

MEMORANDUM

February 25, 2007

Employer Checklist for Complying With Notice 2007-22¹

Before March 15, 2007 (Transition Period) (Generally applies only to HRA plans or calendar year health FSA plans that already have a grace period)

In order to allow a transfer of funds from an FSA or HRA to an HSA, the employer must:

- Amend the FSA and HRA written plan document by March 15, 2007 to allow a qualified HSA distribution prior to March 15, 2007.
- Provide employees an election form to request a transfer anytime from January 1, 2007 through March 15, 2007 if they:
 - have established an HSA and are or will be eligible individuals by the first day of the month of the transfer due to coverage under the employer's HDHP;
 - had an FSA or HRA on September 21, 2006 with a positive balance; and
 - currently have an FSA or HRA with funds credited to it.
- Provide information to employees regarding the requirements of making a transfer
 - Explain how transfer amount is calculated (i.e., on cash basis).
 - Explain that the maximum amount that can be transferred is the lesser of the balance that was in the account on September 21, 2006 or the date of the transfer.
 - Explain that if balance in FSA or HRA at time of transfer is greater than balance on September 21, 2006, a tax free transfer cannot be made because the transfer would not result in a zero balance as required by IRS guidelines.
 - Explain that the employee may make only one transfer from a particular FSA or HRA.
 - Provide an overview of the testing period requirements to ensure employees have a basic understanding of the risk of failing to maintain status as an eligible individual (although the employer is not required to report this information to the HSA trustee/custodian or the IRS).
- Make the transfer for employees who return election forms on or before March 15, 2007, by transferring funds from the FSA or HRA directly to the HSA trustee/custodian by March 15, 2007 but after the employee is an eligible individual. Inform the HSA trustee/custodian that the amounts are intended to be a qualified HSA distribution.

¹ This checklist applies only to general purpose health FSAs and HRAs. There may be additional flexibility for HSA-compatible health FSAs or HRAs that satisfy the requirements of Rev. Rul. 2004-45.

From March 16, 2007 through December 31, 2011 (Permanent Period)

Before the end of a plan year, the employer must:

- Amend the FSA and HRA written plan document to allow a qualified HSA distribution.
- For an FSA, amend the plan to include a grace period so that participants are not required to forfeit account balances on the last day of the plan year.
- Provide employees an election form to elect a transfer if they:
 - have established an HSA that plan year and are or will be eligible individuals by the first day of the month of the transfer due to coverage under the employer's HDHP;
 - had an FSA or HRA on September 21, 2006 with a positive balance; and
 - have an FSA or HRA with funds credited to it (or may have such account prior to the end of the plan year).
- Provide information to employees regarding the requirements of making a transfer:
 - Explain how transfer amount is calculated (i.e., on cash basis based upon account balance on last day of plan year).
 - Explain that the maximum amount that can be transferred is the lesser of the balance that was in the account on September 21, 2006 or the date of the transfer.
 - Explain that if balance in FSA or HRA at time of transfer is greater than balance on September 21, 2006, a tax free transfer cannot be made because the transfer would not result in a zero balance as required by IRS guidelines.
 - Provide an overview of the testing period requirements to ensure employees have a basic understanding of the risk of failing to maintain status as an eligible individual (although the employer is not required to report this information to the HSA trustee/custodian or the IRS).
- Collect election forms from employees on or before the last day of the plan year.
- Freeze the FSA/HRA account balances for employees who elect the transfer, effective on the last day of the plan year (i.e., for calendar-year plan, 12/31). Do not process any claims after the freeze date.
- Make the transfer for employees who return election forms on or before the last day of the plan year, by transferring funds from the FSA or HRA directly to the HSA trustee/custodian by the 15th day of the 3rd month following the end of that plan year but after the employee is an eligible individual. Inform the HSA trustee/custodian that the amounts are intended to be a qualified HSA distribution.