

An Overview of Health Savings Accounts (HSAs)¹

With Comparison to Archer MSAs, Health Reimbursement Arrangements (HRAs) and Flexible Spending Accounts (FSAs)

	Health Savings Account (HSA)	Archer MSA	Health Reimbursement Arrangement (HRA)	Flexible Spending Account (FSA)
Overview ²	<p>A tax-exempt trust or custodial account established for the purpose of paying qualified medical expenses in conjunction with a high-deductible (“HD”) health plan.</p> <p><i>Comment:</i> In brief: A supercharged Archer MSA — a portable, personal trust account for medical expenses, with much greater availability, liberalized funding, and increased contribution limits.</p>	<p>A tax-exempt trust or custodial account established for the purpose of paying qualified medical expenses in conjunction with a high-deductible (“HD”) health plan sponsored by a small employer, or self-employed individual.</p> <p><i>Comment:</i> In brief: A portable, personal trust account for medical expenses, but with limited availability and funding, and more restricted contribution limits.</p>	<p>A benefit plan that is funded solely by the employer, and not through salary reduction, that reimburses the employee for qualified medical expenses.</p> <p><i>Comment:</i> In brief: An employer bookkeeping account for medical expenses that allows carryover and accumulation, but with very limited portability.</p>	<p>An employer-sponsored benefit program typically funded by the employee with pre-tax contributions that reimburses the employee for qualified medical expenses, and is subject to a use-it-or-lose-it rule requiring forfeiture of unused amounts at the end of the year.</p> <p><i>Comment:</i> In brief: An employer bookkeeping account for medical expenses funded by employee pre-tax contributions, with no carryover, accumulation, or portability.</p>

¹ Health Savings Accounts are authorized pursuant to section 1201 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (the “Act”), Pub. L. No. 108-173, which added § 223 of the Internal Revenue Code of 1986. The IRS released initial guidance on Health Savings Accounts in Notice 2004-2, which was issued on December 22, 2003. On March 30, 2004, the IRS issued further guidance in the form of Notice 2004-23, Notice 2004-25, Rev. Rul. 2004-38, and Rev. Proc. 2004-22. On April 7, 2004, the DOL issued guidance on the application of ERISA to HSAs in the form of Field Assistance Bulletin No. 2004-01. The IRS then issued the following subsequent guidance: Rev. Rul. 2004-45, on the impact of HRAs and FSAs on HSAs on May 11, 2004; Notice 2004-43, regarding state law mandated health benefits on June 18, 2004; draft Forms 5305-B (Health Savings Trust Account) and 5305-C (Health Savings Custodial Account) on June 25, 2004; and Notice 2004-50, consisting of comprehensive guidance of more than 80 Q’s and A’s on various issues relating to HSAs on July 23, 2004.

² Note: This chart has been prepared for the information of clients and friends of Miller & Chevalier Chartered. It does not provide legal advice and it is not intended to create a lawyer-client relationship. Readers should not act upon the information in this chart without seeking professional counsel. References herein to “IRC” mean the Internal Revenue Code of 1986.

	Health Savings Account (HSA)	Archer MSA	Health Reimbursement Arrangement (HRA)	Flexible Spending Account (FSA)
Eligibility - General	<p>An individual who is covered under a qualifying HD health plan. IRC § 223(c)(1)(A). It appears that this eligibility rule is applied separately to spouses (except that there are special rules where either spouse has family coverage).</p> <p>Such individual may not be covered under any other non-HD health plan, except for certain exempted coverage and other statutorily “permitted insurance.” Thus, subject to certain transition relief, an eligible individual may not be covered under a separate, non-HD prescription drug plan. IRC § 223(c)(1); Rev. Rul. 2004-38. However, a discount card that entitles the holder to discounts on health care services or products at managed care rates (e.g., a pharmacy discount card) will not adversely affect the holder’s eligibility. Notice 2004-50, Q & A 9.</p>	<p>An employee (or spouse of an employee) of a “small employer” that maintains an individual or family qualifying HD health plan covering that individual (employee or spouse), or a self-employed person (or the spouse of a self-employed person) maintaining an individual or family HD plan covering that individual (self-employed person or spouse). IRC § 220(c)(1).</p> <p>Such individual may not be covered under any other non-HD health plan which provides coverage for any benefit otherwise covered under the HD plan, except for certain exempted coverage and other statutorily “permitted insurance.” IRC § 220(c)(1).</p>	<p>An employee who satisfies the eligibility requirements as established by the employer, subject to IRC § 105(h) nondiscrimination rules.</p>	<p>An employee who satisfies the eligibility requirements as established by the employer, subject to IRC §§ 125 and 105(h) nondiscrimination rules (and who elects to contribute).</p>

	Health Savings Account (HSA)	Archer MSA	Health Reimbursement Arrangement (HRA)	Flexible Spending Account (FSA)
Eligibility - Permitted Other Health Coverage	<p>Exempted coverage (whether through insurance or otherwise) includes coverage for accidents, disability, dental care, vision care, or long-term care. IRC § 223(c)(1)(B). “Permitted insurance” is (1) all insurance where substantially all of the coverage provided relates to liabilities from workers' compensation laws, torts, or ownership or use of property (such as automobile insurance), (2) insurance for a specified disease or illness, and (3) insurance paying a fixed amount per day of hospitalization. IRC § 223(c)(3). To qualify as “permitted insurance,” the specified coverage generally must be provided under an insurance contract. Notice 2004-50, Q & A 8.</p> <p><i>HRA/FSA Coverage:</i> The IRS has held that an HSA eligible individual may have access to benefits under an FSA or HRA only if coverage under the FSA or HRA is limited and does not provide coverage for benefits subject to the minimum deductible requirement for HD health plans. For example, the FSA or HRA may provide benefits to an HSA eligible individual if coverage is limited</p>	<p><i>Exempted coverage:</i> Same as under an HSA. IRC § 220(c)(1)(B).</p> <p><i>“Permitted insurance”:</i> Same as under an HSA. IRC § 220(c)(3); Notice 96-53, Q & A 7, 1996-2 CB 219.</p>	Not applicable	Not applicable.

	Health Savings Account (HSA)	Archer MSA	Health Reimbursement Arrangement (HRA)	Flexible Spending Account (FSA)
<p>Eligibility - Permitted Other Health Coverage (cont'd)</p>	<p>to coverage of dental care, vision care, and preventive care, or to coverage after the employee retires. Rev. Rul. 2004-45.</p> <p><i>EAPs, Disease Management Programs, and Wellness Programs:</i> The IRS has determined that coverage under employee assistance programs, disease management programs, or wellness programs will not be considered coverage under a non-qualifying health plan if the program does not provide significant benefits in the nature of medical care or treatment, disregarding for these purposes any screening or other preventive care services. Notice 2004-50, Q & A 10.</p>			

	Health Savings Account (HSA)	Archer MSA	Health Reimbursement Arrangement (HRA)	Flexible Spending Account (FSA)
Eligibility - High Deductible Plan Requirements	<p>Must be covered by a qualifying HD health plan (generally, with no other health coverage).</p> <p>A qualifying HD health plan is a health plan (including a self-insured plan) which has an annual deductible not less than \$1,000 for self-only coverage (\$2,000 for family coverage) and has an out-of-pocket limit (other than for premiums) equal to \$5,000 for self-only coverage (or \$10,000 for family coverage). IRC § 223(c)(2)(A); Notice 2004-2, Q & A 7. For these purposes, “family coverage” means any coverage other than self-only coverage, including coverage for one eligible individual and at least one other individual. Notice 2004-50, Q & A 12.</p> <p><i>Preventive Care:</i> A plan will still qualify as a HD health plan even if it has no deductible, or a lower deductible, for preventive care. IRC § 223(c)(2)(C). The IRS has provided a safe harbor definition of preventive care benefits which includes periodic health evaluations, routine prenatal/well-child care, child/adult immunizations, tobacco cessation and certain obesity weight-loss programs, and certain screening services.</p>	<p>Must be covered by a qualifying HD health plan (generally, with no other health coverage).</p> <p>A qualifying HD health plan is a health plan which has an annual deductible between \$1,700 and \$2,600 for self-only coverage (or \$3,450 and \$5,150 for family coverage) and which has an out-of-pocket limit (other than for premiums) equal to \$3,450 for self-only coverage (or \$6,300 for family coverage). IRC § 220(c)(2).</p> <p><i>Preventive Care:</i> A plan will still qualify as a HD health plan even if it has no deductible for preventive care. IRC § 220(c)(2)(B)(ii).</p>	None.	None.

	Health Savings Account (HSA)	Archer MSA	Health Reimbursement Arrangement (HRA)	Flexible Spending Account (FSA)
<p>Eligibility - High Deductible Plan Requirements (cont'd)</p>	<p>Preventive care does not include a service or benefit that treats an existing illness, injury, or condition. Notice 2004-23.</p> <p><i>Network Plans:</i> A plan will not fail to qualify as a HD health plan just because the out-of-pocket limitation for services provided by non-network providers exceeds the annual HD health plan limits. IRC § 223(c)(2)(D).</p> <p><i>Stacked Deductibles:</i> In the case of family coverage, a health plan with stacked deductibles will not qualify if benefits are provided for any individual before the applicable family deductible is met. More generally, a HD plan may not provide any benefits for a year until the applicable deductible is met. Notice 2004-2, Q & A 3. In addition, the stacked deductibles are subject in total to the out-of-pocket maximum for HD health plans. Notice 2004-50, Q & 20.</p> <p><i>Prescription Drug Coverage:</i> The IRS makes no exception for prescription drug coverage under the high deductible requirement. Rev. Rul. 2004-38. However, a special transition rule has been provided that allows an eligible individual to have nonconforming coverage for</p>			

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<p>Eligibility - High Deductible Plan Requirements (cont'd)</p>	<p>prescription drugs under a separate health plan or rider through 2005. Rev. Proc. 2004-22. In addition, drugs or medication are regarded by the IRS as preventive care if taken by a person who has developed risk factors for a disease that has not manifested itself or to prevent the recurrence of a disease from which the person has recovered. Notice 2004-50, Q & A 27.</p> <p><i>State Mandates:</i> The IRS has indicated that there is no implied exception for State mandated coverage, even coverage required for "preventive care," if such preventive care does not meet the IRS standards. Notice 2004-23. But in Notice 2004-43, the IRS provided transition relief for individuals in states where HD health plans would not otherwise be available because of state law mandates requiring that health plans provide certain benefits (e.g., nonqualifying preventative care).</p> <p><i>Out-of-Pocket Limits:</i> Generally the out-of-pocket limit maximum only applies to covered benefits under the HD health plan, including amounts paid as deductibles, co-payments, and</p>			

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<p>Eligibility - High Deductible Plan Requirements (cont'd)</p>	<p>other amounts (other than premiums). Notice, 2004-50, Q & A 15, 21.</p> <p><i>Carryover of Deductibles:</i> An HD health plan may provide a credit toward the deductible for expenses incurred during a previous plan's short plan year (whether or not the previous plan is an HD health plan), provided the accumulation period during which expenses are incurred for purposes of meeting the deductible is 12 months or less. Notice 2004-50, Q & A 22. The minimum annual deductible under the HD health plan must be adjusted upward as prescribed by the IRS if the accumulation period for expenses is longer than 12 months. Notice 2004-50, Q & A 24.</p>			

	Health Savings Account (HSA)	Archer MSA	Health Reimbursement Arrangement (HRA)	Flexible Spending Account (FSA)
Account Requirements	<p>A trust created or organized for the purpose of paying the qualified medical expenses of the account beneficiary which meets certain special IRC requirements. IRC § 223(d)(1).</p> <p>The trustee must be a bank, insurance company (as defined in IRC § 816), or approved non-bank custodian. (Where assets are held by an insurance company, contributions are excluded from DAC tax under IRC § 848.)</p> <p>The other special IRC requirements are: (1) except for rollover contributions from an HSA (and also an Archer MSA), no contribution will be accepted unless it is in cash and does not exceed the applicable contribution limits; (2) no part of the trust assets are invested in life insurance contracts; (3) the assets of the trust are not commingled with other property in a common trust or investment fund; and (4) an individual's possessory interest in an HSA account is nonforfeitable. IRC § 223(d)(1).</p>	<p>A trust created or organized for the purpose of paying the qualified medical expenses of the account holder which meets certain special IRC requirements. IRC § 220(d)(1).</p> <p>The trustee must be a bank, insurance company (as defined in IRC § 816), or approved non-bank custodian. (Where assets are held by an insurance company, contributions are excluded from DAC tax under IRC § 848.)</p> <p>The other special IRC requirements are: (1) except for rollover contributions from an Archer MSA, no contribution will be accepted unless it is in cash and does not exceed the applicable contribution limits; (2) no part of the trust assets are invested in life insurance contracts; (3) the assets of the trust are not commingled with other property in a common trust or investment fund; and (4) an individual's possessory interest in an Archer MSA account is nonforfeitable. IRC § 220(d)(1).</p>	<p>No requirement that an account be funded by the employer. Typically, reimbursed amounts are paid directly from an employer's general assets.</p>	<p>No requirement that an account be funded by the employer. Typically, reimbursed amounts are paid directly from an employer's general assets.</p>

	Health Savings Account (HSA)	Archer MSA	Health Reimbursement Arrangement (HRA)	Flexible Spending Account (FSA)
Account Status/ Ownership	<p>Tax-exempt funded trust or custodial account owned by an individual. IRC § 223(d).</p> <p>Only one person may be the account holder of an HSA; a husband and wife may not have a joint HSA. Notice 2004-50, Q & A 63.</p> <p>If an employer makes a contribution to an employee's HSA, the employer may not later recoup any portion of the employer's contribution to such HSA from the HSA account, e.g., when the employer pre-funds its annual contribution for the year and the employee terminates early. Notice 2004-50, Q & A 82.</p>	<p>Tax-exempt funded trust or custodial account owned by the individual. IRC § 220(d).</p>	<p>Typically, an employer bookkeeping account. A covered employee's rights are typically those of an unsecured, general creditor and are limited by the terms of the HRA.</p>	<p>Typically, an employer bookkeeping account. A covered employee's rights are typically those of an unsecured general creditor, and are limited by the terms of the FSA.</p>

	Health Savings Account (HSA)	Archer MSA	Health Reimbursement Arrangement (HRA)	Flexible Spending Account (FSA)
Account Funding/ Use of a Cafeteria Plan	<p>Either an individual or employer may contribute to an account holder's HSA. IRC § 223(a). There is no prohibition against both an employer and an eligible individual making contributions to an eligible individual's HSA in the same year.</p> <p>An HSA may be offered as part of an IRC § 125 cafeteria plan. IRC § 125(d)(2).</p> <p>An employer that makes a contribution to any eligible employee's HSA during a calendar year must make comparable contributions to the HSAs of all comparable participating employees for that calendar year. IRC § 4980G(a). (See page 18 regarding comparability requirement.)</p> <p><i>Note:</i> No deduction is allowed for a contribution to an HSA for any individual for whom a personal exemption can be claimed by another taxpayer for a tax year that begins in the calendar year in which the individual's tax year begins. IRC § 223(b)(6).</p> <p>Contributions may be made for a year at any time prior to the time</p>	<p>An account holder (employee or spouse) may contribute to an MSA. Alternatively, the employee's employer may contribute to the account holder's MSA. However, if an employer makes a contribution to an MSA for a given year, the account holder of that MSA may not contribute to any MSA for that given year. IRC § 220(b)(5).</p> <p>An Archer MSA must be administered separate from an IRC § 125 cafeteria plan. Notice 96-53, Q & A 8, 1996-2 CB 219.</p> <p>An employer that makes a contribution to any eligible employee's Archer MSA during a calendar year must make comparable contributions to the Archer MSAs of all comparable participating employees for that calendar year. IRC § 4980E.</p> <p><i>Note:</i> No deduction is allowed for a contribution to an Archer MSA for any individual for whom a personal exemption can be claimed by another taxpayer for a tax year that begins in the calendar year in which the individual's tax year begins. IRC § 220(b)(6).</p>	<p>Amounts contributed to an HRA cannot be paid through employee salary reduction and must only be paid through employer contributions. Notice 2002-45, Sec. I, 2002-28 IRB 93.</p> <p>Employer contributions to an HRA may not be attributable to salary reduction or otherwise provided under an IRC § 125 cafeteria plan. Notice 2002-45, Sec. IV, 2002-28 IRB 93.</p>	<p>Amounts are typically contributed as pre-tax employee contributions as part of an IRC § 125 cafeteria plan.</p>

	Health Savings Account (HSA)	Archer MSA	Health Reimbursement Arrangement (HRA)	Flexible Spending Account (FSA)
Account Funding/ Use of a Cafeteria Plan (cont'd)	<p>(without extensions) for filing the eligible individual's income tax return for that year. IRC § 223(d)(4)(B).</p> <p>Employers that contribute to an employee's HSA are responsible for determining (i) whether the employee is covered under an HD health plan (and the deductible) or low deductible health plan sponsored by the employer, (ii) the employee's age (for catch-up contributions). The employer may rely on the employee's representation as to DOB. Notice 2004-50, Q & A 81.</p>	<p>Contributions may be made for a year at any time prior to the time (without extensions) for filing the eligible individual's income tax return for that year. IRC § 220(d)(4)(B).</p>		

	Health Savings Account (HSA)	Archer MSA	Health Reimbursement Arrangement (HRA)	Flexible Spending Account (FSA)
Contribution Limits	<p>Maximum contributions (calculated on a monthly basis) for an eligible individual are the lesser of 100% of the annual deductible of the HD plan (disregarding any deductible for out-of-network services) or \$2,600 for self-only coverage, (or \$5,150 in the case of family HD coverage). IRC § 223(b)(2) (limits are indexed).</p> <p><i>Note:</i> There is no requirement that the individual have earnings. Also, the limit is zero for an individual who is enrolled in Medicare. IRC § 223(b)(7). The IRS has determined that an individual who is eligible for Medicare, but not enrolled in Medicare Part A or Part B, may nonetheless contribute to an HSA, if otherwise eligible. Notice 2004-50, Q & A 2.</p> <p>The same annual contribution limit applies whether an employee, an employer, or a self-employed person makes the contributions.</p> <p>Where the HD health plan providing family coverage has embedded individual deductibles, plus an umbrella or aggregate deductible, the maximum contribution amount is the least of (i) the dollar limit for family</p>	<p>Generally 65% of the annual deductible (where individual HD coverage) or 75% of the annual deductible (where family HD coverage). IRC § 220(b).</p> <p><i>Note:</i> The limit is zero for a Medicare eligible individual. IRC § 220(b)(7). Presumably the rule for Medicare coverage would be the same for MSAs as HSAs.</p> <p>The same annual contribution limit applies whether an employee, an employer, or a self-employed person makes the contributions.</p> <p><i>Comment:</i> There is a potential for gap in coverage of out-of-pocket expenses.</p>	<p>There are no statutorily prescribed limits to the amount of contributions that may be made to an HRA. An employer sponsoring the HRA, however, may place limits on contribution amounts by including plan language to that effect.</p> <p>HRA contributions to a separate fund are potentially subject to IRC § 419 deduction limits.</p>	<p>There are no statutorily prescribed limits to the amount of contributions that may be made to an FSA. An employer sponsoring the FSA, however, may place limits on contribution amounts by including plan language to that effect. Amounts may be effectively limited by the IRC § 125 cafeteria plan concentration and nondiscrimination rules.</p>

	Health Savings Account (HSA)	Archer MSA	Health Reimbursement Arrangement (HRA)	Flexible Spending Account (FSA)
<p>Contribution Limits (cont'd)</p>	<p>coverage, (ii) the umbrella deductible, or (iii) the amount of individual stacked deductible times the number of family members covered by the HD health plan. Notice 2004-50, Q & A 30. There are special rules for determining the maximum if the HD health plan covers an ineligible individual. Notice 2004-50, Q & A 31.</p> <p>Employer contributions are not subject to the deduction limits of IRC § 419. Notice 2004-2, Q & A 36.</p> <p><i>Comment:</i> Because HD coverage can permit up to \$5,000/\$10,000 of out-of-pocket exposure, there could be a gap in funding medical expenses. This would increase the desirability of coordination with an HRA or FSA, if possible. However, the IRS has stated that an HSA eligible individual may have access to HRA or FSA benefits only in limited circumstances. For example, an HSA eligible individual may have access to HRA or FSA benefits after the required minimum deductible for HD health plans is met. Rev. Rul. 2004-45.</p>			

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Tax Treatment of Contributions	<p><i>Employee Contributions:</i> Contributions by an eligible individual to an HSA are deductible in computing adjusted gross income. Accordingly, the contributions are deductible whether or not the eligible individual itemizes deductions. IRC § 223(a).</p> <p><i>Employer Contributions:</i> Contributions by an employer to an eligible individual's HSA (including pre-tax contributions made through an IRC § 125 cafeteria plan) are treated as employer-provided coverage under an accident or health plan, excludable from gross income, and are not subject to income tax withholding. IRC §§ 106(d); 3401(a)(22). Employer contributions are not subject to FICA. Notice 2004-2, Q & A 19.</p>	<p><i>Employee Contributions:</i> Contributions by an eligible individual to an Archer MSA are deductible in computing adjusted gross income. Accordingly, the contributions are deductible whether or not the eligible individual itemizes deductions. IRC § 220(a); Notice 96-53, Q & A 15, 1996-2 CB 219.</p> <p><i>Employer Contributions:</i> Contributions by an employer to an eligible individual's Archer MSA are excludable from gross income, are not subject to withholding for income tax, and are not subject to other employment taxes (i.e., Social Security and Medicare taxes (FICA), federal unemployment tax (FUTA) or railroad retirement tax). IRC § 220(a); Notice 96-53, Q & A 16, 1996-2 CB 219.</p>	<p>Coverage and reimbursements of medical care expenses of an employee and the employee's spouse and dependents are generally excludable from the employee's gross income under IRC §§ 105 and 106. Notice 2002-45, Sec. I, 2002-28 IRB 93.</p>	<p>Pre-tax contributions are not subject to tax under IRC § 125. Reimbursements of medical care expenses of an employee and the employee's spouse and dependents are generally excludable from the employee's gross income under IRC §§ 105 and 106. Prop. Treas. Reg. § 1.125-2, Q & A 7.</p>

	Health Savings Account (HSA)	Archer MSA	Health Reimbursement Arrangement (HRA)	Flexible Spending Account (FSA)
Catch-up Contributions	Individuals who have attained age 55 before the close of the taxable year and are not enrolled in Medicare Part A or Part B may contribute an additional \$500 (calculated on a monthly basis) to an HSA for 2004 (\$600 for 2005, \$700 for 2006, \$800 for 2007, \$900 for 2008, \$1,000 for 2009 and beyond). IRC § 223(b)(3).	None.	Not applicable.	Not applicable.

	Health Savings Account (HSA)	Archer MSA	Health Reimbursement Arrangement (HRA)	Flexible Spending Account (FSA)
Coordination of Contribution Limits With Respect to Other Accounts or Arrangements	Maximum contributions allowed to an HSA for any given year are reduced by any contributions made to an Archer MSA in the same year. IRC § 223(b)(4)(A).	Maximum contributions allowed to an HSA for any given year are reduced by any contributions made to an Archer MSA in the same year. IRC § 223(b)(4)(A).	None.	None.

	Health Savings Account (HSA)	Archer MSA	Health Reimbursement Arrangement (HRA)	Flexible Spending Account (FSA)
Non-discrimination	<p>An employer who makes contributions into an HSA for any employee is required to make comparable HSA contributions for all comparable participating employees. IRC § 4980G.</p> <p>The comparability requirement does not apply to contributions made through an IRC § 125 cafeteria plan or by rollover from HSAs or Archer MSAs. Notice 2004-2, Q & A 32.</p> <p>The IRS has ruled that merely offering to make matching contributions to an HSA does not satisfy the comparability requirement, but that such contributions may be made through a cafeteria plan to an HSA without regard to the comparability rule. Such contributions, though, are subject to the cafeteria plan discrimination rules. Notice 2004-50, Q & A 46, 47.</p> <p>For purposes of the comparability requirement, contributions on behalf of part-time employees (those customarily employed for fewer than 30 hours per week) are tested separately. IRC §§ 4980G; 4980E(d)(4). In addition, employees covered</p>	<p>An employer who makes contributions into an Archer MSA for any employee is required to make comparable Archer MSA contributions for all comparable participating employees. IRC § 4980E.</p> <p>For purposes of the comparability requirement, contributions on behalf of part-time employees (those customarily employed for fewer than 30 hours per week) are tested separately. IRC § 4980E(d)(4).</p>	<p>Where an HRA is self-insured, the HRA is subject to the nondiscrimination rules for self-insured medical expense reimbursement plans under IRC § 105(h).</p> <p>The nondiscrimination rules of IRC § 105(h) prohibit discrimination in favor of highly compensated employees with respect to eligibility to participate and benefits.</p>	<p>An FSA is subject to the nondiscrimination rules under the IRC § 125 cafeteria plan provisions and also under IRC § 105(h) for self-insured arrangements.</p> <p>The nondiscrimination rules of IRC § 105(h) prohibit discrimination in favor of highly compensated employees with respect to eligibility to participate and benefits.</p>

	Health Savings Account (HSA)	Archer MSA	Health Reimbursement Arrangement (HRA)	Flexible Spending Account (FSA)
<p>Non-discrimination (cont'd)</p>	<p>under an HD health plan of the employer may be tested separately from those who are not covered under an employer-provided HD health plan. Notice 2004-50, Q & A 53.</p> <p>For these purposes, the testing period is the calendar year, but the rules are applied on a month-to-month basis, so that an employer making contributions to the HSAs of full-time employees must make a pro-rata contribution to an employee who only works full-time for several months of the year. Notice 2004-50, Q & A 51, 52.</p> <p>HSAs are not subject to the section 105(h) nondiscrimination rules. Notice 2004-50, Q & A 83.</p>			

	Health Savings Account (HSA)	Archer MSA	Health Reimbursement Arrangement (HRA)	Flexible Spending Account (FSA)
Permissible Account Benefits	<p>Reimbursement of qualified medical expenses (as defined in § 213(d) of the IRC) (including OTC drugs) pertaining to the account beneficiary, spouse, or any qualifying dependents, but only to the extent that such amounts are not compensated for by insurance or otherwise. IRC § 223(d)(2)(A). Distributions may be made to cover the expenses of the account beneficiary's spouse or dependent even if they are covered under a non-qualifying health plan. Notice 2004-50, Q & A 36.</p> <p>Funds from an HSA may not be used to purchase health insurance, except if used to purchase continuation coverage (i.e., COBRA), qualified long-term care insurance, health insurance while unemployed, or, for individuals eligible for Medicare at age 65, any health insurance other than a Medicare supplemental policy. IRC § 223(d)(2)(B). Thus, an HSA can be used to pay premiums on Medicare Part A or Part B, Medicare HMO, and the employee share of premiums for employer-sponsored retiree health insurance or an employer's self-insured</p>	<p>Reimbursement of qualified medical expenses (as defined in § 213(d) of the IRC) (including OTC drugs) pertaining to the account holder, spouse, or any qualifying dependents, but only to the extent that such amounts are not compensated for by insurance or otherwise. IRC § 220(d)(2)(A).</p> <p>Funds from an Archer MSA may not be used to purchase health insurance, except if used to purchase continuation coverage (i.e., COBRA), qualified long-term care insurance, or health insurance while unemployed. IRC § 220(d)(2)(B).</p> <p>Other distributions are permitted, subject to tax and penalties.</p>	<p>Reimbursement of qualified medical expenses (as defined in § 213(d) of the IRC) (including OTC drugs) pertaining to the account holder, spouse, or any qualifying dependents.</p> <p>An HRA may not reimburse a medical expense that is attributable to a deduction allowed under IRC § 213 for any prior taxable year.</p> <p>Reimbursements for insurance covering medical expenses as defined in § 213(d)(1)(D) may be permissible under an HRA (including amounts paid for premiums for accident or health coverage for current employees, retirees, and COBRA qualified beneficiaries) (but note HIPAA issue). Notice 2002-45, Sec. II, 2002-28 IRB 93.</p> <p>An HRA may not permit the participant to cash out credits or use credits for other benefits.</p>	<p>Reimbursement of qualified medical expenses (as defined in § 213(d) of the IRC) (including OTC drugs) pertaining to the account holder, spouse, or any qualifying dependents. Qualified medical expenses do not include expenses pertaining to (1) health insurance premiums; and (2) long-term care services. IRC § 106(c).</p> <p>An FSA may not permit the participant to cash out credits or use credits for other benefits.</p>

	Health Savings Account (HSA)	Archer MSA	Health Reimbursement Arrangement (HRA)	Flexible Spending Account (FSA)
<p>Permissible Account Benefits (cont'd)</p>	<p>coverage, but not to pay premiums on Medigap policies. Notice 2004-2, Q & A 27; Notice 2004-50, Q & A 43.</p> <p>Distributions may be made for long-term care services. Notice 2004-50, Q & A 42.</p> <p>Other distributions are permitted, subject to tax and penalties.</p>			

	Health Savings Account (HSA)	Archer MSA	Health Reimbursement Arrangement (HRA)	Flexible Spending Account (FSA)
General Coordination with Other Accounts or Arrangements	<p>Funds from an Archer MSA may be rolled over into an HSA. IRC § 220(f)(5). However, rollovers from HRAs or FSAs to HSAs are not permitted. Notice 2004-2, Q&A 23.</p> <p>Maximum contributions allowed to an HSA for any given year are reduced by any contributions made to an Archer MSA in the same year. IRC § 223(b)(4)(A).</p> <p>An HSA may be offered as part of an IRC § 125 cafeteria plan. IRC § 125(d)(2). The normal cafeteria plan rules on mid-year changes do not apply to changes to stop or start an election to make contributions to an HSA, or to increase or decrease the election, as long as the change is prospective. Notice 2004-50, Q & A 58.</p> <p>The IRS has ruled that an HSA eligible individual may not have access to FSAs or HRAs unless coverage under the latter is properly limited. Coverage will be properly limited: (1) if coverage under the FSA or HRA is limited to permitted insurance, exempted coverage or preventive care, (2) if under the HRA the employee elects to forego coverage of medical expenses arising in the coverage period, (3)</p>	<p>Funds from an Archer MSA may be rolled over into an HSA. IRC § 220(f)(5).</p> <p>Although a HD plan may be part of an IRC § 125 cafeteria plan under which a health FSA is offered, an Archer MSA must be administered separate from an IRC § 125 cafeteria plan. Notice 96-53, Q & A 8, 1996-2 CB 219.</p> <p><i>Comment:</i> The impact of maintaining an HRA or FSA in connection with an Archer MSA is unclear. Presumably, an Archer MSA could be coordinated with an HRA or FSA in a manner similar to that of an HSA.</p>	<p>An HRA may be coordinated with an FSA, subject to certain rules, e.g., mutually exclusive coverage, layering of coverage (FSA first).</p> <p>If coverage is provided under both an HRA and an FSA for the same medical care expense, amounts available under an HRA must be exhausted before reimbursements may be made from the FSA. Notice 2002-45, Sec. V, 2002-28 IRB 93.</p> <p>Under no circumstances may an employee be reimbursed for the same medical expense by both an HRA and an FSA. Notice 2002-45, Sec. V, 2002-28 IRB 93.</p>	<p>An FSA may be coordinated with an HRA, subject to certain rules, e.g., mutually exclusive coverage, layering of coverage (FSA first).</p> <p>If coverage is provided under both an HRA and an FSA for the same medical care expense, amounts available under an HRA must be exhausted before reimbursements may be made from the FSA. Notice 2002-45, Sec. V, 2002-28 IRB 93.</p> <p>Under no circumstances may an employee be reimbursed for the same medical expense by both an HRA and an FSA. Notice 2002-45, Sec. V, 2002-28 IRB 93.</p>

	Health Savings Account (HSA)	Archer MSA	Health Reimbursement Arrangement (HRA)	Flexible Spending Account (FSA)
General Coordination with Other Accounts or Arrangements (cont'd)	if the HRA or FSA only provides benefits after the required HD health plan high deductible minimum is met, or (4) if the HRA limits coverage to the period after retirement. Rev. Rul. 2004-45.			

	Health Savings Account (HSA)	Archer MSA	Health Reimbursement Arrangement (HRA)	Flexible Spending Account (FSA)
Tax Treatment of Distribution	<p>Distributions for qualified medical expenses incurred after the HSA was established are generally not taxable. IRC § 223(f)(1). Under a transition rule, an HSA established before April 15, 2005 may make tax-free distributions for certain qualified medical expenses incurred before the HSA was established. Notice 2004-25.</p> <p>There is no deadline as such for withdrawing amounts from an HSA to cover a qualified medical expense incurred in the current year, provided the account holder maintains sufficient records to substantiate the distribution as being for qualified medical expenses that were not otherwise reimbursed or deducted. Notice 2004-50, Q & A 39.</p> <p>Any amount paid or distributed out of an HSA which is not used exclusively to pay the qualified medical expenses of the account holder (or the holder's spouse or dependent) is includable in the gross income of such holder. IRC § 223(f)(2). In addition, such amounts are subject to a 10% penalty. IRC § 223(f)(4).</p> <p><i>Penalty Exceptions:</i> IRC § 223(f)(4) includes an exception (but only for the penalty) to the</p>	<p>Distributions for qualified medical expenses are generally not taxable. IRC § 220(f)(1).</p> <p>Any amount paid or distributed out of an Archer MSA which is not used exclusively to pay the qualified medical expenses of the account holder is includable in the gross income of such holder. IRC § 220(f)(2). In addition, such amounts are subject to a 15% penalty. IRC § 220(f)(4).</p> <p><i>Penalty Exceptions:</i> IRC § 220(f)(4) includes an exception (but only for the penalty) to the above exclusivity requirement for distributions made after an individual dies or becomes disabled, IRC § 220(f)(4)(B), or reaches the Medicare eligibility age (age 65). IRC § 220(f)(4)(C).</p> <p><i>Rollovers:</i> Amounts that would otherwise be taxable distributions are not taxable if rolled over into another MSA or HSA within 60 days, with certain exceptions. IRC § 220(f)(5).</p>	<p>Distributions for qualified medical expenses are generally not taxable. Notice 2002-45, Sec. I, 2002-28 IRB 93.</p> <p>Employer-sponsored HRAs may not reimburse non-qualified medical expenses or any other expenses. Notice 2002-45, Sec. II, 2002-28 IRB 93.</p>	<p>Distributions for qualified medical expenses are generally not taxable. Prop. Treas. Reg. § 1.125-2, Q & A 7.</p> <p>Employer-sponsored FSAs may not reimburse non-qualified medical expenses or any other expenses. Prop. Treas. Reg. § 1.125-2, Q & A 7.</p>

	Health Savings Account (HSA)	Archer MSA	Health Reimbursement Arrangement (HRA)	Flexible Spending Account (FSA)
<p>Tax Treatment of Distributions (cont'd)</p>	<p>above exclusivity requirement for distributions made after an individual dies or becomes disabled, IRC § 223(f)(4)(B), or reaches the Medicare eligibility age (age 65). IRC § 223(f)(4)(C).</p> <p><i>Mistaken Distributions:</i> Certain mistaken distributions that are returned to the HSA on a timely basis are not subject to tax. Notice 2004-50, Q & A 37. However, custodians or trustees of HSAs are not required to allow the return of mistaken contributions. Notice 2004-50, Q & A 76.</p> <p><i>Rollovers:</i> Amounts that would otherwise be taxable distributions are not taxable if rolled over into another HSA within 60 days, with certain exceptions. IRC § 223(f)(5).</p>			

	Health Savings Account (HSA)	Archer MSA	Health Reimbursement Arrangement (HRA)	Flexible Spending Account (FSA)
Portability/ Carryover of Funds	<p>An HSA belongs to the individual owner and is portable between jobs. IRC § 223(f)(5).</p> <p>Amounts not distributed by the end of a taxable year may be carried over into the next year. IRC § 223(d)(1)(E).</p> <p>An HSA may not limit the account holder’s ability to take distributions for any purpose, e.g., may not restrict the account holder from taking a distribution for non-medical purposes or from rolling over a distribution. Notice 2004-50, Q & A 79, 77.</p>	<p>An Archer MSA belongs to individual owner and is portable between jobs. IRC § 220(f)(5); Notice 96-53, Q & A 1, 1996-2 CB 219.</p> <p>Amounts not distributed by the end of a taxable year may be carried over into the next year. IRC § 220(d)(1)(E).</p>	<p>Participants in an HRA may carry forward any unused portion of the maximum dollar amount at the end of a coverage period to increase the maximum reimbursement amount in subsequent coverage periods. Notice 2002-45, Sec. I, 2002-28 IRB 93.</p>	<p>Amounts contributed to an FSA that are not reimbursed during the applicable coverage period are forfeited and may not be carried forward into a subsequent coverage period (“use it or lose it”). Prop. Treas. Reg. § 1.125-2, Q & A 5.</p>

	Health Savings Account (HSA)	Archer MSA	Health Reimbursement Arrangement (HRA)	Flexible Spending Account (FSA)
Death/Divorce	<p><i>Death:</i> If the account holder's spouse is the designated beneficiary, following the death of the account holder and the transfer of interest, the account continues to be treated as an HSA with the spouse as the account holder. IRC § 223(f)(8)(A).</p> <p>If, by reason of death, a spouse who is not named as the beneficiary, or any other individual, acquires an interest in an HSA, then the account is no longer an HSA, and an amount equal to the fair market value of the account assets is includable in such person's income. IRC § 223(f)(8)(B).</p> <p><i>Divorce:</i> The transfer of all or part of an individual's interest in an HSA, which is incident to divorce, is not considered a taxable transfer, and the transferred interest is thereafter treated as an HSA. IRC § 223(f)(7).</p> <p><i>Note:</i> An HSA is not subject to the IRS COBRA rules.</p>	<p><i>Death:</i> If the account holder's spouse is the designated beneficiary, following the death of the account holder and the transfer of interest, the account continues to be treated as an Archer MSA with the spouse as the account holder. IRC § 220(f)(8)(A).</p> <p>If, by reason of death, a spouse who is not named as the beneficiary, or any other individual, acquires an interest in an Archer MSA, then the account is no longer an Archer MSA, and an amount equal to the fair market value of the account assets is includable in such person's income. IRC § 220(f)(8)(B).</p> <p><i>Divorce:</i> The transfer of all or part of an individual's interest in an Archer MSA, which is incident to divorce, is not considered a taxable transfer, and the transferred interest is thereafter treated as an Archer MSA. IRC § 220(f)(7).</p> <p><i>Note:</i> An Archer MSA is not subject to the IRS COBRA rules.</p>	<p>There are no special rules regarding death or divorce. Subject to the terms of the HRA, coverage can continue to a spouse or dependents of a deceased employee. The impact of the COBRA rules on HRAs is unclear; additional guidance on this subject has been requested from the IRS.</p>	<p>There are no special rules regarding death or divorce. Subject to the terms of the FSA, it might be possible to continue coverage to a spouse or dependents of a deceased employee, subject to use-it-or-lose-it rule. FSAs are subject to special COBRA rules.</p>

	Health Savings Account (HSA)	Archer MSA	Health Reimbursement Arrangement (HRA)	Flexible Spending Account (FSA)
Administration - General	<p>HSA assets are held by a qualified trustee or custodian, but an individual owner may direct distributions and, where applicable, investments.</p> <p>HSA assets may be invested in any investment that is approved for IRAs, but the governing instrument may restrict the investment of assets to particular investment funds. Notice 2004-50, Q & A 65. HSA assets may not be commingled with other assets except in limited situations. Notice 2004-50, Q & A 66.</p> <p>The trustee or custodian of an HSA can be different from the HD plan provider. The trustee or custodian may require proof or certification of the HSA owner's eligibility to contribute to the account. Notice 2004-2, Q & A 10.</p> <p>HSAs, and HSA custodians and trustees, are subject to prohibited transaction rules similar to those that apply to IRAs. Notice 2004-50, Q & A 67, 68.</p> <p>The payment of administration and account maintenance fees directly to the trustee or custodian will not count against the contribution limits for HSAs. Notice 2004-50, Q & A 71.</p>	<p>Archer MSA assets are held by a qualified trustee or custodian, but an individual owner may direct distributions and, where applicable, investments.</p>	<p>An HRA is generally administered by the employer, subject to the terms of the HRA document.</p>	<p>An FSA is generally administered by the employer, subject to the terms of the FSA document.</p>

	Health Savings Account (HSA)	Archer MSA	Health Reimbursement Arrangement (HRA)	Flexible Spending Account (FSA)
Administration - Substantiation	No substantiation is required prior to reimbursement or distribution. The account holder of an HSA must substantiate any claimed reimbursements for medical expenses to the IRS if requested. Debit or credit cards can be used to receive distributions from HSAs. Notice 2004-2, Q & A 37.	No substantiation is required prior to reimbursement or distribution. If requested by the IRS, the account holder of an Archer MSA must substantiate any claimed reimbursements. Notice 96-53, Q & A 23, 1996-2 CB 219.	Each medical expense submitted for reimbursement must be substantiated prior to reimbursement. Notice 2002-45, Sec. II, 2002-28 IRB 93. See also Rev. Rul. 2003-43, 2003-21 IRB 814, with regard to the application of the substantiation rules in connection with the use of debit or credit cards.	Each medical expense submitted for reimbursement must be substantiated prior to reimbursement. Prop. Treas. Reg. § 1.125-2, Q & A 7. See also Rev. Rul. 2003-43, 2003-21 IRB 814, with regard to the application of the substantiation rules in connection with the use of debit or credit cards.

	Health Savings Account (HSA)	Archer MSA	Health Reimbursement Arrangement (HRA)	Flexible Spending Account (FSA)
Administration – Information Reporting	<p>Employer contributions to an HSA must be reported on the employee’s Form W-2. Reporting for HSAs will be similar to information reporting for Archer MSAs. The IRS will release forms and instructions. Notice 2004-2, Q & A 34.</p> <p>The 2004 Form W-2 contains specific references to HSAs for reporting of amounts in Box 12. The IRS has announced that employer contributions should be shown in that Box using Code W. Ann. 2004-2, 2004-3 IRB 322. Although it is likely that a new Form 1099-HSA will be required to be filed by the trustee, no draft of that form is currently available.</p> <p>New Form 8889, Health Savings Accounts, as referenced in the 2004 Form W-2 instructions, will likely be required to be filed with an employee’s Form 1040 to report contributions to and distributions from HSAs.</p>	<p>Employer contributions are required to be reported on the employee’s Form W-2, in Box 12. In addition, distributions from MSAs are reported to recipients on Form 1099-MSA.</p> <p>Employees must file Form 8853, Archer MSAs and LT Care Insurance Contracts, with Form 1040 to report any contributions to and distributions from MSAs.</p>	<p>There is no information reporting requirements applicable to amounts that an employer allocates to HRAs. HRAs as employee welfare benefit plans under ERISA may be subject to annual reporting on Form 5500.</p> <p>Although Rev. Rul. 2003-43, 2003-21 IRB 935, issued on May 6, 2003, states that payments made under employer-provided expense reimbursements to medical service providers through debit, credit, and stored value cards are reportable by the employer on form 1099-MISC, the Act provides an exception from the reporting provisions for medical care payments made under HRAs and FSAs.</p>	<p>There are no information reporting requirements applicable to amounts elected to be contributed to FSAs. FSAs as employee welfare benefit plans under ERISA may be subject to annual reporting on Form 5500.</p> <p>Although Rev. Rul. 2003-43, 2003-21 IRB 935, issued on May 6, 2003, states that payments made under employer-provided expense reimbursements to medical service providers through debit, credit, and stored value cards are reportable by the employer on form 1099-MISC, the Act provides an exception from the reporting provisions for medical care payments made under FSAs and HRAs.</p>

	Health Savings Account (HSA)	Archer MSA	Health Reimbursement Arrangement (HRA)	Flexible Spending Account (FSA)
ERISA Application	<p>The Department of Labor has indicated that an HSA generally will not constitute an ERISA-covered employee welfare benefit plan, provided employer involvement is limited. Field Assistance Bulletin (“FAB”) No. 2004-01.</p> <p>The DOL has further stated that the fact that an employer makes contributions to an HSA or limits the forwarding of contributions through its payroll system to a single HSA provider generally will not constitute excessive involvement for these purposes, unless the employer or HSA provider restricts the employee’s ability to move funds in the HSA to another HSA. The DOL guidance suggests that an HSA may be an ERISA-covered plan if, among other things, the employer imposes conditions on the use of HSA funds (beyond those permitted under the Code) or represents that the HSA is an employee welfare benefit plan of the employer.</p> <p>The fact that an HSA is not subject to ERISA does not mean that a related HD health plan sponsored by the employer is also exempt from ERISA.</p>	<p>The Department has not issued guidance on the application of ERISA to an Archer MSA. Presumably the Department would employ criteria similar to those it announced with respect to an HSA in FAB No. 2004-01.</p>	<p>An HRA is an ERISA plan subject to reporting and disclosure obligations.</p>	<p>An FSA is an ERISA plan subject to reporting and disclosure obligations.</p>

	Health Savings Account (HSA)	Archer MSA	Health Reimbursement Arrangement (HRA)	Flexible Spending Account (FSA)
Effective Date/Cut-off Date	<p><i>Effective Date:</i> January 1, 2004. P.L. 108-173.</p> <p><i>Cut-off date:</i> None</p> <p>The IRS has provided certain transition relief for situations in which an individual is covered by a non-HD prescription drug plan or rider or when certain state law mandated benefits are present. Rev. Proc. 2004-22; Notice 2004-43. In addition, the IRS has announced transition relief for 2004 with regard to HD health plans that lack an express out-of-pocket maximum on payments above the deductible, and for 2004 and 2005 for existing HD health plans that provide for certain carryover of deductibles. Notice 2004-50.</p>	<p><i>Effective Date:</i> December 21, 2000 (for Archer MSAs), P.L. 106-554, and January 1, 1997 (for Medical Savings Accounts), P.L. 104-191.</p> <p><i>Cut-off Date:</i> December 31, 2003.</p> <p><i>Note:</i> While not entirely clear, the legislative history of the Act suggests that individuals with established Archer MSAs may be able to continue to contribute to their Archer MSAs, and that employers who have established Archer MSA plans for their employees by December 31, 2003 may be able to permit employees to establish Archer MSA accounts after the cut-off date even if the employees never had such an account previously. IRC § 220(i).</p>	<p><i>Effective Date:</i> Status clarified in Notice 2002-45, 2002-28 IRB 93.</p> <p><i>Cut-off Date:</i> None</p>	<p><i>Effective Date:</i> Established in IRC § 125 and subsequent regulations.</p> <p><i>Cut-off Date:</i> None</p>