COMPLIANCE OVERVIEW

Provided by Moore Benefits, Inc.

Health Savings Account (HSA) Contribution Rules

Many employers offer high deductible health plans (HDHPs) to control premium costs and then pair this coverage with health savings accounts (HSAs) to help employees with their health care expenses.

An HSA is a tax-favored trust or account that can be contributed to by, or on behalf of, an eligible individual for the purpose of paying qualified medical expenses. For example, individuals can use their HSAs to pay for expenses covered under their HDHPs until their deductibles have been met, or they can use their HSAs to pay for qualified medical expenses not covered by their HDHPs, such as dental or vision expenses.

HSAs provide a triple tax advantage—contributions, investment earnings and amounts distributed for qualified medical expenses are all exempt from federal income tax, Social Security/Medicare tax and most state income taxes. Due to an HSA's potential tax savings, federal tax law includes **strict rules for HSA contributions**.

LINKS AND RESOURCES

- IRS Publication 969, Health Savings Accounts and Other Tax-favored Health Plans
- IRS Notice 2004-50, which includes Q&As on a variety of HSA topics
- IRS Rev. Proc. 2018-30, which includes the inflation-adjusted HSA limits for 2019

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HIGHLIGHTS

CONTRIBUTION LIMITS

- For 2019, $3,500 for individuals with self-only coverage and $7,000 for individuals with family coverage.
- Individuals who are age 55 or older may make an additional $1,000 "catch-up" contribution.

CONTRIBUTION RULES

- For each month an individual is HSA-eligible, he or she may contribute one-twelfth of the applicable maximum contribution limit.
- The full-contribution rule is a special rule that allows an individual who is HSA-eligible for only part of a year to make a full year's worth of HSA contributions.
- A special contribution limit applies to married spouses when either spouse has family HDHP coverage.

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WHO CAN CONTRIBUTE TO AN HSA?

Only an **eligible individual** can establish an HSA and make HSA contributions (or have them made on his or her behalf). An individual's eligibility for HSA contributions is generally determined monthly, as of the first day of the month.

To be HSA-eligible for a month, an individual must:

- ✓ Be covered by an HDHP on the first day of the month;
- ✓ Not be covered by other health coverage that is not an HDHP (with certain exceptions);
- ✓ Not be enrolled in Medicare; and
- ✓ Not be eligible to be claimed as a dependent on another person's tax return.

HSA contributions can be made by the HSA accountholder or by any other person on his or her behalf, including an employer or family member. An individual who is no longer HSA-eligible may still contribute to his or her HSA (or have contributions made on his or her behalf) for the months of the year in which he or she was HSA-eligible.

HOW MUCH CAN BE CONTRIBUTED TO AN HSA EACH YEAR?

For each month an individual is HSA-eligible, he or she may contribute **one-twelfth of the applicable maximum contribution limit for the year**. This limit is called the **general monthly contribution rule**. The applicable maximum contribution limit depends on whether the individual has self-only HDHP coverage or family HDHP coverage on the first day of the month.

- Self-only HDHP coverage is HDHP coverage for only one HSA–eligible individual.
- Family HDHP coverage is HDHP coverage for one HSA-eligible individual and at least one other individual (regardless of whether the other individual is HSA–eligible).

The maximum HSA contribution limits are subject to an annual adjustment for inflation. By June 1 of each calendar year, the Internal Revenue Service (IRS) publishes the cost-of-living adjustments that will become effective as of the next Jan. 1.

MAXIMUM CONTRIBUTION LIMIT

TYPE OF COVERAGE	2017	2018	2019
Self-only HDHP coverage	$3,400	$3,450	$3,500
Family HDHP coverage	$6,750	$6,900	$7,000

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Example: Gina, age 38, enrolls in family HDHP coverage on Jan. 1, 2019, and is an HSA-eligible individual on that date. Her coverage changes to self-only HDHP coverage on July 1, 2019, and she retains that coverage through Dec. 31, 2019. She is an eligible individual for all 12 months in 2019. She can contribute $5,250 ((6/12 × $7,000) + (6/12 × $3,500)) to an HSA for 2019.

Except for rollover contributions, all HSA contributions made by or on behalf of an HSA–eligible individual are aggregated for purposes of applying the maximum contribution limit. However, HSA administrative fees or account maintenance fees paid by the HSA accountholder (or someone on his or her behalf) are not HSA contributions, and do not count toward the annual contribution limit. Also, all HSA contributions, except rollover contributions, must be made in cash. For example, HSA contributions cannot be made in stock or other property.

Keep in mind that there are some special contribution rules for individuals who are age 55 or older, mid-year HDHP enrollees and married spouses with family HDHP coverage. These rules, which are discussed below, may impact how much can be contributed to an individual's HSA each year.

WHO IS ELIGIBLE TO MAKE CATCH-UP CONTRIBUTIONS?

Individuals who are **age 55 or older by the end of the tax year** are permitted to make additional HSA contributions, called "**catch-up contributions**." The maximum annual catch-up contribution is **$1,000**. Because the catch-up contribution limit is not adjusted for inflation, it remains the same year after year. As with the general HSA contribution limit, the catch-up contribution limit is determined on a monthly basis.

Example: On Jan. 1, 2019, Mary begins participating in self-only coverage under an HDHP. Mary turns age 65 on July 1, 2019, and enrolls in Medicare. She ceases to be an eligible individual for HSA purposes when she becomes enrolled in Medicare (on July 1, 2019). Thus, she will be eligible to make HSA contributions for six months in 2019 (Jan. through June) at a monthly contribution limit of approximately $375 (1/12 of $3,500 (the statutory maximum) + 1/12 of $1,000 (the annual HSA catch-up limit)). Her maximum HSA contribution limit for 2019 is approximately $2,250 (6 × $375).

The HSA catch-up contribution limit is not reduced for the year in which the individual reaches age 55 if he or she reaches age 55 after Jan. 1. For example, an individual who is HSA-eligible for all of 2019 and who turns age 55 on Dec. 1, 2019, may make a full $1,000 catch-up contribution for 2019.

A married couple may make two HSA catch-up contributions, as long as both spouses are at least age 55. However, in order for a married couple to make two HSA catch-up contributions, a separate HSA must be established in the name of each spouse.

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WHAT IS THE FULL-CONTRIBUTION RULE FOR MID-YEAR ENROLLEES?

The **full-contribution rule** is an exception to the general rule that the maximum amount of HSA contributions for a year is determined monthly, based on the individual's HSA eligibility for that month.

Full-contribution Rule

Under the full-contribution rule, an individual is treated as HSA-eligible for the entire calendar year for purposes of HSA contributions, if he or she becomes covered under an HDHP in a month other than January and is HSA-eligible on Dec. 1 of that year.

The eligible individual is treated as enrolled in the same HDHP coverage (that is, self-only or family coverage) as he or she has on the first day of the last month of the year. For example, if an individual first becomes HSA-eligible on Dec. 1, 2019, and has family HDHP coverage, he or she is treated as an eligible individual who had family HDHP coverage for all twelve months in 2019.

The full-contribution rule applies regardless of whether the individual was an eligible individual for the entire year, had HDHP coverage for the entire year, or had disqualifying non-HDHP coverage for part of the year. However, an individual who relies on this special rule must generally remain HSA-eligible during a **13-month testing period**, with exceptions for death and disability.

The full-contribution rule applies to both the general monthly contribution limit and to the additional HSA catch-up contribution limit for eligible individuals who reach age 55 by the end of the year.

The full-contribution rule, however, does not change the requirement that expenses incurred before the date the HSA was established cannot be reimbursed by the HSA. An HSA is not established before the date that the HSA is actually established, even when individuals are treated as HSA–eligible for the entire year under the full-contribution rule.

HOW DOES THE FULL-CONTRIBUTION RULE WORK?

The full-contribution rule can increase, but not decrease, the amount that an individual would otherwise be eligible to contribute to his or her HSA under the general monthly contribution rule.

An individual who is eligible for the full-contribution rule can contribute the greater of:

- The maximum amount determined under the general monthly contribution rule for the taxable year, based on the individual's HDHP coverage—that is, self-only or family coverage—for each month of the year that he or she is HSA-eligible (without regard to the full-contribution rule); OR
- The full HSA contribution limit for the taxable year based on the type of HDHP coverage (self-only or family coverage) that he or she had on Dec. 1 of that year.

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Thus, under the full-contribution rule, an individual who has self-only HDHP coverage for most of the taxable year, but who switches to family HDHP coverage late in the year and who still has family HDHP coverage on Dec. 1 of that year, will be able to contribute significantly more to his or her HSA for the year than if he or she had kept self-only HDHP coverage for all 12 months of the year.

Example: Bob, age 39, enrolls in self-only HDHP coverage on Jan. 1, 2019, and is an HSA-eligible individual on that date. Bob's coverage changes to family HDHP coverage on Nov. 1, 2019, and Bob retains family HDHP coverage through Dec. 31, 2019. Bob remains HSA–eligible through Dec. 31, 2020 (testing period).

Bob is an eligible individual with family HDHP coverage on Dec. 1, 2019. Bob's full contribution limit for 2019 is $7,000. Bob's sum of the monthly contribution limits is approximately $4,082 ((2/12 × $7,000) + (10/12 × $3,500)). Bob's annual contribution limit for 2019 is $7,000—the greater of $7,000 or $4,082.

WHAT IS THE TESTING PERIOD FOR THE FULL-CONTRIBUTION RULE?

If an individual makes additional HSA contributions (or if contributions are made on his or her behalf) under the full-contribution rule, and the individual does not remain HSA-eligible during the 13-month testing period, he or she will experience **adverse tax consequences**.

These adverse tax consequences do not apply, however, if an individual loses his or her HSA eligibility during the testing period due to disability or death.

Also, to remain HSA-eligible during the testing period, an individual is not required to keep the same level of HDHP coverage during the testing period. Thus, if an HSA-eligible individual merely changes his or her HDHP coverage level (from self-only to family coverage, or vice versa) during the testing period, he or she will not suffer any adverse tax consequences.

The testing period begins on Dec. 1 of the year for which the HSA contributions were made, and it ends on Dec. 31 of the following year.

ADVERSE TAX CONSEQUENCES

If an individual makes additional contributions under the full-contribution rule and then ceases to be HSA-eligible during the testing period, the additional contributions that were made under the full-contribution rule will be:

- **Includible in the individual's gross income** (for the taxable year containing the first month of the testing period for which the individual ceases to be HSA–eligible); and
- Subject to an additional 10 percent tax.

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The amount that is included in the individual's gross income is computed by subtracting the amount that could have been contributed under the general monthly contribution rule from the amount actually contributed under the full-contribution rule.

Earnings on the taxable amount are not included in gross income and are not subject to the 10 percent additional tax, as long as the earnings remain in the individual's HSA or are used for qualified medical expenses.

Example: Alex, age 53, enrolls in family HDHP coverage on Dec. 1, 2019, and is otherwise an HSA-eligible individual on that date. Alex is not an eligible individual in any other month in 2019. Alex's full-contribution limit for 2019 is $7,000. The sum of the monthly contribution limits is approximately $583 (1/12 × $7,000). Alex's annual contribution limit for 2019 is $7,000—the greater of $7,000 or $583.

The testing period for 2019 HSA contributions ends on Dec. 31, 2020. In 2020, Alex ceases to be an eligible individual during the testing period. In 2020, Alex must include approximately $6,417 in gross income, the amount contributed to the HSA for 2019, minus the sum of the monthly contribution limits ($7,000−$583). In addition, the 10 percent additional tax (approximately $641) applies to the amount included in gross income.

The 10 percent additional tax for the failure to remain HSA-eligible during the testing period applies regardless of the individual's age (that is, it applies even after the individual attains age 65).

This additional tax cannot be avoided by withdrawing the taxable amounts from the HSA. An amount included in an individual's federal gross income because the individual failed to remain HSA-eligible during the testing period is not an "excess contribution." Withdrawing the taxable amount (and not using the withdrawn amount for qualified medical expenses) will result in double taxation because the withdrawn amount will again be included in the individual's gross income and (unless the individual has died, become disabled or attained age 65) will also be subject to the additional 20 percent tax on nonmedical distributions.

ARE THERE ANY SPECIAL CONTRIBUTION LIMITS FOR SPOUSES?

There is a special contribution rule for married individuals, which provides that **if either spouse has family HDHP coverage, then both spouses are treated as having only that family coverage**.

If both spouses are HSA-eligible, the HSA contribution limit calculated under this special contribution rule is a joint limit, which is divided equally between the spouses (unless they agree on a different division). This means that if both spouses are HSA-eligible and either has family HDHP coverage, the spouses' combined contribution limit is the annual maximum limit for individuals with family HDHP coverage.

This special contribution rule applies even if one spouse has family HDHP coverage and the other has self-only HDHP coverage, or if each spouse has family HDHP coverage that does not cover the other

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spouse. The special contribution rule for married spouses does not apply to catch-up contributions. Married couples who both are over age 55 may each make an additional catch-up contribution ($1,000) to their separate HSAs.

Example: In 2019, Tony (age 53) and Barb (age 56) are married and both have family coverage under separate HDHPs. Together, they will be able to contribute up to the annual maximum limit for family HDHP coverage ($7,000 for 2019). They have not made any special agreement about the division of their combined HSA limit. Consequently, Tony may contribute $3,500 to his HSA (half of the $7,000 contribution limit) and Barb may contribute $4,500 to her HSA (half of the $7,000 limit plus an additional $1,000 catch-up contribution).

Spouses who are HSA-eligible may allocate the joint contribution limit in any way they want. They may divide the limit equally or allocate it between their HSAs in any proportion, including allocating it entirely to one spouse.

In addition, keep in mind that HSAs are individual trusts or accounts, which means that spouses cannot share a joint HSA. Also, if a spouse has non-HDHP coverage (such as a low-deductible health plan, general purpose FSA or HRA) that covers the other spouse, both spouses are ineligible for HSA contributions.

The special contribution rule for married spouses does not apply when:

- **Only one spouse is HSA-eligible**. The contribution limit is determined based on the HSA-eligible spouse's coverage, without applying the special contribution rule. This means that the HSA–eligible spouse may contribute the full amount based on his or her HDHP coverage and no allocation is made to the ineligible spouse.
- **Neither spouse has family coverage**. Contributions to each eligible spouse's HSA are subject to the limit on contributions for persons with self-only coverage, plus any available catch-up contributions. One spouse cannot reduce his or her own HSA contributions in order to allow the other spouse to make contributions greater than the self-only coverage limit.

ARE THERE SPECIAL RULES FOR MEDICARE ENROLLEES?

An individual is not eligible for HSA contributions once his or her Medicare coverage begins. There are some special timing rules regarding the effective date for Medicare coverage that sometimes come as a surprise to individuals who have been contributing to HSAs.

Under these rules, Medicare Part A coverage begins the month an individual turns age 65, provided the individual files an application for Medicare Part A (or for Social Security or Railroad Retirement Board benefits) within six months of when the individual becomes age 65. If the individual files an application more than six months after turning age 65, Medicare Part A coverage will be retroactive for six months.

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Individuals who delay applying for Medicare and are later covered by Medicare retroactively to the month they turned 65 (or six months if later) cannot make contributions to an HSA for the period of retroactive coverage. In other words, an individual's annual HSA contribution limit is reduced for any months of Medicare coverage, including retroactive Medicare coverage. To avoid excess contributions, individuals may need to stop making HSA contributions in advance of when they apply for Medicare coverage.

IF EMPLOYEES MAKE PRE-TAX HSA CONTRIBUTIONS, CAN THEY CHANGE THEIR ELECTIONS DURING A PLAN YEAR?

HSAs are commonly offered with HDHPs under an employer's Section 125 plan (or a cafeteria plan). This allows employees to make their HSA and HDHP contributions as pre-tax salary reductions. As a general rule, cafeteria plan elections are irrevocable for an entire plan year. This means that participants ordinarily cannot make changes to their cafeteria plan elections during a plan year. The IRS, however, allows a cafeteria plan to be designed to permit mid-year election changes in limited situations.

IRS Notice 2004-50 confirms that the **irrevocable election rules do not apply to a cafeteria plan's HSA benefit**. An employee who elects to make HSA contributions under a cafeteria plan may start or stop the election or increase or decrease the election at any time during the plan year, as long as the change is effective prospectively. If an employer places additional restrictions on HSA contribution elections under its cafeteria plan, then the same restrictions must apply to all employees. Also, to be consistent with the HSA monthly eligibility rules, HSA election changes must be allowed **at least monthly** and **upon loss of HSA eligibility**.

WHAT ARE THE RULES FOR EMPLOYER HSA CONTRIBUTIONS?

Employers may contribute to the HSAs of current or former employees. An individual's HSA contribution limit is reduced by any employer contributions (including pre-tax salary deferrals under a cafeteria plan) made to his or her HSA (or Archer MSA).

When an employer makes a pre-tax contribution to an employee's HSA, the employer should have a reasonable belief that the contribution will be excluded from the employee's income. However, the employee, and not the employer, is primarily responsible for determining eligibility for HSA contributions. IRS Notice 2004-50 states that an employer is only responsible for determining whether **the employee is covered under an HDHP or any low-deductible health plan sponsored by the employer**, including health FSAs and HRAs.

In addition, if an employer makes HSA contributions outside of a cafeteria plan, the employer must make **comparable contributions** to the HSAs of all comparable participating employees. As a general rule, contributions are comparable if they are the same dollar amount or the same percentage of the HDHP deductible. If an employer fails to comply with the comparability requirement during a calendar year, it will be liable for an excise tax equal to **35 percent** of the aggregate amount contributed by the employer to the HSAs of its employees during that calendar year.

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The comparability rules do not apply to employer HSA contributions made through a cafeteria plan. Employer contributions to employees' HSAs are made through the cafeteria plan when the cafeteria plan allows eligible participants to make pre-tax salary deferrals to fund their HSAs. When employer HSA contributions are made through a cafeteria plan, however, the employer's contributions are subject to the **nondiscrimination rules** governing cafeteria plans.

WHAT IS THE DEADLINE FOR MAKING HSA CONTRIBUTIONS?

Although the dollar limit for HSA contributions is determined on a monthly basis, HSA contributions do not have to be made in equal amounts each month. An eligible individual can contribute in a lump sum or in any amounts or any frequency that he or she wants. All HSA contributions for the eligible individual's taxable year must be made by the date for filing his or her federal income tax return for that year, without extensions. For example, all contributions for 2018 would have to be made by April 15, 2019, the date for filing the 2018 federal income tax return, without extensions.

ARE ROLLOVER CONTRIBUTIONS OR TRANSFERS FROM OTHER ACCOUNTS ALLOWED?

Rollovers from Other HSAs or Archer MSAs

HSAs may accept rollover contributions from **another HSA** or from an **Archer MSA**. These rollover contributions do not count toward the annual HSA contribution limit, and they are not required to be in cash. Also, an individual does not need to be HSA-eligible to make a rollover contribution from his or her existing HSA to a new HSA. To qualify as a rollover distribution, the amount must be distributed from the other HSA (or Archer MSA) to the HSA accountholder and then deposited into the individual's HSA within 60 days of when the distribution was received.

This rollover exception only applies **once every 12 months**. In addition, HSA funds may be moved from one HSA trustee directly to another HSA trustee (called a trustee-to-trustee transfer). There is no limit on the number of trustee-to-trustee transfers allowed during a year.

Transfers from IRAs—Qualified HSA Funding Distributions

An HSA–eligible individual may irrevocably elect a direct trustee-to-trustee transfer of a qualified HSA funding distribution from his or her **traditional IRA** or **Roth IRA** into his or her HSA. Qualified funding distributions may not be made from ongoing SEP IRAs or SIMPLE IRAs.

Generally, only one qualified HSA funding distribution is allowed during the lifetime of an individual. Also, the distributions must be from an IRA to an HSA owned by the individual who owns the IRA, or, in the case of an inherited IRA, for whom the IRA is maintained. This means a qualified HSA funding distribution cannot be made to an HSA owned by any other person, including the individual's spouse. Qualified HSA funding distributions are counted as contributions when applying the annual HSA contribution limit for the taxable year in which they are contributed to the HSA.

In addition, the qualified HSA funding distribution rules require the individual to remain HSA–eligible during a **testing period**. The testing period begins with the month in which the qualified funding

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distribution is contributed to the HSA and ends on the last day of the twelfth month following that month. For example, if a qualified funding distribution is made on June 4, 2019, the testing period would begin in June 2019 and continue until June 30, 2020. If an individual loses his or her HSA eligibility at any time during the testing period, the amount of the qualified HSA funding distribution is included in the individual's gross income, and the amount is subject to a 10 percent additional tax. These adverse tax consequences do not apply if an individual ceases to be HSA-eligible due to disability or death.

HOW ARE HSA CONTRIBUTIONS TAXED?

All HSA contributions receive tax-favored treatment (unless they are excess contributions). The specific tax treatment, however, depends on who is making the contribution, as described in the table below.

SOURCE OF CONTRIBUTION	TAX TREATMENT
HSA Accountholder	Individuals who make contributions to their own HSAs get an above-the-line deduction for the contributions.
Family member or other person/entity (but not employer)	These contributions may be subject to applicable gift taxes. Contributions made by anyone other than an employer are deductible by the HSA accountholder (but not necessarily by the contributor) in computing adjusted gross income (that is, as an above-the-line deduction).
Employer contributions (*including employees' pre-tax salary deferrals under a cafeteria plan*)	In general, these contributions are deductible by the employer and excludable from employee's gross income. Also, they are not subject to income tax withholding or Social Security/Medicare taxes, if, at the time of contribution, it is reasonable to believe that the contribution will be excluded from the employee's income.

HSA contributions that exceed an individual's maximum contribution amount or that are made by or on behalf of an individual who is not HSA-eligible are considered "**excess contributions**." Excess contributions are not deductible by the HSA owner. Also, employer HSA contributions are included in the gross income of the employee to the extent that they exceed the individual's maximum contribution amount or are made on behalf of an employee who is not an eligible individual.

A **6 percent excise tax** is imposed on the HSA owner for all excess contributions. The excise tax can be avoided if the excess contributions for a taxable year (and the net income attributable to those excess contributions) are distributed to the HSA owner by the deadline for filing the owner's federal income tax return for the taxable year (that is, the following April 15).

If a corrective distribution is made:

- The net income attributable to the excess contributions is included in the HSA owner's gross income for the taxable year in which the distribution is received;
- The 6 percent excise tax is not imposed on the excess contributions; and

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- The distribution of the excess contributions is not taxed (but the excess contribution is included in the owner's gross income because it is not deductible or excludable for tax purposes).

The 6 percent excise tax is **cumulative** and will continue in future years if a corrective distribution is not made. For each year, the HSA owner must pay excise tax on the total of all excess contributions in the account. However, the amount on which the tax is assessed is reduced in certain circumstances. For example, if HSA contributions for any year are less than the maximum limit for that year, the amount subject to the excise tax is reduced (for that year and subsequent years) by the difference between the maximum limit for the year and the amount actually contributed.

Thus, under the full-contribution rule, an individual who has self-only HDHP coverage for most of the taxable year, but who switches to family HDHP coverage late in the year and who still has family HDHP coverage on Dec. 1 of that year, will be able to contribute significantly more to his or her HSA for the year than if he or she had kept self-only HDHP coverage for all 12 months of the year.

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