

## FSA/HRA/HSA UNDERSTANDING YOUR OPTIONS FOR 2012

	HEALTH FSAs	HRAs	HSA
IRS Tax Code Section	Section 125	Section 105	Section 223
Also Known As	Health Flexible Spending Account	Health Reimbursement Arrangement	Health Savings Account
Who is eligible?	Any common law employee, subject to employer plan design exclusions. (Note: 2% or greater shareholders of S Corp and family members, LLC members, partners in a partnership, and sole proprietors NOT eligible.)	Any common law employee, subject to employer plan design exclusions. (Note: 2% or greater shareholders of S Corp and family members, LLC members, partners in a partnership, and sole proprietors NOT eligible.) Eligibility can be tied to employer-sponsored health plan.	Any individual covered under a High Deductible Health Plan (HDHP), as defined in Code 223, not entitled to Medicare, and not claimed as a tax dependent. With certain exceptions, the individual cannot have any other non-HDHP coverage.
Can you fund the account through pre-tax payroll deductions?	Yes.	N/A	Yes.
Can you rollover unused amounts from year to year?	Generally, No. <b>One time rollover to a HSA if plan design permits. Some restrictions apply.</b>	Yes, if plan design permits. <b>One time rollover to a qualified HSA. Some restrictions apply.</b>	Yes.
Do you need a specific health insurance plan to be eligible?	No.	No, unless Employer ties eligibility to employer-sponsored health plan by design.	Yes. A HDHP with a min. deductible \$1,200 S and \$2,400 F ( <b>2012 limits</b> ) with no first dollar coverage, except dental, vision and preventative care. Max Out-of-pocket (OOP) <b>\$6,050 S</b> and <b>\$12,100 F (2012 limits)</b> .
What are the plan limits?	Plan limit is set by the Employer. ( <b>Eff 1/1/2013 mandatory \$2,500 calendar yr cap.</b> ) Account is funded through salary reductions from payroll withheld equally over the plan year. May also be funded by employer credits. Uniform Coverage Rules require entire election be available on the first day of the plan year.	Plan limit is set by the Employer. Account may be funded up front with entire amount available for reimbursement or pro rata (i.e. per payroll, monthly, etc.) and reimbursement is based upon account balance.	<b>2012 Limits: \$3,100 S \$6,250 F/calendar yr (indexed for inflation annually)</b> , without regard to health plan deductible or number of months the individual is HSA eligible, so long as HSA eligible on December 1st and remains HSA eligible for the following calendar year. Excess funding subject to 6% excise tax. Add'l <b>catch up</b> contribution of <b>\$1,000/yr for 2012 and thereafter, if 55 or older</b> .
What medical expenses are eligible for reimbursement?	Unreimbursed Code 213(d) medical expenses incurred during the coverage period for self and qualified tax dependents. Cannot reimburse insurance premiums or for long-term care insurance or services.	Unreimbursed Code 213(d) medical expenses incurred for self and qualified tax dependents, while coverage is in effect, including premiums for eligible health insurance and long-term care insurance, subject to employer-designed limitations.	Unreimbursed Code 213(d) medical expenses of account-holder and eligible tax dependents incurred after HSA established, including premiums for COBRA, long-term care insurance, health insurance while receiving unemployment compensation; or, if 65 or older, any health insurance except a Medicare supplement.
Can you cash out balances for non-medical expenses?	No.	No.	Yes, but such amounts are taxable and subject to a 20% excise tax <b>Effective 2011</b> (certain exceptions apply).
Are elections irrevocable if account is funded through pre-tax payroll deductions in a Section 125 Plan?	Yes.	N/A No employee funding permitted.	No. Section 125 irrevocability rules do not apply to HSAs funded pre-tax through a Section 125 Plan.
Can a terminated employee spend down unused amounts for expenses incurred after termination?	No. Cannot use unused amounts to pay for claims incurred after the date of termination unless there was a positive balance at the time of termination and COBRA is elected.	Yes. HRA can permit claims incurred after termination to be used towards unused balances by plan design or as an alternative to COBRA. HRA is a health plan subject to COBRA.	Yes. HSAs are non-forfeitable and portable. Any qualified medical expense incurred after the HSA is set up is eligible to withdraw funds on a tax free basis.
Do claims need to be incurred during the current period of coverage to be eligible for reimbursement?	Yes.	Yes, but claims incurred but not fully reimbursed due to insufficient HRA balance can be reimbursed (by plan design) in subsequent year if individual was a participant when the claims were incurred and is still a participant.	Distributions for qualifying medical expenses incurred after the HSA is established will be tax free. ( <b>Effective 2011: 20% excise tax for non-medical distributions before age 65, death or disability.</b> )
Must a third party process/approve the claim and is substantiation required for reimbursement?	Yes. Substantiation required at time of reimbursement. Must be reviewed by third party (i.e. Employer, TPA, etc.).	Yes. Substantiation required at time of reimbursement. Must be reviewed by third party (i.e. Employer, TPA, etc.).	No. HSA owner must retain records. Substantiation is not required at the time of reimbursement but must be available in the event of an IRS audit.
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<b>Are there ordering rules that apply?</b>	Yes. Health FSAs must be payors of last resort and cannot reimburse expenses that have been reimbursed elsewhere. <b>Note:</b> Employer can draft HRA and health FSA plan documents so HRA pays only after health FSA amounts are exhausted.	Yes. Generally claims are submitted to the HRA first and the Health FSA reimburses any amounts not reimbursed by the HRA. <b>Note:</b> Employer can draft HRA and Health FSA plan documents so that HRA reimburses only after Health FSA amounts are exhausted.	No. HSA-eligible individual can't have non-HDHP coverage. Certain permitted coverage is disregarded. The HRA or Health FSA is not permitted coverage unless restricted to pay only permitted coverage benefits (e.g., dental, vision, preventative care) or to pay benefits only after minimum HDHP deductible is met. Can't reimburse expenses reimbursed elsewhere.
<b>Do Code 105(h) nondiscrimination requirements apply?</b>	Yes.	Yes.	Yes for self-insured HDHP. No for HSA, but if employer makes HSA contributions outside Section 125 Plan, Code 4980E requires comparable contribution to be available for comparable participating employees.
<b>Do Code 125 nondiscrimination apply?</b>	Yes, for health FSA offered under a cafeteria plan.	No. HRAs cannot be offered under a cafeteria plan.	HSAs contributions made under a cafeteria plan <b>ARE</b> subject to the Code 125 non-discrimination rules.
<b>Is a trust account required?</b>	No, not by the Code, but possibly by ERISA if reimbursements are <b>not</b> made directly out of the general assets of the employer.	No, not by the Code, but possibly by ERISA if reimbursements are <b>not</b> made directly out of the general assets of the employer.	Yes. Custodial trustee is required to hold the HSA funds.
<b>Are account earnings taxable?</b>	If reimbursements made directly out of the general assets of the employer, no earnings to tax.	If reimbursements made directly out of the general assets of the employer, no earnings to tax.	No
<b>Is it an ERISA plan?</b>	Yes, the Health FSA is subject to ERISA, unless exempt as a governmental entity or church.	Yes, unless plan is exempt as a governmental entity or church.	Potentially if employer contributes to the HSA, unless exception applies as indicated in DOL FAB 2006-02.
<b>Is there a funding requirement?</b>	No. However, if funds set aside in a separate account by employer choice, funding may trigger ERISA trust requirement.	No. However, if funds set aside in separate account by employer choice, as the liability increases, funding may trigger ERISA trust requirement.	The Code requires that HSA contributions are to be put in a trust. ERISA trust requirements may also apply if the HSA is deemed an ERISA plan due to employer contributions.
<b>Are there plan assets for ERISA purposes?</b>	Yes. Even for plans that are treated as "unfunded" under ERISA Tech. Rel. 92-1, salary reductions are plan assets for purposes of ERISAs exclusive benefit and fiduciary rules.	With no employee contributions, HRAs generally do not have plan assets as long as all reimbursements are paid directly out of the general assets of employer.	If HSA is an ERISA plan, employer contributions and employees' pre-tax salary reductions would be plan assets. (See April 7, 2004 DOL guidance and DOL FAB 2006-02.)
<b>Is an ERISA Form 5500 required to be filed?</b>	Yes. Exception for small plan (fewer than 100 participants/unfunded plan.)	Yes. Exception for small plan (fewer than 100 participants/unfunded plan.)	Generally no, except for employer sponsored HSA subject to ERISA. Filing requirements unclear.
<b>Do individuals/participants need to do anything differently on their personal tax return?</b>	No.	No.	Yes. IRS Form 8889 must be filed with personal income tax return to report contributions and distributions.
<b>Do ERISA SPD and other disclosures and adherence to ERISAs benefit claims procedures apply?</b>	Yes.	Yes.	Generally no, except for employer sponsored HSA subject to ERISA. Unclear since HSA claims are self substantiated and reported.
<b>Does portability, certificates of creditable coverage, health status non-discrimination, and privacy provisions of HIPAA apply?</b>	Yes, however there may be exception to everything but the privacy portion, for Health FSAs funded with salary reductions.	Yes, however there may be exception to everything but the privacy portion for HRAs that fall within the technical definition of health FSA.	Yes, for HDHP and for an employer-sponsored HSA. Special rules for governmental entity of church. DOL guidance regarding whether an HSA is an ERISA plan will be relevant to privacy provision.