



## IRS Finalizes Regulations on Employer Comparable Contributions to HSAs

*The IRS has issued final regulations that provide guidance on employer comparable HSA contributions when an employee has not established an HSA by year end and when an employer accelerates HSA contributions for employees who have incurred qualified medical expenses. These rules only apply to HSA contributions made by employers that do not provide employees the opportunity to make HSA contributions through a cafeteria plan.*

### Background

Health Savings Accounts (HSAs) are tax-exempt savings vehicles funded by individual or employer contributions that may be used to pay for qualified medical expenses. Generally, unless an employer makes comparable contributions to the HSAs of all comparable participating employees, it will be subject to an excise tax equal to 35% of the aggregate amount contributed by the employer to the HSAs of its employees during the calendar year. The comparability requirements do not apply to employers that offer their employees the opportunity to make HSA contributions on a pre-tax basis through a Section 125 cafeteria plan.

Proposed regulations on the comparability requirements issued in 2005 provided that an employer was not required to make comparable contributions to an employee's HSA for a calendar year if the employee had not established an HSA by December 31 of that year. However, when the IRS issued final regulations in 2006, it removed this provision and reserved it for future rulemaking. (See our August 10, 2006 [For Your Information](#).) In 2007, the IRS issued proposed regulations addressing this reserved issue and one additional issue concerning the acceleration of employer contributions. (See our June 26, 2007 [For Your Information](#).)

### Final Regulations

The IRS has now issued [final regulations](#) that adopt the 2007 proposed regulations without substantive change.

### Where HSA Not Established or Notice that HSA Has Been Established Not Provided By December 31

As under the proposed regulations, the final regulations provide that an employer will meet the comparability requirements for a calendar year with respect to employees who have not established an HSA by December 31 or who may have established an HSA but did not notify the employer of that fact, if it does *both* of the following –

- It provides written notice, no earlier than 90 days before the first HSA employer contribution for the calendar year and no later than January 15 of the following calendar year, that it will make comparable

contributions to the HSAs of those eligible employees who both establish an HSA and notify the employer that they have established an HSA by the last day of February of the following calendar year.

- It makes comparable contributions (with reasonable interest) by April 15 of the following calendar year to the HSA of each eligible employee who both establishes an HSA and notifies the employer by the last day of February that it has been established. The contribution amount must take into account each month that the employee was a comparable participating employee.

As under the proposed regulations, the final regulations provide model language that employers may use as a basis in preparing their own notices. The notice may be delivered electronically in accordance with IRS rules governing the use of electronic media to provide employee benefit notices. (See our November 21, 2006 [For Your Information](#).)

## Acceleration of Employer Contributions

As under the proposed regulations, the final regulations permit an employer to accelerate part or all of its contributions for the entire calendar year to the HSAs of employees who have incurred qualified medical expenses that exceed the employer's cumulative HSA contributions at that time – as long as the accelerated contributions are available on an equal and uniform basis to all eligible employees throughout the calendar year. Employers must establish reasonable uniform procedures for accelerating contributions and determining medical expenses.

## Effective Date

The final comparability regulations apply to employer contributions made to employees' HSAs for calendar years beginning on or after January 1, 2009. However, employers may rely on them immediately.

## Conclusion

Because many employers offer employees the opportunity to make HSA contributions through a cafeteria plan, the final regulations are of limited application. However, employers that are subject to the comparability rules should determine how they will satisfy these requirements. Buck's consultants would be pleased to discuss these final regulations with you and provide you with assistance.

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*This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.*