

Final Regulations on Employer Health Savings Account Contributions

The IRS has released final regulations regarding employers' failure to make comparable contributions to employees' health savings accounts (HSAs). These regulations clarify what constitutes comparable contributions and will apply to employer contributions to HSAs made on or after January 1, 2007.

HSAs are accounts that work in tandem with a high-deductible health plan (HDHP). Employers are not required to make contributions to employee HSAs. However, if you do contribute to any employee's HSA, you must make comparable contributions to all comparable participating employee HSAs. Comparable participating employees are eligible individuals within the same category of employees who have the same category of HDHP coverage. In the event you fail to make comparable contributions to all eligible employee HSAs, then you will be subject to an excise tax equal to 35 percent of the aggregate contributions to employee HSAs for the calendar year.

Under the final regulations, employer contributions are comparable if they are either (1) the same amount or (2) the same percentage of the employee's deductible, for employees within the same category of coverage. Under the proposed regulations there were only two categories of HDHP coverage: self and family. However, the final regulations provide for four categories of coverage: self; self plus one; self plus two; and self plus three or more. In addition, the final regulations provide that an employer's contribution to the self plus two category may not be less than its contribution to the self plus one category. Similarly, the employer's contribution to the self plus three or more category may not be less than its contribution to the self plus two category.

The final regulations apply the comparability rules separately to employees covered by a collective bargaining agreement. Thus, employees who are covered by a bona fide multi-employer collective bargaining agreement are not comparable participating employees.

The final regulations also provide better guidance for employers that want to make contributions through a cafeteria plan. Such contributions will qualify as comparable contributions under the following conditions:

1. the plan is written, and
2. all or a portion of the HSA contribution is available as a pre-tax salary reduction, regardless of whether the employee actually elects to contribute to the HSA by salary reduction.

As you can see, the rules governing this type of employee benefit plan are complex. If you would like additional information on this recent development, or if you would like us to perform an analysis to determine whether your current employee benefit plan is in compliance, please contact us.