Q 6:40	Are meal expenses related to medical care qualified medical expenses?	6-18
Q 6:41	Is cosmetic surgery deductible?	6-20
Q 6:42	Are health insurance premiums qualified medical expenses for purposes of an HSA?	6-20
Q 6:43	Are Medicare premiums that are deducted from a retiree Medicare beneficiary's Social Security benefits considered qualified medical expenses for purposes of an HSA?	6-20
Q 6:44	Can medical expenses paid or reimbursed by distributions from an HSA be treated as expenses paid for medical care for purposes of taking an itemized deduction under Code Section 213(a)? ...	6-20
Q 6:45	What are Medigap policies?	6-21
Q 6:46	Are premiums for Medigap policies treated as qualified medical expenses?	6-21

List of Questions

- Q 6:47** Can accident or disability insurance premiums be paid out of an HSA? **6-21**
- Q 6:48** Are distributions from an HSA for long-term care services considered qualified medical expenses that are excluded from the HSA owner's income? **6-21**
- Q 6:49** May a retiree who is age 65 or older receive tax-free distributions from an HSA to pay the retiree's contributions to an employer's self-insured retiree health coverage? **6-22**
- Q 6:50** May an individual who is under age 65 and has end-stage renal disease or is disabled receive tax-free distributions from an HSA to pay for health insurance premiums? **6-22**
- Q 6:51** Are amounts paid by an individual for equipment, supplies, and diagnostic devices that may be purchased without a prescription from a physician qualified medical expenses for purposes of an HSA? **6-22**

Medicine and Drugs

- Q 6:52** What does the term *medicine and drugs* include? **6-23**
- Q 6:53** May an HSA reimburse the expense of "medical marijuana?" ... **6-23**
- Q 6:54** May an HSA reimburse the expense of CBD oil and CBD products? **6-25**
- Q 6:55** May an HSA reimburse the expense of personal protective equipment such as masks and hand sanitizers? **6-25**
- Q 6:56** Can an HSA reimburse the cost of prescription drugs imported from Canada (or other countries)? **6-26**
- Q 6:57** Are amounts paid by an individual for medicines that may be purchased without a prescription of a physician qualified medical expenses for purposes of an HSA? **6-27**
- Q 6:58** What is meant by the term *prescribed drug*? **6-29**

Distributions Used for Long-Term Care Insurance Premiums

- Q 6:59** May an HSA owner pay qualified long-term care insurance premiums with a tax-free distribution from an HSA? **6-30**
- Q 6:60** May an HSA owner pay qualified long-term care insurance premiums with tax-free distributions from an HSA if contributions to the HSA are made by salary reduction through a Code Section 125 cafeteria plan? **6-30**
- Q 6:61** Are tax-free distributions from an HSA for long-term care insurance premiums limited in amount? **6-30**

Deemed Distributions Due to Prohibited Transactions

- Q 6:62** Are account beneficiaries prohibited from engaging in any transactions involving an HSA? **6-31**

Health Savings Account Answer Book

- Q 6:63** What are the results if an individual engages in a prohibited transaction? **6-31**
- Q 6:64** May an HSA owner pledge his or her HSA as security for a loan? **6-32**

The 20 Percent Additional Tax—IRC § 223(f)

- Q 6:65** When is a distribution from an HSA subject to the 20 percent additional tax under Code Section 223(f)(4)? **6-32**
- Q 6:66** May a distribution that does not violate the contribution limit be treated as a distribution of an excess amount? **6-33**
- Q 6:67** What are the exceptions to the 20 percent additional tax on distributions not used exclusively to pay or reimburse qualified medical expenses of the HSA owner, his or her spouse, or a dependent? **6-33**
- Q 6:68** When is an individual disabled? **6-34**
- Q 6:69** What is a substantial gainful activity for purposes of the disability exception? **6-35**
- Q 6:70** What is an indefinite duration for purposes of the disability exception? **6-36**

Returning Distributions Mistakenly Made

- Q 6:71** May a distribution made erroneously be redeposited into an HSA? **6-36**
- Q 6:72** What is reasonable cause that would permit a mistake-of-fact distribution from an HSA to be redeposited into the HSA? **6-37**
- Q 6:73** Are trustees and custodians required to accept the return of mistaken distributions? **6-37**
- Q 6:74** What is the tax treatment of a mistake-of-fact HSA distribution that is properly and timely repaid into an HSA? **6-37**

Death Distributions to Designated Beneficiaries

- Q 6:75** What happens to an HSA upon the death of the HSA owner? ... **6-37**
- Q 6:76** What are the federal income tax consequences of the HSA owner's death? **6-38**
- Q 6:77** Is a surviving spouse who assumes ownership of an HSA upon the death of his or her spouse (and former HSA owner) subject to income tax upon transfer of the HSA? **6-39**
- Q 6:78** How is an HSA treated for federal estate tax purposes? **6-39**
- Q 6:79** How is an HSA treated for federal gift tax purposes? **6-39**

Income Tax Withholding on HSA Distributions

- Q 6:80** Is a distribution from an HSA subject to federal income tax withholding? **6-39**
- Q 6:81** Are payers required to withhold income taxes on distributions that are not used for qualified medical expenses? **6-39**

Chapter 7 Administration and Compliance

In General

HSA Documents

Q 7:1	Must an HSA be offered in the form of a trust?	7-2
Q 7:2	Has the IRS issued any documents that an individual may use to establish an HSA?	7-2
Q 7:3	Should Model Form 5305-B or Model Form 5305-C be filed with the IRS?	7-3
Q 7:4	May a sponsor of a Model Form 5305-B or Model Form 5305-C add provisions to the model forms?	7-4
Q 7:5	What type of additional provisions can be added to Model Form 5305-B and Model Form 5305-C?	7-4
Q 7:6	What happens if the additional provisions are inconsistent with Code Section 223 or published IRS guidance?	7-4
Q 7:7	When are the model forms deemed established?	7-4
Q 7:8	Must the HSA be created in the United States?	7-4
Q 7:9	What documents should an HSA trustee or custodian provide to the HSA owner when an HSA is established?	7-5
Q 7:10	May a trustee or custodian design an IRS-approved prototype HSA?	7-5

Permissible Investments

Q 7:11	How may HSA funds be invested?	7-5
Q 7:12	May an HSA trust or custodial agreement restrict investments to certain types of permissible investments?	7-5
Q 7:13	May HSA funds be commingled in a common trust fund or common investment fund?	7-6
Q 7:14	Are HSA trustees and custodians also subject to the rules against prohibited transactions?	7-7

Account Fees

Q 7:15	If HSA administration and account maintenance fees are withdrawn from the HSA, are the withdrawn amounts treated as taxable distributions to the HSA owner?	7-7
Q 7:16	How do HSA trustees report amounts withdrawn from the HSA to pay for HSA administration and account maintenance fees? ...	7-7
Q 7:17	If HSA administration and account maintenance fees are withdrawn from the HSA, does the withdrawn amount increase the maximum annual HSA contribution limit?	7-8

Health Savings Account Answer Book

- Q 7:18** If HSA administration and account maintenance fees are paid by the HSA owner or employer directly to the HSA trustee or HSA custodian, do these payments count toward the annual maximum contribution limit for the HSA? **7-8**

Trustees and Custodians

- Q 7:19** Is any insurance company or bank a qualified HSA trustee or HSA custodian? **7-8**
- Q 7:20** Can an individual qualify to be an HSA trustee or custodian? ... **7-9**
- Q 7:21** Is there a limit on the annual HSA contribution which the HSA trustee or custodian may accept? **7-9**
- Q 7:22** May an HSA trustee or custodian accept contributions of property? **7-9**
- Q 7:23** Who is responsible for determining whether contributions to an HSA exceed the maximum annual contribution limit for a particular HSA owner? **7-9**
- Q 7:24** Who is responsible for notifying the HSA trustee or custodian of any excess contribution and requesting a withdrawal of the excess contribution? **7-9**
- Q 7:25** Is the HSA trustee or custodian responsible for accepting cash contributions? **7-9**
- Q 7:26** Is the HSA trustee or custodian responsible for filing required information returns with the IRS? **7-10**
- Q 7:27** Is the HSA trustee or custodian responsible for tracking the HSA owner's age? **7-10**
- Q 7:28** Must the HSA trustee or custodian allow account beneficiaries to return mistaken distributions to the HSA? **7-10**
- Q 7:29** May an HSA trust or custodial agreement restrict the HSA owner's ability to roll over amounts from that HSA? **7-10**
- Q 7:30** Are HSA trustees or custodians required to accept rollover contributions or trustee-to-trustee transfers? **7-10**
- Q 7:31** May an HSA trust or custodial agreement restrict HSA distributions to pay or reimburse only the HSA owner's qualified medical expenses? **7-11**
- Q 7:32** May an HSA trustee or custodian restrict the frequency or minimum amount of distributions from an HSA? **7-11**
- Q 7:33** May an HSA trustee or custodian that does not sponsor an HDHP require proof or certification that the HSA owner is an eligible individual? **7-11**
- Q 7:34** May an HSA trustee or custodian that does not sponsor an HDHP require proof or certification that the HSA owner is covered by an HDHP? **7-11**

Reports

- Q 7:35** What reports may the IRS require in connection with an HSA? ... **7-11**
- Q 7:36** When must reports regarding HSAs be provided? **7-12**

List of Questions

- Q 7:37** What is the penalty if an HSA trustee, custodian, or employer fails to file a required report with the IRS? **7-12**
- Q 7:38** What methods have been used to commit fraud against HSAs and HSA administrators? **7-12**

Form Filing Requirements

- Q 7:39** Is an employer required to provide participants in an HSA or an HDHP with an SPD? **7-13**

Reporting HSA Contributions on Form 5498-SA

- Q 7:40** What is the purpose of Form 5498-SA—*HSA, Archer MSA, or Medicare Advantage MSA Information*? **7-13**
- Q 7:41** For whom is Form 5498-SA required to be filed? **7-13**
- Q 7:42** Is Form 5498-SA required if no contributions were made and there was a total distribution made from the HSA? **7-14**
- Q 7:43** When must Form 5498-SA be filed with the IRS? **7-14**
- Q 7:44** When must Form 5498-SA be provided to the recipient? **7-15**
- Q 7:45** Must Form 5498-SA be filed if the owner of an HSA dies? **7-15**
- Q 7:46** How are the boxes on Form 5498-SA completed for an HSA? ... **7-15**

Reporting HSA Distributions on Form 1099-SA

- Q 7:47** What is the purpose of Form 1099-SA? **7-16**
- Q 7:48** In what year are distributions from an HSA required to be reported? **7-16**
- Q 7:49** Must Form 1099-SA be provided to the HSA owner and/or account beneficiaries? **7-16**
- Q 7:50** When is Form 1099-SA required to be provided to the recipient? **7-17**
- Q 7:51** When is Form 1099-SA required to be filed with the IRS? **7-17**
- Q 7:52** What is a substitute statement for Form 1099-SA? **7-17**
- Q 7:53** How are transfers between trustees and/or custodians treated for purposes of Form 1099-SA? **7-17**
- Q 7:54** How is Form 1099-SA completed for an HSA? **7-18**

Form 5329: Reporting Additional Taxes on Excess HSA Contributions

- Q 7:55** What is the purpose of Form 5329? **7-20**
- Q 7:56** Under what circumstances must Form 5329 be filed with respect to an HSA? **7-20**
- Q 7:57** If applicable, can a married couple who are filing a joint tax return file one Form 5329? **7-20**
- Q 7:58** When must Form 5329 be filed? **7-20**
- Q 7:59** How is Part VII of Form 5329 completed for an HSA? **7-21**

Reporting Excise Tax on Prohibited Transactions

- Q 7:60** What is the purpose of Form 5330? **7-22**
- Q 7:61** When must Form 5330 be filed? **7-22**
- Q 7:62** How is Form 5330 completed when a disqualified person participates in a prohibited transaction involving an HSA? **7-22**

Form 8889: Health Savings Accounts (HSAs)

- Q 7:63** What is the purpose of Form 8889? **7-23**
- Q 7:64** Who must file Form 8889? **7-23**
- Q 7:65** How is Form 8889 completed upon the death of the owner? ... **7-23**
- Q 7:66** How are contributions, excess contributions, and deductions reported on Form 8889? **7-24**

Reporting Deemed Distributions

- Q 7:67** How are deemed distributions from an HSA reported on Form 8889? **7-29**
- Q 7:68** How is Form 8889 completed if a distribution is made from the account? **7-29**
- Q 7:69** How is Form 8889 completed if HDHP coverage is not maintained during the testing period? **7-30**

Reporting Excise Tax on Failure to Make Comparable HSA Contributions on Form 8928

- Q 7:70** What is the purpose of Form 8928? **7-31**
- Q 7:71** How is the excise tax on failure to make comparable employer contributions computed? **7-31**
- Q 7:72** Can the excise tax on failure to make comparable employer contributions be waived? **7-31**
- Q 7:73** When must an employer report the excise tax on failure to make comparable employer contributions? **7-32**
- Q 7:74** Who must sign Form 8928? **7-32**
- Q 7:75** How is Form 8928 completed for a failure to make comparable employer contributions? **7-32**

Reporting Employer Contributions on Form W-2

- Q 7:76** How is Form W-2, Wage and Tax Statement, completed if an employer makes contributions to an HSA? **7-32**
- Q 7:77** How should pretax contributions made to an HSA through an employer's cafeteria plan be reported? **7-33**
- Q 7:78** How does an employer report contributions on Form W-2 that are recouped because the employee was never an eligible individual or that exceeded the maximum annual contributions limit? **7-33**

List of Questions

Q 7:79	How are employer contributions to the HSA of an employee's spouse (who is not an employee of this employer) treated? ...	7-34
Q 7:80	How is the cost of employer-provided health coverage reported on Form W-2?	7-34
Q 7:81	Is the amount reported on Form W-2 taxable?	7-34
Q 7:82	Are all employers required to report the cost of employer-provided coverage?	7-34

Chapter 8 Federal and State Laws Affecting HSAs

ERISA

Q 8:1	What guidance did the DOL issue regarding HSAs and ERISA? ...	8-2
Q 8:2	What conditions must be satisfied in order for an HSA to be exempt from ERISA?	8-2
Q 8:3	How does the guidance issued in Field Assistance Bulletin (FAB) 2006-02 differ from earlier DOL guidance with respect to other arrangements?	8-2
Q 8:4	What are the safe harbor rules that apply to determine whether Title I of ERISA applies to a group or group-type insurance program offered to employees by an employer?	8-4
Q 8:5	What weight would a court give to a FAB?	8-4
Q 8:6	What types of employer actions would not be viewed by the DOL as “representing that an HSA is an employee welfare plan established and maintained by the employer”?	8-5
Q 8:7	Is FAB 2004-01 more flexible than the group insurance safe harbor with respect to “endorsement”?	8-5
Q 8:8	If an employer offering an HSA to employees asks the HSA provider for specific investment options, will the HSA be subject to ERISA?	8-7
Q 8:9	May an employer select an HSA provider that also offers some or all of its investment options made available to employees in the employer-sponsored 401(k) plan?	8-7
Q 8:10	Can an employer select a single HSA trustee that offers a limited range of investment options to provide HSA services to its employees without violating the FAB prohibition against making or selecting investment options?	8-8
Q 8:11	May an employer encourage participation in the HSA program? ...	8-8
Q 8:12	May an employer that makes an HSA program available to employees pay the fees imposed by the HSA provider without causing the HSA to be subject to ERISA, or without generating adverse tax consequences for employees?	8-8
Q 8:13	If an employer makes arrangements with an HSA trustee to offer an HSA with a debit card to employees, can the employer specify that the debit card be used only for medical expenses without violating the FAB prohibition against imposing conditions on the use of HSA funds?	8-9

Health Savings Account Answer Book

- Q 8:14** Do the debit card interchange transaction fee restrictions and prohibitions against payment card network exclusivity arrangements in the Dodd-Frank Wall Street Reform and Consumer Protection Act apply to debit cards used with HSAs? **8-10**
- Q 8:15** May an HSA owner direct the payment of HSA funds to a credit line vendor to reimburse the vendor for HSA expenses paid with a credit card? **8-13**
- Q 8:16** If an employer is in the business of providing HSAs, can it offer HSAs to its employees on the same terms as offered to the public without causing the HSAs to be subject to ERISA? **8-13**
- Q 8:17** Can an employer offer the HDHP and HSA as a single option without making the HSA subject to ERISA? **8-14**
- Q 8:18** Can an employer limit an employee's pre-tax HSA contributions without causing the HSA to be subject to ERISA? **8-14**
- Q 8:19** What are the consequences if an HSA is not subject to ERISA? ... **8-14**
- Q 8:20** What are the employer's legal obligations and consequences if the HSA is subject to ERISA? **8-14**
- Q 8:21** If an HSA is subject to ERISA, would an employer be required to distribute a COBRA General Notice? **8-15**
- Q 8:22** If an HSA is subject to ERISA, is an employer required to comply with the HIPAA nondiscrimination rules as well as the PPACA's insurance market reform rules? **8-15**
- Q 8:23** If an HSA is subject to ERISA, is an employer required to comply with the DOL claims procedure rules and the PPACA claims procedure requirements that apply to group health plans? ... **8-16**
- Q 8:24** If an HSA is subject to ERISA, could its funds be held in a custodial account rather than in a trust? **8-17**
- Q 8:25** If an HSA is subject to ERISA, what fiduciary standards would apply to the HSA trustee or custodian? **8-17**
- Q 8:26** Does an entity incur additional risk and responsibilities as an HSA trustee as compared to an HSA custodian? **8-18**
- Q 8:27** Is it possible to designate one entity as the trustee of an HSA and another entity as the custodian of an HSA? **8-19**
- Q 8:28** What are the potential consequences when a fiduciary violates ERISA? **8-19**
- Q 8:29** If an HSA trust is not subject to ERISA, what fiduciary standards would apply to the HSA trustee? **8-20**
- Q 8:30** Has the DOL issued any guidance regarding incentive payments made into an HSA other than FAB 2004-01 relating to HSAs? ... **8-21**
- Q 8:31** Do the prohibited transaction rules under Code Section 4975 apply if an HSA is not subject to ERISA? **8-21**
- HIPAA Privacy**
- Q 8:32** Is an HSA subject to the HIPAA privacy and security regulations? **8-22**

List of Questions

- Q 8:33** Would the HIPAA Standard Transaction Regulations apply to HSAs? **8-22**

Medicare Part D

- Q 8:34** Is an HSA a plan for which an employer must issue a certificate of creditable coverage for purposes of Medicare Part D? **8-23**
- Q 8:35** Is an HSA a plan for which an employer may apply for the employer subsidy under Medicare Part D? **8-24**

State Benefit Mandates

- Q 8:36** What state laws could affect the HDHP that accompanies the HSA? **8-24**
- Q 8:37** What transition relief has the IRS issued with respect to HDHPs that are subject to state mandates? **8-25**
- Q 8:38** Can an employer make the same HDHP/HSA available to its employees in Hawaii as is available in other states? **8-26**
- Q 8:39** Is it possible to have an HDHP in New Jersey that satisfies federal requirements? **8-27**

State Tax Consequences

- Q 8:40** If an HSA satisfies applicable federal requirements, will a participant have the same favorable tax consequences under state law as under federal law? **8-27**
- Q 8:41** Does New Jersey conform to Code Section 223? **8-28**
- Q 8:42** Does Wisconsin conform to Code Section 223? **8-29**
- Q 8:43** What impact did California's Assembly Bill 115 have on HSAs? ... **8-29**
- Q 8:44** Does Alabama conform to Code Section 223? **8-29**
- Q 8:45** What impact did the Health Savings Account Act in Pennsylvania have on HSAs? **8-30**

Unclaimed Property

- Q 8:46** When is property presumed to be abandoned under the Unclaimed Property Act? **8-30**
- Q 8:47** Have all states adopted the Unclaimed Property Act? **8-32**
- Q 8:48** Has the Unclaimed Property Act been revised to address when an HSA is presumed abandoned? **8-32**

Davis-Bacon Act

- Q 8:49** Do employer contributions to an HSA count as fringe benefits under the Davis-Bacon Act? **8-33**

Fair Labor Standards Act

- Q 8:50** Are contributions to an HSA excluded from the regular rate under the Fair Labor Standards Act? **8-33**

USA Patriot Act

- Q 8:51** Do the Customer Identification Procedures of the USA Patriot Act apply to HSAs for which a bank is trustee or custodian? **8-34**

Securities Law

- Q 8:52** Is an HSA subject to regulation by the Securities and Exchange Commission? **8-35**
- Q 8:53** Under what circumstances would an HSA be considered a security for purposes of the federal securities laws? **8-35**
- Q 8:54** Is guidance relating to IRAs relevant for purposes of determining whether an HSA is a security? **8-35**
- Q 8:55** What is the SEC's position regarding IRAs? **8-35**

Use of Electronic Media

- Q 8:56** To what extent can an employer use electronic technologies for providing employee benefit notices and transmitting employee benefit elections and consents? **8-36**

Creditor Protection

- Q 8:57** Are HSAs subject to the claims of creditors? **8-37**

PPACA

- Q 8:58** How are employer HSA contributions counted for purposes of determining the actuarial value of the accompanying high deductible health plan under the PPACA? **8-38**
- Q 8:59** How are employer HSA contributions counted for purposes of determining the minimum value of the accompanying high deductible health plan under the PPACA? **8-39**
- Q 8:60** Are employer HSA contributions and employee pretax HSA contributions counted for purposes of calculating the high cost employer-sponsored health coverage tax under the PPACA? . . . **8-40**

Chapter 9 Prohibited Transactions and Fiduciary Responsibility

Deemed Distributions Due to Prohibited Transactions

- Q 9:1** Are account beneficiaries prohibited from engaging in any transactions involving an HSA? **9-1**
- Q 9:2** What are the results if an individual engages in a prohibited transaction? **9-2**
- Q 9:3** May an HSA owner pledge his or her HSA as security for a loan? **9-2**

List of Questions

Q 9:4	Is an HSA subject to the prohibited transaction provisions of the Code?	9-2
Q 9:5	What is a <i>prohibited transaction</i> and what are some prohibited transaction exemptions that are commonly relied upon?	9-3
Q 9:6	Who is a <i>disqualified person</i> ?	9-5
Q 9:7	Is an HSA subject to two different federal legal schemes that impose prohibited transaction restrictions?	9-6
Q 9:8	What are the consequences if an HSA owner or other disqualified person enters into a prohibited transaction with an HSA?	9-7

Personalized Investment Advice

Q 9:9	When is the provision of investment advice a prohibited transaction?	9-7
Q 9:10	What is the prohibited transaction penalty tax rate?	9-8
Q 9:11	May the prohibited transaction rules be waived?	9-8
Q 9:12	What is meant by a disqualified person under the Code and by a party in interest under ERISA?	9-9
Q 9:13	Who is a <i>fiduciary</i> for purposes of ERISA and Code Section 4975?	9-11
Q 9:14	Who is a fiduciary based on the provision of investment advice?	9-11
Q 9:15	What is the status of the DOL's revised definition of "fiduciary" rule?	9-13
Q 9:16	How has the SEC attempted to regulate the delivery of investment advice by a broker-dealer?	9-14
Q 9:17	May an investment adviser who is a fiduciary make an investment recommendation to an HSA owner and receive additional compensation in connection with such recommendations? ...	9-18
Q 9:18	May an insurer offer a cash incentive to establish an HSA and an HDHP without violating the prohibited transaction rules?	9-19

