

1. We have a concern regarding whether there will be a requirement for employers with employee HSAs to file Form 5500. Page 3 and 4 of the Form 5500 instructions delineate the types of plans and those required not to file. It would appear that an HSA is not an unfunded plan and possibly would have to file. We would appreciate any guidance you could give us.

Answer: This is an issue addressed by the Department of Labor (DOL). See their Field Assistance Bulletin 2004-01 about when an HSA is an ERISA-covered plan. DOL generally does not consider HSAs ERISA plans and we advise against filing any forms with DOL, including Form 5500.

2. During the Telebriefing, I believe you had indicated that Vanguard, Schwab and Fidelity all had made known their intentions to go live with some sort of HSA product in the next couple of years. I understand they all have proprietary operating systems for their fund accounting. We use a vended platform for our own mutual fund family and our vendor is still evaluating whether or not there is sufficient market demand to develop an HSA accounting functionality. We have a client reference list from our vendor that includes Bisys, Franklin Templeton, Harbor Funds, Heritage, UMB and IFS. Through your market sources, have you heard if any of these fund families are pushing to offer HSAs in the coming year? We may have the desire/need to bring a case to our vendor for development and a coalition of sorts would be useful.

Answer: We do not expect any broker/dealers to offer HSA accounts but we do expect most mutual fund companies and most of the companies listed in the question to accept HSA assets under management once minimum balances are reached. For example, the Mellon HSA program allows account owners to invest \$2,500 of their HSA balance with Dreyfus once the total HSA balance reaches \$4,500.

3. Is someone developing education materials for bankers, employers, and employees concerning HSAs? If so, who? When will it be available?

*Answer: As of January 1, 2005, ABA and ABIA staff have been researching HSA compliance and will shortly produce a reference guide. Until this guide is finalized, we recommend **HSA Road Rules** produced by the HSA Coalition of which ABA and ABIA are a part. It can be found at:*

<http://www.hsainsider.com/HSA%20Road%20Rules%20Dec%207th.pdf>

4. Does a bank need a unique system to support the HSA account? If so, where do I find such a system?

Answer: Many of ABA's members report that vendors have successfully modified existing systems (Bisys, Metavante, Fiserv, etc.) to administer HSA accounts. If banks want to

internally administer HSA business, one of these systems, or a similar product should be sufficient.

5. Are there any projections for 2004/2005 on what % of workers will enroll for a HSA?

Answer: there are some educated guesses: a recent Watson Wyatt survey found that 8% of employers currently offer HSAs and 18% have indicated they will offer them in 2006. America's Health Insurance Plans (AHIP) notes that their members report about 450,000 HSAs open as of the end of 2004.

6. Have heard that a bank would need to be approved for Trust Powers to accept HSAs. Is this true?

Answer: No. Banks can establish an HSA account for anyone - regardless of if they have Trust powers or not - and have no liability to determine if the account opener is qualified to open the account under the HSA rules.

7. What kind of monitoring or policing of HSAs would be required?

Answer: None. The responsibility to establish eligibility in the program and to determine if contributions and expenses are properly qualified rests on the individual, not the bank.

Comments from the September Telebriefing suggested that in order to improve a bank's service to its customers it may be beneficial if the bank treats some HSA business the way it treats other Trust department business. Treasury's speakers also said that if the bank becomes familiar with the HSA rules or partners with a TPA, educating HSA customers would be a valuable market advantage. However neither is required under law.

8. Does an HSA ever expire?

Answer: At death, an HSA is not longer an HSA if it passes to a non-spouse. In that case, the fair market value of the HSA assets is included in the non-spouse's income.

If it expires on death, what happens to remaining HSA balance? Is it paid to beneficiary or does bank/insurer keep it?

Answer: HSA assets are distributed just like the other assets of a deceased owner; pursuant to the deceased owner's wishes.

9. Clarification of a previous question:

If a person has a \$10,000 HSA at bank #1; \$10,000 HSA at bank #2; and \$10,000 HSA at bank #3 do each of those accounts qualify for one annual rollover?

Answer: Unlimited direct HSA to HSA transfers are allowed, but only one rollover per year. Statutory language, which excludes the initial "distribution" from income to the HSA owner, seems to say one person, not one per HSA. Proposed regulations for IRAs take a different but Treasury has not issued guidance on this point yet.

10. What is the bank's obligation when a customer comes in to open an HSA for \$10,000 knowing that the maximum HSA deposit for 2004 for Family Coverage is \$5,150?

Answer: See Q&A 73 of Notice 2004-50. The bank has a responsibility to determine whether it is a rollover contribution (which would be allowed) but generally is not responsible for determining if the contribution complies with IRS rules.

11. Our bank is rolling out a custodial product, it will have check writing and debit card convenience, and offer interest on the account. I will assume for now our bank will draft our own version of the 5305-C for to open accounts, but there is no other "formal" application or filing our bank has to complete to begin opening the HAS accounts, right? We are a FDIC insured State of Idaho chartered bank.

Answer: There is no other application procedure required for purposes of the IRS. Any bank approved to offer IRAs can offer HSAs.

12. In answer to a question regarding guidance related to a Master (Commingled) Trust Agreement (from May telephone briefing), you replied "This guidance is being developed." Has such guidance yet been developed? If not, is it contemplated in the near future?

Answer: Treasury and IRS are not contemplating any formal guidance.

13. There was a great deal of discussion about a model whereby the Bank would serve as Trustee, but would delegate administrative and reporting responsibilities to a TPA.

Are there any guidelines or limitations on what responsibilities can be delegated?

Answer: Any responsibility could be delegated, but the trustee would be derivatively responsible for any fiduciary failure (generally as determined under state law) or failure to report.

Can the CIP responsibilities (once the account owner takes some action/ownership) also be delegated?

Answer: The bank may delegate CIP responsibilities (by contract to a TPA for example) but it will remain liable for following the rules, unless the other financial institution is also subject to the CIP rules and the HSA owner is a customer of the other institution and certain other conditions are satisfied. Generally, the CIP responsibilities fall on whichever financial institutions has the account holder as a customer.

Does the TPA need to qualify as a Trustee (or qualify in any other matter) in order to assume these responsibilities?

Answer: No

14. To clarify a model we believe some Banks are contemplating, please consider the following scenario and advise as to whether the scenario described by all three components in combination would meet the obligations of the Trustee:

HSA Trust Agreements are signed by each individual HSA holder. ALL individual HSA funds are combined into a Master Trust Account (there are no separate custodial accounts for each HSA). Separate accounting of the funds combined in the Master Trust is delegated to a TPA (along with reporting).

Answer: This scenario does not appear to violate any of the rules. There is one caveat, however; the term "master trust account" has a defined meaning in ERISA. Master Trust Accounts are used in the context of welfare and retirement plans that are subject to ERISA (which would not include HSAs). In that context, a "master trust" is a trust for which a regulated financial institution serves as a trustee or custodian and in which the assets of more than one plan sponsored by a single employer or by a group of employers under common control are held. Alternatively, if the term "master trust account" is used in a more colloquial sense to refer to a common trust fund or common investment fund, then the proposed model looks like it fits within the intent (and letter) of the HSA statute.

15. We need some suggestions about how to administer an account that must be established as a single owner account (2004-50 Q63) but yet as a family coverage account may need to be accessed by more than one debit card and could need to have two authorized signers? Is a Power of Attorney permitted under HSA rules?

Answer: For IRS purposes, multiple debit cards for an HSA is fine. If used for non-qualified expenses – nondependent expenses or non-medical expenses – will be taxable and included in income, potentially subject to 10 percent penalty if under 65.

Let's say John & Mary Smith are a married couple. John has a HDHP. Mary does not have any separate health insurance, so they have a HSA in connection with their family plan insurance policy. John is in a coma and Mary needs funds from the

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account to pay John's medical bills. I understand Mary can be listed as Payable on Death beneficiary for the HSA, but since John is still alive - how does she get access to the funds to pay the medical bills?

There is no IRS rule preventing her from being able to access the HSA funds, but it cannot be a "joint" account.

A more common situation that we anticipate is that John will request two debit cards for the account so both he and Mary can each carry a debit card to use to pick up prescriptions, pay for doctor visits or medical tests. Due to both Reg. E and CIP concerns, we only issue debit cards to individuals who are signers on the account. So the single ownership rule for family coverage accounts is creating a concern for us.

The IRS is ok with multiple debit cards or being signatories to the HSA.