

PLAN COMPARISON

UNDERSTANDING YOUR OPTIONS FOR 2020

	Healthcare FSA Healthcare Flexible Spending Account	HRA Health Reimbursement Arrangement	HSA Health Savings Account
What IRS Tax Code Section?	Section 125	Section 105	Section 223
Who is eligible?	Any common law employee, subject to employer plan design exclusions. (Note: 2% or greater shareholders of S-Corp & family members, LLC members, partners in a partnership, & sole proprietors NOT eligible). Eligibility should be limited to those employees who are eligible for the group health plan.	Any common law employee, subject to employer plan design exclusions. (Note: 2% or greater shareholders of S-Corp & family members, LLC members, partners in a partnership, & sole proprietors NOT eligible). Eligibility is tied to employer-sponsored health plan for active employees.	Any individual covered under a High Deductible Health Plan (HDHP), as defined in Code 223, not entitled to Medicare, & 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?	Up to \$550 per plan year if employer adopts the rollover feature.	Yes, if plan design permits.	Yes
Do you need a specific health insurance plan to be eligible?	No. To be an excepted benefit a group medical plan must be available to the employee, plus meet the maximum benefit conditions to satisfy ACA market reforms.	Yes. In order to meet ACA integration rule, the employee must participate in employer-sponsored medical plan to participate in the HRA. Exception for limited scope HRA or Retiree HRA.	Yes. A HDHP with a minimum deductible of \$1,400/single & \$2,800/family. No first dollar coverage, except dental, vision & preventive care. Max out-of-pocket \$7,000/single & \$14,000/family.
What are the plan limits?	Plan limit is set by the Employer. \$2,750 plan year cap on employee salary reduction; funded through salary deductions from payroll, employer contributions, or a combination. Employer contributions are in addition to salary reduction maximum. Uniform Coverage Rules require entire election be available first day of plan year.	Plan limit is set by the Employer. Account may be funded up front with entire amount available for reimbursement or prorated (per payroll, monthly, etc.) & reimbursement is based upon account balance.	\$3,600/single & \$7,200/family per calendar year, as long as HSA eligible on December 1 & remains HSA eligible for the following calendar year. Excess funding subject to 6% excise tax. Additional catch up contribution of \$1,000/year if age 55 or older.
What medical expenses are eligible for reimbursement?	Unreimbursed Code 213(d) medical expenses incurred during the coverage period for self & qualified tax dependents. Cannot reimburse insurance premiums or for long-term care insurance or services.	Unreimbursed Code 213(d) medical expenses incurred for self & qualified tax dependents, while coverage is in effect, including premiums for eligible insurance & long-term care insurance, subject to employer designed limitations.	Unreimbursed Code 213(d) medical expenses of account-holder & eligible tax dependents incurred after HSA established, including premiums for COBRA, LTC 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 & subject to a 20% excise tax with certain exceptions.
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. Exception if there was a positive balance at the time of termination & COBRA is elected.	Yes. Can be used toward unused balances based on plan design or as an alternative to COBRA. HRA is subject to COBRA.	Yes. This account is non-forfeitable & portable.
Do claims need to be incurred during the current period of coverage to be eligible for reimbursement?	Yes	Yes. However, claims incurred, but not fully reimbursed due to insufficient balances can be reimbursed (by plan design) in subsequent year if individual was a participant when the claims were incurred & is still a participant.	Distributions for qualifying medical expenses incurred after the HSA is established will be tax free; 20% excise tax for non-medical distributions before age 65, death or disability.

*Content provided by the Employers Council of Flexible Compensation (ECFC).

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Must a third-party process/approve the claim & 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. Owner must retain records. Substantiation is not required at the time of reimbursement, but must be available in the event of an IRS audit.
Are there ordering rules?	Yes. Health FSAs must be payers of last resort & cannot reimburse expenses that have been reimbursed elsewhere. Note: Employer can draft HRA & health FSA plan documents so HRA pays only after health FSA amounts are exhausted.	Yes. Generally claims are submitted to the HRA first & the Health FSA reimburses any amounts not reimbursed by the HRA. Note: Employer can draft HRA & 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.
Do Code 105(h) nondiscrimination requirements apply?	Yes	Yes	No. If employer makes HSA contributions outside Section 125 Plan, Code 4980E requires comparable contribution be available for participants.
Does Code 125 nondiscrimination apply?	Yes	No. HRAs cannot be offered under a cafeteria plan.	Yes, if contributions are permitted through a Section 125 Cafeteria Plan.
Is a trust account required?	No, if reimbursements are made directly out of the general assets of the employer.	No. Not by Code, but possibly by ERISA if reimbursements are not made directly out of the general assets of the employer.	Yes. Custodial trustee is required to hold funds. Accounts are individually owned.
Are account earnings taxable?	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, as long as it is used for qualified medical expenses.
Is it an ERISA plan?	Yes; unless exempt (governmental entity or church plan).	Yes, unless plan is exempt (governmental entity or church plan).	Generally, no, unless the employer fails to meet the safe harbor requirements set forth in the regulations and agency guidance.
Is there a funding requirement?	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.	ERISA trust requirements may also apply if the HSA is deemed an ERISA plan due to employer failing to meet HSA safe harbor.
Are there plan assets for ERISA purposes?	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 & 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 & employees' pre-tax salary reductions would be plan assets. (See April 7, 2004 DOL guidance & DOL FAB 2006-02).
Is an ERISA Form 5500 required to be filed?	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.
Do participants need to do anything differently on their personal tax return?	No	No	Yes. IRS Form 8889 must be filed with personal income tax return to report contributions & distributions.
Do ERISA SPD & other disclosures & adherence to ERISAs benefit claims procedures apply?	Yes	Yes	Generally no, except for employer-sponsored HSA subject to ERISA. Unclear since claims are self-substantiated & reported.
Does portability, health status nondiscrimination, & privacy provisions of HIPAA apply?	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 & for an employer-sponsored HSA. Special rules for governmental entity of church. DOL guidance regarding if ERISA plan will be relevant to privacy provision.
Does COBRA apply?	Yes. Special rule for qualifying accounts. Generally by plan design, COBRA only offered to participants with an underspent balance at time of termination.	Yes. Full COBRA rules apply. Possible to offer spend down in lieu of COBRA option by plan design.	No. However, COBRA may apply to employer sponsored HSA that is an ERISA plan & to HSAs sponsored by state & local gov't employers. COBRA applies to HDHP.

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