

***IRS Pre-Tax Plan Comparisons  
of  
HSAs, HRAs, & Health FSAs***

*(As defined by the Employee Benefits Institute of America Inc. (EBIA): 2006)*

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**Definitions/Notes:**

1. HDHC means High-Deductible Health Coverage. Employers that have HRAs may couple them with HDHC, limiting HRA eligibility to those employees who elect HDHC plans.
  2. For employers with HSAs, the HDHC does not need to satisfy the deductible or other requirements of Code § 223 for HSA-qualified HDHP.
  3. HDHP means High-deductible-Health-Plan.
  4. There is a limited exception in IRS Notice 2004-25 for HSAs that are established for 2004.
  5. When an HRA is coupled with HDHC, the combined arrangement may look and operate very much like an HSA. However, there are significant differences; for example the HDHC coverage that is provided in conjunction with an HRA does not need to qualify as HAS-eligible HDHP coverage under Code § 223.
  6. Sponsors of an HRA+HDHC arrangement have more freedom in plan design since the HDHC deductible is not required to be within the range prescribed by Code § 223 for an HSA-HDHP. But unlike HSAs, which do not have an independent claims adjudication requirement, no reimbursement can be made under an HRA (or health FSA) without independent claims adjudication.
  7. Employee contributions cannot be made to an HRA on a pre-tax salary reduction or other tax-advantaged basis. While HSAs may be funded through deductible employee contributions
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Plan Design or Compliance Issue	HSAs Health Savings Account	HRAs Health Reimbursement Account	Health FSAs Flexible Spending Account
<i>Internal Revenue Code</i>			
Who is Eligible?	Any individual who is covered under an 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.	Any employee, subject to employer-designed exclusions. Eligibility may or may not be tied to HDHC. (See note 1 & 3)	Any employee, subject to employer-designed exclusions.
Are self-employed individuals (including sole proprietors, partners in a partnership, and more-than-2% shareholders in a Subchapter S corporation) eligible?	Yes, But they will not be eligible to participate in a cafeteria plan used to fund HSAs in the workplace.	No.	No.
Is funding with cafeteria plan salary reductions permitted?	Yes.	Not for HRA, but it is permitted for HDHC.	Yes.
Can unused amounts be carried over to the next year?	Yes.	Yes.	Generally 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.
What medical expenses are eligible for reimbursement?	Otherwise unreimbursed Code § 213(d) medical expenses of account holder, spouse, and dependents incurred after HSA established (See note 2), 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).	Otherwise unreimbursed Code § 213(d) medical expenses incurred while coverage in effect, including premiums for eligible health insurance and long-term care insurance, for employee, spouse and dependents, subject to employer designed limitations.  Cannot reimburse qualified long-term care services so long as the HRA is an FSA.	Otherwise unreimbursed Code § 213(d) medical expenses incurred during the coverage period.  Cannot reimburse insurance premiums.  Cannot reimburse qualified long-term care services.
Are distributions (or cash-outs) for non-medical expenses permitted?	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).	No.	No.

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Must coverage be elected/provided for a full 12 month period, and are there prohibitions on mid-year changes?	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.  Yes for HDHP funded through cafeteria plan.	Not for HRA. Yes for a HDHC funded through cafeteria plan.	Yes.
Do the uniform coverage rules apply, requiring the annual coverage amount to be available as of the first day of the plan year?	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.	NO. Coverage may be prorated by plan design (e.g., employee has \$100 credited to a bookkeeping account each month).	Yes.
Can amounts that are unused at termination of active employment continue to be spent?	Yes. HSAs are non-forfeitable and portable.	Yes. HRAs can permit unused amounts to be used until depleted to pay for claims incurred after termination (COBRA may also apply).	Generally no. Cannot use unused amounts to pay for claims incurred after termination (except COBRA or a plan's grace period may allow).
To be reimbursable, must claims be incurred during the current period of coverage?	No. Distributions for qualifying medical expenses will be tax-free if incurred at any time after the HSA is established. (See note 2)	Yes, but with an exception. Claims incurred but not reimbursed due to an insufficient HRA balance can be reimbursed in subsequent year - if the participant was a participant when the claims were incurred and is still a participant	Yes.
Is expense substantiation required?	Yes. HSA account holder must retain records.	Yes.	Yes.
Is independent claim adjudication requires? That is must someone other than the covered employee/individual process and approve the claim?	No.	Yes.	Yes.
Can an individual participate in more than one of these vehicles at the same time?	A traditional, general-purpose health FSA or HRA will make an individual ineligible for an HSA. But a limited-purpose health FSA or HRA, a high-deductible health FSA or HRA, a suspended HRA or a retirement HRA will not prevent HSA eligibility.	An employee who is covered by an HRA may also participate in a health 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.	An employee who is covered by a health FSA may also participate in a HRA.  A traditional, general-purpose health FSA will make an individual ineligible for an HSA. But a limited-purpose health FSA, or a high-deductible health FSA will not prevent HSA eligibility.

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Are there ordering rules that apply?	<p>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.)</p> <p>Cannot reimburse expenses that have been reimbursed elsewhere.</p>	<p>Yes Generally, health FSAs must be payors of last resort vis-à-vis an HRA. But HRAs and health FSAs can be drafted to require that the HRA pays only after health FSA amounts are exhausted.</p> <p>Cannot reimburse expenses that have been reimbursed elsewhere.</p>	<p>Yes. Generally, health FSAs must be payors of last resort vis-à-vis an HRA. But HRAs and health FSAs can be drafted to require that the HRA pays only after the health FSA amounts are exhausted.</p> <p>Cannot reimburse expenses that have been reimbursed elsewhere.</p>
Do <b>Code § 105(h)</b> non-discrimination requirements apply?	<p>Yes, for HSA but employer contributions made outside a cafeteria plan are subject to comparability requirements. Yes for HDHP.</p>	<p>Yes.</p>	<p>Yes.</p>
Do <b>Code § 125</b> non-discrimination requirements apply?	<p>Yes, for HSA or HDHP offered under a cafeteria plan.</p>	<p>No. HRAs cannot be offered under a cafeteria plan. But the non-discrimination rules will apply to a HDHC offered under a cafeteria plan.</p>	<p>Yes, for health FSAs offered under a cafeteria plan.</p>
Is a trust account required?	<p>Yes.</p>	<p>No, not by the Code, but possibly by ERISA (see box in previous column).</p>	<p>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).</p>
Are account earnings taxable?	<p>No (except unrelated business income will be taxed under Code § 511).</p>	<p>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.</p>	<p>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.</p>

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<b>ERISA (for ERISA-covered employers)</b>			
Is it an <b>ERISA</b> plan? (if a plan is subject to <b>ERISA</b> , various requirements will apply, a few of which are highlighted below)	Generally no, unless employer takes action that triggers ERISA under DOL guidance. Employer contributions alone do not trigger ERISA.	Yes, unless plan maintained by government entity or church (ERISA does not apply).	Yes, unless plan maintained by government entity or church (ERISA does not apply).
Is there a funding requirement?	The CODE requires that HSA contributions be put in a trust or custodial account. ERISA's trust requirements will also apply to an employer sponsored HSA that is an ERISA plan.	No. Employers may decide to fund (i.e. set aside funds) as a potential liability increases. But any such funding may invoke ERISA's trust requirements if amounts are segregated from general assets.	No. Although 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 requirements if amounts are segregated from general assets.
Are there plan assets for <b>ERISA</b> purposes?	Generally no. But yes for an employer sponsored HSA that is an ERISA plan (i.e. employer contributions and employee's pre-tax salary reductions would be plan assets).	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.	Yes. Even for plans that are treated as 'unfunded' under ERISA Tech. Rel. 92-1, salary reductions amounts are plan assets for the purpose of ERISA's exclusive benefit and fiduciary duty rules.
Is an <b>ERISA</b> Form 5500 required to be filed?	Generally no. Presumably yes for an employer sponsored HSA that is an ERISA plan. But because HSAs are individual trusts or custodial accounts, it is uncertain how an employer would be required to comply with its Form 5500 obligation.	Yes, Exception for small (fewer than 100 participant) unfunded plans.	Yes, Exception for small (fewer than 100 participant) unfunded plans.
Do <b>ERISA SPDs</b> and other disclosures and adherence to <b>ERISA's</b> benefit claims procedures apply?  (SPD = Summary Plan Description)	Generally, no. Yes for an employer sponsored HSA that is an ERISA plan. How ERISA claim procedures would apply is uncertain since HSA claims are generally self-adjudicated.	Yes.	Yes.

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<b>Other Laws</b>			
Do <b>HIPAA's</b> portability certificates of creditable coverage, and health status nondiscrimination provisions apply?	Yes, for an HDHP and maybe for an employer sponsored HSA that is an ERISA plan. Special rules apply to governmental plans and to church plans.		Yes. Exceptions for most (not all) health FSAs funded with salary reductions.
Do <b>HIPAA's</b> administrative simplification (including privacy) provisions apply?	Yes, for a HDHP and for an employer sponsored HSA that is an ERISA plan. Maybe for an HAS that is not an ERISA plan.		Yes.
Does <b>COBRA</b> apply?	Generally no, for HSAs. But there is some uncertainty as to whether ERISA's COBRA provisions may apply to an HSA that is an ERISA plan and whether PHSA's COBRA provisions may apply to HSAs sponsored by state and local government employers.  Yes, for HDHP.		Yes. But, there is a special rule limiting COBRA obligations for qualifying health FSAs
Are <b>Creditable Coverage Disclosures</b> required under Medicare Part D?	No, for HSAs.  Yes, for HDHPs.		No.