

Chart Comparing Health FSAs, HRAs and HSAs

<u>Plan Design or Compliance Issue</u>	<u>Health FSAs</u>	<u>HRAs</u>	<u>HSAs</u>
Internal Revenue Code			
Who is eligible?	Any employee, subject to employer-designed exclusions.	Any employee, subject to employer-designed exclusions. Eligibility may or may not be tied to HDHP.*	Any individual who is covered under a HDHP (as defined in Code § 223), is not entitled to Medicare, and cannot be claimed as a tax dependent. With certain exceptions, the individual cannot have any non-HDHP health coverage.
Are self-employed individuals (including more-than-2% shareholders of a Subchapter S corporation and partners in a partnership) eligible?	No.	No.	Yes. But they will not be eligible to participate in a cafeteria plan used to fund HSAs in the workplace.
Is funding with cafeteria plan salary reductions permitted?	Yes.	No.	Yes.
Can unused amounts be carried over to the next year?	No, although a plan may be amended to allow a grace period of up to 2 1/2 months during which claims may be incurred.	Yes.	Yes.
What medical expenses are eligible for reimbursement?	Otherwise unreimbursed Code § 213(d) medical expenses incurred during the coverage period. Cannot reimburse insurance premiums. Cannot reimburse qualified long-term care services.	Otherwise unreimbursed Code § 213(d) medical expenses incurred while coverage in effect, including premiums for health insurance and long-term care insurance, for employee, spouse and dependents, subject to employer-designed limitations.	Otherwise unreimbursed Code § 213(d) medical expenses of account holder, spouse, and dependents incurred after HSA established, other than insurance premiums (with limited exceptions for COBRA coverage, long-term care insurance, health coverage while drawing unemployment compensation, and, if 65 or older, any health insurance except a Medicare supplemental policy).
*High Deductible Health Plan			

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Are distributions (or cash-outs) for non-medical expenses permitted?	No.	No.	Yes, distributions cannot be restricted to pay or reimburse only qualified medical expenses. However, distributions for non-medical expenses are taxable and subject to a 10% excise tax (certain exceptions apply).
Must coverage be elected/provided for a full 12-month period, and are there prohibitions on mid-year changes?	Yes.	No.	Not for HSA. IRS guidance confirms that the 12-month coverage and election change rules do not apply even for HSAs offered through a cafeteria plan.
Do the uniform coverage rules apply, requiring the annual coverage amount to be available as of the first day of the plan year?	Yes.	No. Coverage may be prorated by the plan design (e.g., employee has \$100 credited to a bookkeeping account each month.)	No. But IRS guidance indicates that employers may choose to accelerate funding of HSA salary reduction elections under a cafeteria plan so long as certain requirements are met.
Can amounts that are unused at termination of active employment continue until spent down?	Generally no. Cannot use unused amounts to pay for claims incurred after termination (except as COBRA or a plan's grace-period might allow).	Yes. HRA can permit unused amounts to be used until depleted to pay for claims incurred after termination. (COBRA may also apply).	Yes. HSAs are nonforfeitable and portable.
To be reimbursable, must claims be incurred during current period of coverage?	Yes.	Yes, but there's a big exception. Claims incurred but not reimbursed due to an insufficient HRA balance can be reimbursed in subsequent year if the individual was a participant when the claims were incurred and is still a participant.	No. Distributions for qualifying medical expenses will be tax-free if incurred at any time after the HSA is established.
Is expense substantiation required?	Yes.	Yes.	Yes. HSA account holder must retain records.
Is claims adjudication required? That is, must someone other than the covered employee/individual process and approve the claim?	Yes.	Yes.	No.

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Can an individual participate in more than one of these vehicles at the same time?	An employee who is covered by a health FSA may also participate in an HRA. A traditional, general-purpose health FSA will make an individual ineligible for an HSA. But limited-purpose health FSA will not prevent HSA eligibility.	An employee who is covered by a health HRA may also participate in an FSA. A traditional, general-purpose HRA will make an individual ineligible for an HSA. But a limited-purpose HRA, a high-deductible HRA, a suspended HRA or a retirement HRA will not prevent HSA eligibility.	A traditional, general-purpose FSA or HRA will make an individual ineligible for an HSA. But a limited-purpose health FSA or HRA, a high-deductible FSA or HRA, a suspended HRA or a retirement HRA will not prevent HSA eligibility.
Are there ordering rules that apply?	Yes. Generally, health FSAs must be payors of last resort. HRAs and health FSAs can be drafted to require that the HRA pays only after FSA amounts are exhausted. Cannot reimburse expenses that have been reimbursed elsewhere.	Yes. Generally, health FSAs must be payors of last resort. HRAs and health FSAs can be drafted to require that the HRA pays only after FSA amounts are exhausted. Cannot reimburse expenses that have been reimbursed elsewhere.	No. HRA or health FSA participants do not need to exhaust their HSAs before seeking payment or reimbursement through the HRA or health FSA. (Note: The box above describes the limited HRA or health FSA designs that do not interfere with HSA eligibility.) Cannot reimburse expenses that have been reimbursed elsewhere.
Do Code § 105(h) nondiscrimination requirements apply?	Yes.	Yes.	No, but employer contributions made outside a cafeteria plan are subject to comparability requirements.
Do Code § 125 nondiscrimination requirements apply?	Yes, for health FSAs offered under a cafeteria plan.	No. HRAs cannot be offered under a cafeteria plan.	Yes for a HSA offered under a cafeteria plan.
Is a trust account required?	No, not by the Code, but possibly by ERISA (no trust if health FSA complies with ERISA Tech. Rel. 92-01, including that reimbursements are made directly out of the general assets of the employer).	No. Not by the Code, but possibly by ERISA (see box in previous column).	Yes.
Are account earnings taxable?	If reimbursements are made directly out of the general assets of the employer and account funds are not set aside in a separate account, there are no earnings to be taxed. If funds are deposited in a VEBA, earnings generally are not taxable.	If reimbursements are made directly out of the general assets of the employer and account funds are not set aside in a separate account, there are no earnings to be taxed. If funds are deposited in a VEBA, earnings generally are not taxable.	No (except unrelated business income will be taxed under Code § 511).

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Is it an ERISA plan? (If a plan is subject to ERISA, various requirements will apply. We highlight a few of those requirements below.)	Yes, unless plan maintained by governmental entity or church (ERISA does not apply).	Yes, unless plan maintained by governmental entity or church (ERISA does not apply).	Generally, no, unless Employer contributions are made to the HSA trust.
Is there a funding requirement?	No. While there is no requirement to set funds aside in a separate account, an employer may choose to do so. But any such funding may invoke ERISA's trust requirement if amounts are segregated from general assets.	No. Employers may decide to fund (i.e., set aside funds) as potential liability increases. An employer may choose to do so. But any such funding may invoke ERISA's trust requirement if amounts are segregated from general assets.	The Code requires that HSA contributions be put in trust. ERISA's trust requirements will also apply to an employer-sponsored HSA that is an ERISA plan.
Are there plan assets for ERISA purposes?	Yes. Even for plans that are treated as "unfunded" under ERISA Tech. Rel. 92-1, salary reduction amounts are plan assets for purposes of ERISA's exclusive benefit and fiduciary duty rules.	With no employee contributions, HRAs generally do not have plan assets so long as all reimbursements are paid directly out of general assets of the employer and not from a special fund segregated from the general assets of the employer.	Generally, no. But yes for an employer-sponsored HSA that is an ERISA plan (i.e., employer contributions and employees' pre-tax salary reductions would be plan assets.)
Is an ERISA Form 5500 required to be filed?	Yes. Exception for small (fewer than 100 participants) unfunded plan.	Yes. Exception for small (fewer than 100 participants) unfunded plan.	Generally, no. Presumably yes for an employer-sponsored HSA that is an ERISA plan. But because HSA's are individual trusts, it is uncertain how an employer would be required to comply with its Form 5500 obligation.
Do ERISA SPD and other disclosures and adherence to ERISA's benefit claims procedures apply?	Yes.	Yes.	Generally, no. Yes for an employer-sponsored HSA that is an ERISA plan. How ERISA claims procedures would apply is uncertain since HSA claims are generally self-reported.
<b><u>Other Laws</u></b>			
Do HIPAA's portability, certificates of creditable coverage, and health status nondiscrimination provisions apply?	Yes. Exception for most (not all) health FSAs funded with salary reductions.	Yes. Exception for HRAs that fall within the technical definition of a health FSA.	Yes, for an employer-sponsored HSA that is an ERISA plan. Special rules apply to governmental plans and to church plans.
Do HIPPA's administrative simplification (including privacy) provisions apply?	Yes.	Yes.	Yes.

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<b>Does COBRA apply?</b>	Yes. But there is a special rule limiting COBRA obligations for qualifying health FSAs.	Yes. Rarely, and HRA providing ≤ \$500 in coverage will satisfy the terms of the special rule limiting COBRA obligations for qualifying health FSAs.	No. Yes for HDHP.
<b>Are Credible Coverage Disclosures Required Under Medicare Part D?</b>	No.	Yes.	No.