

# THE Pension Digest

## ALSO IN THIS ISSUE –

**CWF's Commentary on  
the IRS Model HSA  
Form 5305-C, Page 2**

**Explanation—  
How HSAs Are  
Impacted by FSAs and  
HRAs, Page 4**

**Transition Relief For  
State Mandated  
Coverage, Page 5**

**DOL Furnishes HSA  
Guidance, Page 5**

**IRS Draft Form 5305-C,  
Pages 6 & 7**

**IRS Releases 2004 Form  
8889, Page 8**

**Collin W. Fritz and  
Associates, Inc.,  
"The Pension Specialists"**



© 2003 Collin W. Fritz and Associates, Ltd.  
Copyright is not claimed in any material  
secured from official U.S. Government  
sources. Published by Collin W. Fritz and  
Associates, Ltd. Subscription Rate: \$65 per  
year.

## Health Savings Account (HSA) Update

The IRS, DOL and other regulators are being very active in furnishing additional guidance with respect to Health Savings Accounts. Since the Bush administration is very interested in seeing HSAs succeed, it is not surprising that the IRS is being very active in furnishing guidance on the new HSAs.

1. The IRS has recently issued two model HSA plan agreements in draft status. One is used to establish a "custodial" HSA, and one is used to create a trust HSA. See page 6 for a reprinting of the Form 5305-C (Health Savings Custodial Account). These two forms should be adopted in final version by the middle of August. As with the use of any model form, it is not mandatory to use the model form, but most financial institutions and HSA vendors will choose to do so.

2. The IRS has issued a draft of the 2004 Form 1040. The taxpayer will use line 28 to claim his or her HSA tax deduction.

3. The IRS has recently issued a draft version of the 2004 Form 8889. A taxpayer will use this form to report contributions to his or her HSA and also to report withdrawals from his or her HSA. See page 8.

4. The IRS has recently announced that the 5498-MSA and 1099-MSA for 2004 will be revised to incorporate the HSA sections. The IRS said these should be available in October or November.

5. The IRS issued Notice 2004-43 because it became aware that many states require health insurance providers to provide benefits for certain procedures and medical conditions for which the insurance provider is not able to impose any deductible requirement. Because HSAs, by definition, must have a deductible requirement, the establishing of an HSA would be impossible in such states. As transitional relief, the IRS is giving such states until December 31, 2005, to modify its laws to conform to the HSA requirements. See page 5 for a thorough discussion of this special relief.

6. The IRS issued Rev. Rul 2004-45 to discuss how, and if, HSAs may interrelate with Health Flexible Spending Arrangements and Health Reimbursement Arrangements. In many cases, a person will be ineligible for an HSA if he or she is also covered by an FSA or an HRA. In certain situations, however, an individual covered by an HDHP may still fund an HSA, even while participating in an FSA and/or an HRA. See page 4 for a thorough discussion.

7. The Department of Labor has recently ruled that an employers making of contributions to employees' HSA accounts will NOT generally constitute an ERISA plan. See page 5 for an additional discussion.

8. The National Credit Union Administration has recently proposed a new regulation so that federal credit unions will clearly have the authority to act as an HSA custodian or trustee. Many credit unions were hesitant to conclude they had the authority to act as an HSA custodian since the governing regulation talks in terms of IRAs or pension plans. Clearly, an HSA is neither an IRA nor a pension plan.

The National Credit Union Administration (NCUA) has issued proposed regulations that would expand the authority of federal credit unions (FCUs) to serve as trustees/custodians for HSAs. Currently such authorization is limited to FCUs serving as trustees/custodians only for pension and retirement plans. The NCUA would revise its regulations to reflect this change. Also, the NCUA intends to incorporate in its regulations all applicable IRS HSA guidelines.

## CWF's Commentary on the IRS Model HSA Form 5305-C

The following discussion of HSA Form 5305-C is based upon the draft form issued by the IRS on June 24, 2004. This form will be finalized by the IRS at a later date. This is an IRS "Model" form. A model form is, in essence, a "safe harbor" for those establishing HSAs. Using a model form assures that the plan agreement complies with the related statute, and there will be no IRS problems with the terms of the agreement. Using the model form is one option for establishing an HSA; a vendor may write its own forms, which must also comply with the statute relating to HSAs.

### Article I

**1. The custodian will accept additional cash contributions for the tax year made by the account owner or on behalf of the account owner (by an employer, family member or any other person). No contributions will be accepted by the custodian in excess of the maximum amount for an account owner with family coverage plus the catch-up contribution.**

**2. Contributions for any tax year may be made at any time before the deadline for filing the account owner's federal income tax return for that year (without extensions).**

**3. Rollover contributions from an HSA or an Archer Medical Savings Account (Archer MSA) (if permitted under this agreement) need not be in cash and are not subject to the maximum annual contribution limit set forth in Article II.**

Comment—Contributions to an HSA must be made in cash and may be made by the account holder, an employer or any other person. Contributions will not be accepted if greater than the amount of the maximum allowed, unless the contribution is a rollover or catch-up contribution. For 2004, custodians will want to be aware that HSA contributions must be less than \$5,650 (the maximum family contribution allowed— \$5,150 plus the allowed catch-up contribution— \$500 (if applicable)), unless the contribution is a rollover contribution. Rollover contributions need not be in cash. The deadline for making an HSA contribution is the account owner's tax-filing deadline for the year (without regard to extensions).

**Note:** An HSA account owner will want to be certain that excess contributions are not made to the HSA if both the account owner and an employer or other person are making contributions for the same year. CWF believes that this is the first time the IRS has made it clear that any other person besides the account owner, employer, or family member may make a contribution to the account owner's HSA.

### Article II

**1. For calendar year 2004, the maximum annual contribution limit for an account owner with single coverage is the lesser of the amount of the deductible under the HDHP**

**but not more than \$2,600. For calendar year 2004, the maximum annual contribution limit for an account owner with family coverage is the lesser of the amount of the deductible under the HDHP but not more than \$5,150. These limits are subject to cost-of-living increases after 2004.**

**2. Contributions to Archer MSAs or other HSAs count toward the maximum annual contribution limit to this HSA.**

**3. For calendar year 2004, an additional \$500 catch-up contribution may be made for an account owner who is at least age 55 and less than age 65. The catch-up contribution increases to \$600 in 2005, \$700 in 2006, \$800 in 2007, \$900 in 2008, and \$1,000 in 2009 and later years.**

Comment—For 2004, HSA contributions are limited to the lesser of the HDHP deductible or the maximum allowed (\$2,600 — single; \$5,150 — family). These limits will be increased through cost-of-living increases after 2004— for example, the single HSA contribution limit could conceivably be raised to \$2,650 for 2005. Catch-up contributions are allowed for account owners who have attained age 55, but who have not yet attained age 65. These catch-up contributions increase yearly, from \$500 in 2004 to \$1,000 for 2009 and subsequent years. All Archer MSAs and HSAs must be aggregated to determine whether or not the annual contribution limit has been met or exceeded.

### Article III

**1. It is the responsibility of the account owner to determine whether contributions to this HSA have exceeded the maximum annual contribution limit described in Article II. If contributions to this HSA exceed the maximum annual contribution limit, the account owner shall notify the custodian that there exists excess contributions to the HSA. It is the responsibility of the account owner to request the withdrawal of the excess contribution and any net income attributable to such excess contribution.**

Comment—The account owner must determine whether or not the annual HSA limit has been exceeded by aggregating all Archer MSAs and HSAs which the account owner has. If the annual limit has been exceeded, it is up to account owner to notify the custodian and withdraw the excess amount plus applicable interest. It is very clear that the IRA custodian IS NOT responsible to determine whether or not there is an excess contribution made to an HSA account.

### Article IV

**1. The account owner's interest in the balance in this custodial account is nonforfeitable.**

Comment—This may mean that creditors are not able to reach the assets held by an individual's HSA. However, neither Congress nor the IRS has ever given a good explanation of what "nonforfeitable" means. CWF anticipates that the rules governing IRAs will probably be applied to HSAs. Clearly, the institution serving as custodian of an HSA will not have the banking right of "off-set" with respect to an HSA. To what

**Commentary on IRS Model 5305-C,  
Continued from page 2**

respect the assets are available to creditors will be determined by state law.

**Article V**

1. No part of the custodial funds in this account may be invested in life insurance contracts or in collectibles as defined in section 408(m).

2. The assets of this account may not be commingled with other property except in a common trust fund or common investment fund.

3. Neither the account owner nor the custodian will engage in any prohibited transaction with respect to this account (such as borrowing or pledging the account or engaging in any other prohibited transaction as defined in section 4975).

Comment—This Article discusses the restrictions placed on HSA investments. HSA funds may not be invested in life insurance or collectibles — art, antiques, stamps, precious metals, rare wines, jewels, etc. are examples of collectibles. The assets of this HSA also may not be commingled with other property, except in a common trust fund. Article V, #3 seems to state that no transaction which would be considered a “prohibited” transaction may be entered into by either the account owner or the custodian of the HSA. For example, if an HSA account owner pledges his HSA to a creditor, the custodian would have the right to say the pledge by the account owner is of no effect, citing that the plan agreement states that the account owner will not engage in any prohibited transaction.

**Article VI**

1. Distribution of funds from this HSA may be made at any time upon the direction of the account owner.

2. Distributions from this HSA that are used exclusively to pay or reimburse qualified medical expenses of the account owner, his or her spouse, or dependents are tax-free. However, distributions that are not used for qualified medical expenses are included in the account owner's gross income and are subject to an additional 10 percent tax on that amount. The additional 10 percent tax does not apply if the distribution is made after the account owner's death, disability, or reaching age 65.

3. The custodian is not required to determine whether the distribution is for the payment or reimbursement of qualified medical expenses. Only the account owner is responsible for substantiating that the distribution is for qualified medical expenses and must maintain records sufficient to show that the distribution is tax-free.

Comment—It is the account owner's responsibility, not the custodian's responsibility, to determine whether or not the distribution is tax free. The account owner must keep accurate records to be able to determine the tax or non-tax status of each distribution. Distributions may be made at any time from this account. Distributions used to pay qualifying medical expenses will be tax free, whereas distributions used for any

other reason will be subject to regular income tax and an additional 10% tax, unless made after the account owner's death, disability, or reaching age 65.

**Article VII**

If the account owner dies before the entire interest in the account is distributed, the entire account will be disposed of as follows:

1. If the beneficiary is the account owner's spouse, the HSA will become the spouse's HSA as of the date of death.

2. If the beneficiary is not the account owner's spouse, the HSA will cease to be an HSA as of the date of death and the fair market value of the account will be taxable to that person (or the estate of the account owner) in the tax year that includes such date.

Comment—Upon the death of the account owner, the HSA becomes the HSA of the spouse beneficiary (if applicable). Concerning any other beneficiary, the fair market value of the account is no longer considered an HSA as of the date of the account owner's death, and the funds are deemed distributed and taxable to said beneficiary or the account owner's estate, in the year of the account owner's death. CWF hopes the IRS will issue additional guidance on this beneficiary subject. Obviously the funds will not be distributed to a beneficiary on the date of the account owner's death. However, it appears the amount is taxable to the beneficiary in the year of the account owner's death. There could also certainly be a difference in the fair market value of the account in the time period between the account owner's death and the actual distribution of funds to the beneficiary.

**Article VIII**

1. The account owner agrees to provide the custodian with information necessary for the custodian to prepare any report or return required by the IRS.

2. The custodian agrees to prepare and submit any report or return as prescribed by the IRS.

Comment—The IRS has just recently issued some HSA forms. We are not certain exactly what reports will be required for HSAs, but we believe they will be similar to those required for IRAs. Under this Article, the account owner agrees to provide all information necessary to enable the custodian to prepare any required reports, and the custodian agrees to prepare and submit required reports to the IRS.

**Article IX**

Notwithstanding any other articles that may be added or incorporated in this agreement, the provisions of Articles I through VIII and this sentence are controlling. Any additional article in this agreement that is inconsistent with section 223 or IRS published guidance will be void.

Comment—This Article acknowledges that while additional articles may be added, the rules as stated in Articles I-VIII, Code section 223, and any IRS published guidance are controlling.

**Commentary on IRS Model 5305-C,  
Continued from page 3**

**Article X**

**This agreement will be amended from time to time to comply with the provisions of the code or IRS published guidance. Other amendments may be made with the consent of the persons whose signatures appear below.**

Comment—Under this Article, the agreement is allowed to be amended to comply with HSA law. The custodian is allowed to amend the agreement whenever the law pertaining to HSAs changes. Articles I-VIII are allowed to be amended by the custodian without the consent of the account owner. Additional amendments may be made or amended by the custodian under Article XI only with the express consent of the account owner.

**Article XI**

**Article XI may be used for any additional provisions. If no other provisions will be added, draw a line through this space. If provisions are added, they must comply with the requirements of Article IX.**

Comment—This optional article allows the institution to add other contractual provisions to the plan. An institution which does not take advantage of adding additional contractual provisions is missing an important opportunity to limit its duties and liabilities. These provisions must comply with applicable law, and generally specify additional rights and responsibilities of both the institution and the account owner. This article should also contain expanded amendment language.

## Explanation — How HSAs Are Impacted by FSAs and HRAs

The IRS, along with the Treasury Department, has issued guidance concerning how HSAs interrelate with employer-provided health-care plans such as flexible spending accounts (FSAs) and health reimbursement arrangements (HRAs). The IRS issued Rev.Rul.2004-45 on June 1, 2004. In certain instances, an individual covered by an HDHP may still fund an HSA, even while participating in an FSA and/or an HRA.

The IRS lists four scenarios under which individuals covered by an HDHP may still contribute to an HSA while also covered by an employer-provided plan—

**1. Limited-purpose FSAs/HRAs where reimbursement is limited to permitted benefits (vision, dental, preventive care, etc.).** If reimbursement is limited to “permitted coverage” such as vision or dental expenses, such permitted coverage expenses may be reimbursed by an FSA and/or HRA and is disregarded with respect to the minimum deductible requirement of the HDHP. Preventive-care benefits may also be reimbursed. These benefits may be included under a separate health-care plan, a separate option or rider, or as part of the HDHP.

**2. Suspended HRA, where the employee elects to forgo health reimbursements for the coverage period.** If an individual is covered by an HDHP and an HRA (but not by an

FSA), the individual can elect to suspend coverage under the HRA (such election must take place prior to the beginning of the HRA coverage period). In this case, benefits (except allowed excepted medical expenses) would not be paid by the HRA during the suspension period, nor could they be paid later from the HRA. However, the individual’s employer may still contribute to the HRA, and the individual will not lose his/her accumulated benefits. An individual making this election is eligible to make HSA contributions until the suspension period ends. They will again be entitled to receive reimbursements from the HRA for expenses incurred after the suspension period.

**3. Post-deductible FSAs/HRAs which reimburse the individual only after his/her deductible has been met.** If an individual has an FSA or HRA under which medical expenses are paid only after the HDHP deductible has been met (including the individual’s 20% coinsurance in addition to the deductible), then the individual can also contribute to an HSA. The HRA and/or FSA deductible need not be the same as the deductible for the HDHP. However, under this scenario, the individual CANNOT receive reimbursement under any plan until the minimum annual deductible is satisfied. If the HDHP, the FSA and the HRA do not have the same required deductible amounts, the individual may fund the HSA only up to the amount of the lowest deductible.

**4. Retirement HRAs which provide the individual with reimbursements only after he/she has retired.** If the individual is not covered by an FSA, and the individual’s HRA is a retirement HRA which only reimburses medical expenses incurred after an individual retires, the individual is eligible to make HSA contributions before retirement.

**Note:** After retirement, the individual with a retirement HRA will NOT be eligible to contribute to an HSA.

In additional guidance, the IRS and the Treasury have clarified that persons with FSA, HRA and HSA coverage may receive reimbursement of medical expenses through the FSA or HRA prior to taking distributions from the HSA, as long as a person does not receive multiple reimbursements for the same expense.

## Transition Relief For State Mandated Coverage — Notice 2004-43

### Purpose

This notice provides transition relief for individuals in states where high deductible health plans (HDHPs) as described in section 223(c)(2) are not available because state laws require health plans to provide certain benefits without regard to a deductible or below the minimum annual deductible of section 223(c)(2)(A)(i). The transition relief covers months before January 1, 2006, for state requirements in effect on January 1, 2004.



## Background

Section 1201 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003, Pub. L. 108-173, added section 223 to the Internal Revenue Code to permit eligible individuals to establish health savings accounts (HSAs) for taxable years beginning after December 31, 2003. An "eligible individual" under section 223(c)(1) must be covered by a "high deductible health plan" (HDHP). An HDHP under section 223(c)(2) must satisfy certain requirements with respect to minimum annual deductibles and maximum out-of-pocket expenses. However, section 223(c)(2)(C) permits a safe harbor for the absence of a preventive care deductible. An eligible individual may also have certain permitted insurance and permitted coverage under section 223(c)(1)(B).

Notice 2004-23, 2004-15 I.R.B. 725 describes a safe harbor for preventive care benefits that may be provided by an HDHP without a deductible or with a deductible below the minimum annual deductible for an HDHP. In addition, the notice indicates that whether health care required by state law without regard to a deductible is "preventive" will be based on the standards set forth in Notice 2004-23 and other guidance issued by the IRS, rather than on how the benefits are characterized by state law.

Several states currently require that health plans provide certain benefits without regard to a deductible or with a deductible below the minimum annual deductible requirements of section 223(c)(2) (e.g., first-dollar coverage or coverage with a low deductible). These health plans are not HDHPs under section 223(c)(2) and individuals covered under these health plans are not eligible to contribute to HSAs. Because of the short period between the enactment of HSAs and the effective date of section 223, these states have had insufficient time to modify their laws to conform to the standards of section 223. Thus, it is appropriate to provide transition relief that treats HDHPs as qualifying under section 223(c)(2) when the sole reason the plans are not HDHPs is because of state-mandated benefits. During the transition period, otherwise eligible individuals covered under these plans will be treated as eligible individuals for purposes of section 223(c)(1) and may contribute to an HSA.

## Application

For months before January 1, 2006, a health plan which would otherwise qualify as an HDHP under section 223(c)(2), except that it complies with state law requirements that certain benefits be provided without a deductible or below the minimum annual deductible of 223(c)(2)(A)(i), will be treated as an HDHP for purposes of section 223(c)(2), if the disqualifying benefits are required by state law in effect on January 1, 2004.

## Drafting Information

The principal author of this notice is Shoshanna Tanner of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice, contact Ms. Tanner at (202)-622-6080 (not a toll-free call).

## DOL Furnishes HSA Guidance

The DOL has certainly been asked the question, "In what situations will the employer's making contributions to an HSA result in there being an ERISA plan?" Such contributions could come directly from the employer or could come from the employee through payroll withholding.

On April 7, 2004, the Employee Benefit Security Administration (EBSA) issued Field Assistance Bulletin 2004-1. The general rule has been that the making of an employer contribution has been sufficient to bring a plan under ERISA. The EBSA has concluded that the general rule does not or should not apply to HSA contributions, since HSAs are primarily personal health-care savings vehicles and are controlled by the individual.

The EBSA has stated that it will not find an ERISA plan where the employer makes contributions to the HSAs of employees if: (1) an employee has total discretion whether or not to establish the HSA and (2) the employer does not: (a) limit the ability of the HSA account holder to roll over his or her balance beyond the restrictions imposed by the Internal Revenue Code; (b) impose conditions on the use of the HSA funds beyond those imposed by the IRS; (c) make or influence how the HSA funds will be invested; (d) represent that the HSA contribution program is an ERISA welfare plan or is maintained by the employer; and (e) receive any payment or compensation in connection with an HSA.

The EBSA has also stated that an employer may adopt certain reasonable limits. First, an employer will be able to limit the forwarding of contributions through its payroll system to a single HSA provider. Secondly, an employer will be able to permit only a limited number of HSA providers to advertise or market their HSA investment products and services, as long as the employer or the HSA provider does not restrict the ability of the employee to move funds to another HSA beyond those restrictions imposed by the IRC. We at CWF read this to mean: rollovers would be limited to once per year and transfers would not need to be allowed.

Although the employer's contribution to HSAs (even if the employer sponsors the HDHP) will generally not result in the HSA program being an ERISA plan, the DOL has made clear that the employer's sponsorship of an HDHP is an ERISA plan unless otherwise exempt (e.g. governmental plans or church plans).

Form **5305-C**

(August 2004)  
Department of the Treasury  
Internal Revenue Service

## Health Savings Custodial Account

(Under section 223(a) of the Internal Revenue Code)

**Do not file**  
with the Internal  
Revenue Service

Name of account owner

Date of birth of account owner

Identifying number (see instructions)

Address of account owner (Street address, city, state, zip code)

Name of custodian

Address or principal place of business of custodian

The account owner named above is establishing this health savings account (HSA) exclusively for the purpose of paying or reimbursing qualified medical expenses of the account owner, his or her spouse, and dependents. The account owner represents that, unless this account is used solely to make rollover contributions, he or she is eligible to contribute to this HSA; specifically, that he or she: (1) is covered under a high deductible health plan (HDHP); (2) is not also covered by any other health plan that is not an HDHP (with certain exceptions for plans providing preventive care and limited types of permitted insurance and permitted coverage); (3) is not entitled to benefits under Medicare (generally, has not reached age 65); and (4) cannot be claimed as a dependent on another person's tax return.

\$ ..... dollars in cash is assigned to this custodial account.

The account owner and the custodian make the following agreement:

### Article I

1. The custodian will accept additional cash contributions for the tax year made by the account owner or on behalf of the account owner (by an employer, family member or any other person). No contributions will be accepted by the custodian in excess of the maximum amount for an account owner with family coverage plus the catch-up contribution.
2. Contributions for any tax year may be made at any time before the deadline for filing the account owner's federal income tax return for that year (without extensions).
3. Rollover contributions from an HSA or an Archer Medical Savings Account (Archer MSA) (if permitted under this agreement) need not be in cash and are not subject to the maximum annual contribution limit set forth in Article II.

### Article II

1. For calendar year 2004, the maximum annual contribution limit for an account owner with single coverage is the lesser of the amount of the deductible under the HDHP but not more than \$2,600. For calendar year 2004, the maximum annual contribution limit for an account owner with family coverage is the lesser of the amount of the deductible under the HDHP but not more than \$5,150. These limits are subject to cost-of-living increases after 2004.
2. Contributions to Archer MSAs or other HSAs count toward the maximum annual contribution limit to this HSA.
3. For calendar year 2004, an additional \$500 catch-up contribution may be made for an account owner who is at least age 55 and less than age 65. The catch-up contribution increases to \$600 in 2005, \$700 in 2006, \$800 in 2007, \$900 in 2008, and \$1,000 in 2009 and later years.
4. Contributions in excess of the maximum annual contribution limit are subject to an excise tax. However, the catch-up contributions are not subject to an excise tax.

### Article III

It is the responsibility of the account owner to determine whether contributions to this HSA have exceeded the maximum annual contribution limit described in Article II. If contributions to this HSA exceed the maximum annual contribution limit, the account owner shall notify the custodian that there exist excess contributions to the HSA. It is the responsibility of the account owner to request the withdrawal of the excess contribution and any net income attributable to such excess contribution.

### Article IV

The account owner's interest in the balance in this custodial account is nonforfeitable.

### Article V

1. No part of the custodial funds in this account may be invested in life insurance contracts or in collectibles as defined in section 408(m).
2. The assets of this account may not be commingled with other property except in a common trust fund or common investment fund.
3. Neither the account owner nor the custodian will engage in any prohibited transaction with respect to this account (such as borrowing or pledging the account or engaging in any other prohibited transaction as defined in section 4975).

### Article VI

1. Distributions of funds from this HSA may be made at any time upon the direction of the account owner.
2. Distributions from this HSA that are used exclusively to pay or reimburse qualified medical expenses of the account owner, his or her spouse, or dependents are tax-free. However, distributions that are not used for qualified medical expenses are included in the account owner's gross income and are subject to an additional 10 percent tax on that amount. The additional 10 percent tax does not apply if the distribution is made after the account owner's death, disability, or reaching age 65.
3. The custodian is not required to determine whether the distribution is for the payment or reimbursement of qualified medical expenses. Only the account owner is responsible for substantiating that the distribution is for qualified medical expenses and must maintain records sufficient to show that the distribution is tax-free.

### Article VII

If the account owner dies before the entire interest in the account is distributed, the entire account will be disposed of as follows:

1. If the beneficiary is the account owner's spouse, the HSA will become the spouse's HSA as of the date of death.
2. If the beneficiary is not the account owner's spouse, the HSA will cease to be an HSA as of the date of death and the fair market value of the account will be taxable to that person (or the estate of the account owner) in the tax year that includes such date.

### Article VIII

1. The account owner agrees to provide the custodian with information necessary for the custodian to prepare any report or return required by the IRS.
2. The custodian agrees to prepare and submit any report or return as prescribed by the IRS.

### Article IX

Notwithstanding any other article that may be added or incorporated in this agreement, the provisions of Articles I through VIII and this sentence are controlling. Any additional article in this agreement that is inconsistent with section 223 or IRS published guidance will be void.

### Article X

This agreement will be amended from time to time to comply with the provisions of the Code or IRS published guidance. Other amendments may be made with the consent of the persons whose signatures appear below.

### Article XI

Article XI may be used for any additional provisions. If no other provisions will be added, draw a line through this space. If provisions are added, they must comply with the requirements of Article IX.

Account owner's signature ..... Date .....

Custodian's signature ..... Date .....

Witness' signature .....

(Use only if signature of account owner or custodian is required to be witnessed.)

## General Instructions

Section references are to the Internal Revenue Code.

### Purpose of Form

Form 5305-C is a model (nonmandatory) custodial account agreement that has been approved by the IRS. An HSA is established after the form is fully executed by both the account owner and the custodian. The form can be completed at any time during the tax year. This account must be created in the United States for the exclusive benefit of the account owner.

Do not file Form 5305-C with the IRS. Instead, keep it with your records. For more information on HSAs, see Notice 2004-2, 2004-2 I.R.B. 269.

### Definitions

**Identifying Number.** The account owner's social security number will serve as the identification number of this HSA. For married persons, each spouse who is eligible to open an HSA and wants to contribute to an HSA must establish his or her own account. An employer identification number (EIN) is required for an HSA for which a return is filed to report unrelated business taxable income. An EIN is also required for a common fund created for HSAs.

**High Deductible Health Plan (HDHP).** For calendar year 2004, an HDHP for self-only coverage has a minimum annual deductible of \$1,000 and an annual out-of-pocket maximum (deductibles, co-payments and other amounts, but not premiums) of \$5,000. For calendar year 2004, an HDHP for family coverage has a minimum annual deductible of \$2,000 and an annual out-of-pocket maximum of \$10,000. These limits are subject to cost-of-living increases after 2004.

**Self-only coverage and family coverage under an HDHP.** Family coverage means coverage that is not self-only coverage.

**Qualified medical expenses.** Qualified medical expenses are amounts paid for medical care as defined in section 213(d) for the account owner, his or her spouse, or dependents (as defined in section 152) but only to the extent that such amounts are not compensated for by insurance or otherwise. With certain exceptions, health insurance premiums are not qualified medical expenses. See Notice 2004-25, 2004-15 I.R.B. 727 for transition relief for distributions for qualified medical expenses incurred in calendar year 2004.

**Custodian.** A custodian of an HSA must be a bank, a life insurance company, a person previously approved by the IRS to be a custodian of an individual retirement account (IRA) or Archer MSA, or any other person approved by the IRS.

## Specific Instructions

**Article XI.** Article XI and any that follow it may incorporate additional provisions that are agreed to by the account owner and custodian. The additional provisions may include, for example, definitions, restrictions on rollover contributions from HSAs or Archer MSAs (requiring a rollover not later than 60 days after receipt of a distribution and limited to one rollover during a one-year period), investment powers, voting rights, exculpatory provisions, amendment and termination, removal of custodian, custodian's fees, state law requirements, treatment of excess contributions, distribution procedures (including frequency or minimum dollar amount), use of debit, credit, or stored-value cards, return of erroneous distributions, and descriptions of prohibited transactions. Attach additional pages if necessary.



## IRS Releases 2004 Form 8889

The IRS has released a draft version of the 2004 Form 8889 (Health Savings Accounts (HSAs)). A taxpayer, or his or her tax preparer, will use this form to calculate and report the contributions made to his or her HSA for tax year 2004. Such contributions may be made on or before April 15, 2005, as long as designated for 2004.

This form will also be used to report the gross amount withdrawn from the HSA and the amounts which are taxable and nontaxable. In addition, the tax amount owing due to 10% additional tax must be shown.

<b>Form 8889</b> <small>Department of the Treasury Internal Revenue Service</small>	<b>Health Savings Accounts (HSAs)</b> ▶ Attach to Form 1040.      ▶ See separate instructions.	OMB No. 1545-XXXX <b>2004</b> Attachment Sequence No. <b>138</b>
Name(s) shown on Form 1040		Social security number of HSA beneficiary. If both spouses have HSAs, see page 1 of the instructions ▶
<b>Before you begin:</b> Complete Form 8853, Archer MSAs and Long-Term Care Insurance Contracts, if required.		
<b>Part I HSA Contributions and Deduction.</b> See page X of the instructions before completing this part. If you are filing jointly and both you and your spouse each have separate HSAs, complete a separate Part I for each spouse (see page X of the instructions).		
1 Check the box to indicate your coverage under a high-deductible health plan during 2004 (see instructions). . . . . <input type="checkbox"/> Self-only <input type="checkbox"/> Family		
2 HSA contributions you made for 2004 (or those made on your behalf), including those made from January 1, 2005, through April 15, 2005, that were for 2004. <b>Do not</b> include employer contributions or rollovers (see page X of the instructions) . . . . .		2
3 If you were under age 55 at the end of 2004, and on the first day of every month during 2004, you were an eligible individual with the same annual deductible and coverage, enter the smaller of: • Your annual deductible or • \$2,600 (\$5,150 for family coverage) All others, enter the limit from the worksheet on page XX of the instructions . . . . .		3
4 Enter the amount you and your employer contributed to your Archer MSAs for 2004 from Form 8853, lines 1 and 2. If you or your spouse had family coverage under a high-deductible health plan at any time during 2004, also include any amount contributed to your spouse's Archer MSAs		4
5 Subtract line 4 from line 3. If zero or less, enter -0- . . . . .		5
6 If you and your spouse each have separate HSAs and had family coverage under a high-deductible health plan at any time during 2004, enter one-half of the amount on line 5 (or your share of the amount on line 5, if you and your spouse choose to divide that amount differently). All others, enter the amount from line 5 . . . . .		6
7 If you were age 55 or older at the end of 2004, married, and you or your spouse had family coverage under a high-deductible health plan at any time during 2004, enter the additional contribution amount from the worksheet on page XX of the instructions . . . . .		7
8 Add lines 6 and 7 . . . . .		8
9 Employer contributions made to your HSAs for 2004 . . . . .		9
10 Subtract line 9 from line 8. If zero or less, enter -0- . . . . .		10
11 <b>HSA deduction.</b> Enter the smaller of line 2 or line 10 here and on Form 1040, line 28 . . . . . <b>Caution:</b> If line 2 is more than line 11, you may have to pay an additional tax (see page X of the instructions).		11
<b>Part II HSA Distributions</b>		
12a Total distributions you, and your spouse if filing jointly, received in 2004 from all HSAs (see page X of the instructions) . . . . .		12a
b Distributions included on line 12a that you rolled over to another HSA. Also include any excess contributions (and the earnings on those excess contributions) included on line 12a that were withdrawn by the due date of your return (see page X of the instructions) . . . . .		12b
c Subtract line 12b from line 12a . . . . .		12c
13 Unreimbursed qualified medical expenses (see page X of the instructions) . . . . .		13
14 <b>Taxable HSA distributions.</b> Subtract line 13 from line 12c. If zero or less, enter -0-. Also, include this amount in the total on Form 1040, line 21. On the dotted line next to line 21, enter "HSA" and the amount . . . . .		14
15a If any of the distributions included on line 14 meet any of the <b>Exceptions to the Additional 10% Tax</b> (see page 4 of the instructions), check here . . . . . <input type="checkbox"/>		
b <b>Additional 10% tax</b> (see page 4 of the instructions). Enter 10% (.10) of the distributions included on line 14 that are subject to the additional 10% tax. Also include this amount in the total on Form 1040, line 62. On the dotted line next to line 62, enter "HSA" and the amount . . . . .		15b
For Paperwork Reduction Act Notice, see page X of the instructions.		