

Plan Comparison

Plan design or compliance issue	Health FSA	HRA	HSA
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 the health care plan.	Any individual who is covered under a HDHP, is not entitled to (covered by) 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, they are eligible to open an HSA and take the HSA credit on their 1040. 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.	Not for an HRA. It is permitted for the health plan.	Yes.
Can unused amounts be carried over to the next year?	No.	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 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 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).
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.	Not for an HRA.	Yes for health plan funded through a cafeteria plan. Not for an 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.

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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 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 reductions elections under a cafeteria plan so long as certain requirements are met.
Can amounts that are unused at termination of active employment continue to be spent down?	No. Cannot use unused amounts to pay for claims incurred after termination (except as COBRA may 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 non-forfeitable and portable.
To be reimbursable, must claims be incurred during current period of coverage?	Yes.	Yes, but there is a big exception. Claims incurred but not reimbursed due to an insufficient HRA balance can be reimbursed in a subsequent year if the individual was a participant when the claims were incurred and is still a participant. This may be limited by plan design.	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 someone other than the covered employee or individual process and approve the claim?	Yes.	Yes.	No.
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 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.	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.	A traditional, general-purpose health FSA or HRA would 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.
Are there ordering rules that apply?	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. Cannot reimburse expenses that have been reimbursed elsewhere.	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. 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).

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Do Code § 105(h) nondiscrimination requirements apply?	Yes.	Yes.	Yes for self-insured HDHP. No for HSA, 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. But the nondiscrimination rules will apply to the health plan offered under a cafeteria plan.	Yes for HDHP or 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 out of the general assets of the employer and account funds aren't set aside in a separate account, there are no earnings to be taxed. If funds are deposited in a VEBA, earnings generally aren't taxed.	If reimbursements are made 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 aren't taxed.	No (except unrelated business income will be taxed under Code § 511).

Plan Comparison

ERISA for ERISA Covered Employers	Health FSA	HRA	HSA
Is it an ERISA plan? (If a plan is subject to ERISA, various requirements will apply.)	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 the employer takes action that triggers ERISA under DOL guidance. Employer contributions alone do not trigger ERISA.

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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. 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 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.	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.	No.
Do ERISA SPD and other disclosures and adherence to ERISA's benefit claims procedures apply?	Yes.	Yes.	No.

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Other Laws	Health FSA	HRA	HSA
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 HDHP and for an employer-sponsored HSA that is an ERISA plan. Special rules apply to governmental plans and to church plans.
Do HIPAA's administrative simplification (including privacy) provisions apply?	Yes.	Yes.	Yes, for an HDHP and for an employer-sponsored HSA that is an ERISA plan.
Does COBRA apply?	Yes. There is a special rule for qualifying health FSAs.	Yes. If HRA falls within the technical definition of health FSA, the special rule for qualifying health FSA will apply.	Generally not for HAS. COBRA may apply to an employer-sponsored HSA that is an ERISA plan and/or to HSAs sponsored by state and local government employers. Yes for HDHP.