

Question	Answer
Q: Do you have to maintain a HDHP in order to have a H-FSA?	A: No, the requirement of participation in a HDHP for eligibility is for health savings account (HSA) participation only and is not required to
Q: Was is the difference between a POP and a regular 125 plan?	A: A premium-only plan (POP) is the simplest form of cafeteria plan; it allows employees to save money by letting them pay for their share of insurance premiums with pre-tax dollars. Regular 125 plans can be
Q: Can owners of a company participate in the 125 Cafeteria Plan?	A: Individuals must be employees to participate in the employer's cafeteria plan, so directors and owners can participate so long as they are also employees. However, self-employed individuals, partners in a partnership, and more than 2% shareholders in an S-corporation are not
Q: Simple Cafeteria Plan- Can all employees participate, including partners and owners?	A: Technically, an HDHP is a health plan that meets the statutory requirements for an individual to be able to make contributions to an HSA account. It must have a minimum level of annual deductibles and a maximum out of pocket level. However, the term HDHP is often used generically simply to describe that a plan has a high deductible.
Q: What's the definition of a high-deductible health plan?	

To be an HSA qualified HDHP the plan must meet the following:

For self-only HDHP: Qualifying HDHP coverage for an individual must have an annual deductible of at least \$1,250 for 2013 before any reimbursement is made for eligible medical expenses (other than preventive care), and the sum of the plan's annual deductible and other annual out-of-pocket expenses (other than premiums) that the insured is required to pay, such as co-payments and co-insurance, cannot exceed \$6,250 for 2013.

Q: Simple Cafeteria Plans: Employers < 100 employees, is that employees working > 1,000 hours or all employees, including irregular part-timers?

A: In general, an "eligible employer" is one that employed an average of 100 or fewer employees on business days during either of the two preceding years. All employees with at least 1,000 hours of service during the preceding plan year (other than certain excludable employees as discussed below) must be eligible to participate in the plan (whether full-time or part-time). In addition, each employee who is eligible to participate must be able to elect any benefit available under the plan (subject to any terms and conditions that apply to all participants).

However, employers may elect to exclude from the plan employees in one or more of the following categories:

- employees who have not attained age 21 (or a younger age selected by the employer) before the close of a plan year;
- employees who have less than one year of service with the employer (or a shorter period of service selected by the employer) as of any day during the plan year;
- employees covered by a collective bargaining agreement, if there is evidence that the benefits covered under the cafeteria plan were the subject of good faith bargaining between employee representatives and the employer; or
- certain nonresident aliens working outside the U.S.

Q: Does the Code permit a plan doc to return unclaimed money from a health FSA to the estate of a plan participant who died during the plan year?

A: No. Any amounts not used to reimburse eligible expenses will be forfeited under the use-it-or-lose-it rule.

However, the deceased participant's executor or personal representative may submit claims for any expenses incurred prior to death (so long as they are submitted prior to the end of the run-off period). In addition, COBRA is generally required to be offered to spouses and dependent children who lose health FSA coverage as a result of a qualifying event such as an employee's death. Electing COBRA would allow these persons to be reimbursed for medical expenses incurred after the participant's death.

Q: Our plan runs from August to July. Do we need to convert to a calendar year plan?

A: No, plan years are required to be 12 months, but are not required to correspond with the calendar year.

Q: Do employers have to offer COBRA to H-FSA?

A: A health FSA must comply with COBRA and offer continuation rights to qualified beneficiaries who lose their health FSA coverage as a result of a qualifying event. However, there are two exceptions to this rule for health FSAs that meet certain requirements. First, COBRA does not need to be offered at all to qualified beneficiaries who have overspent their accounts as of the date of their qualifying events. Second, while COBRA must be offered to those who have underspent their accounts, it can be cut off at the end of the year in which the qualifying event occurs.

Q: If a cafeteria plan fails a non-discrimination testing, what happens? Does it affect all members under the plan or just the members/employees that got greater benefit than others lose tax advantage under the cafeteria plan?

A: It will affect only the 'highly compensated employees' and 'key employees'; it will not have an effect on the other participants in the plan.

If a plan is found to be discriminatory, the employer would need to: (i) determine the additional tax liability assumed by the highly compensated employees in whose favor the plan discriminated, and (ii) change the benefit, eligibility and/or contribution provisions of the benefit that resulted in a discriminatory result before the end of the plan year. However, if corrections cannot be made to reduce the adverse impact before the plan year has ended, benefits for 'highly compensated employees' or 'key employees' that fail the nondiscrimination test may be included in gross income (they would have been nontaxable if the cafeteria plan benefits had passed the nondiscrimination tests).

Q: Can employer use an HRA to reimburse individual premiums purchased via an exchange? What if the plans are individual plans purchased via a private exchange?

A: The January 2013 DOL FAQs clarified that HRAs cannot be used to fund the purchase of individual health insurance policies on a tax free basis. Individual policies purchased through an Exchange may not be funded on a pre-tax basis through a cafeteria plan either. However, small employers that purchase small group coverage through an Exchange can allow employees' contributions to be made on a pre-tax basis through the employer's cafeteria plan.

Q: Can an employer use a premium only plan to reimburse employee's premiums who purchase individual coverage on the exchange?

A: Generally, premium-only plans (POP) are used to pay premiums for employer-sponsored plans pre-tax. IRS Section 125 regulations permit employees who purchase individual health insurance policies to pay for that coverage with pre-tax salary reductions. To do so the employer must follow certain substantiation rules.

However, allowing employee to pay for individual coverage pre-tax through a cafeteria plan raises a number of difficult compliance issues including COBRA, HIPAA, and ERISA obligations. Employers considering this option should seek the advice of a qualified advisor or legal counsel before moving forward.

Q: Can employers take money that is in the FSA and transfer it to the HSA?

A: Typically, an individual is not allowed to participate in both the HSA and FSA at the same time (unless the FSA is limited in scope). Funds contributed to an FSA may only be disbursed to reimburse qualified medical expenses and are forfeited at the end of the plan year (or grace period if adopted). Such funds may not be transferred to an HSA.

Note: For a limited time (i.e., from December 20, 2006 to December 31, 2011), unused health FSA amounts could be directly rolled over, tax-free, into HSAs if certain requirements were met. This is no longer allowed.

Q: Can the forfeiture balance from an FSA be used to fund HRA claims? My company has some forfeitures and we just implemented an HRA. When an employee submits an HRA claim, can I use these FSA forfeitures to pay the HRA claim?

A: Once the plan year (along with the grace period and/or run-off period, as applicable) ends, the FSA funds are forfeited and cannot be used to reimburse an employee's expenses.

Q: Could an employer contribute \$1000 of FSA and then employee contribute \$2500? This exceeds annual but heard allowed that employer contribution is exempt from limit.

A: The \$2500 maximum for H-FSAs is for the employee salary reduction only and does not limit the employer contribution. It would be fine for the employer to contribute money in addition to an election of the maximum \$2500 by the employee (i.e. \$2500 from employee salary + \$200 employer contribution (\$2700 total)).

It is important to keep in mind, however, that if the employer chooses to contribute more than \$500, the plan could lose its 'excepted benefit' status, which could lead to a host of other potential compliance issues.

Q: Regarding Grace Period: Employee may not contribute to HSA if FSA funds are still available. Does that include the employer contribution (if offered by company)? What happens if employer contributes before employee is 'eligible' to contribute?

A: No contributions may be made to an employee's HSA account by either the employee or the employer until the employee is HSA eligible.

Q: Does the grace period allow only reimbursement of charges incurred in the prior year or is the grace period allowing charges to be incurred into the new year?

A: If a grace period is formally adopted by the plan, participants may incur claims through the end of the grace period.

Q: If there is a 2.5 grace period and I have \$600 remaining at the end of the regular plan year. When I start the new plan year with \$2500, you said that would give me a higher amount available for the next year. Isn't the \$600 limited to prior year receipts?

A: No, the \$600 may be used to reimburse any claims reimbursed up through the end of the grace period. That is why there would technically be \$3100 available through the end of the grace period (\$2500 or whatever remains of the \$2500 is available once the grace period expires).

Q: Would the adoption of a 2.5 month additional grace period on the H-FSA plan violate the rule that you cannot defer income/benefits from one tax year to another?

A: No, there is an exception for the grace period.

Q: Grace period must be requested and included in plan doc?

A: Yes, if the employer or plan administrator chooses to offer a grace period in addition to the 12-month plan year, it must be formally adopted and included in the plan document. If the plan does not formally adopt a grace period allowing additional time to incur claims (up to 2 1/2 months allowed), then any leftover funds at the end of the 12-month plan year are forfeited.

Q: What happens if the pre-tax deductions are not spent in calendar year? What if employer doesn't explicitly allow first 2 1/2 months of next year for unexpended fund use? Whether employer does or doesn't explicitly allow first 2 1/2 months and there's still unexpended funds at end?

Q: We have an FSA that goes from Jan 1 to March 15, but employees can submit for payments until April 15. Can they change to an HSA plan on March 15 or April 15?

A: Claims may only be incurred January 1 to March 15 (plan year plus a grace period), even though such claims may be submitted for reimbursement through April 15. Therefore, eligible employees may enroll in the HSA plan as of March 16 when claims can no longer be incurred.

In addition, keep in mind that if all FSA funds are used by December 31 (prior to the start of the grace period), such eligible employee may enroll in the HSA plan as of January 1. However, if any funds remain in the FSA as of December 31, the employee must wait until the grace period expires.

Q: If employee experiences change of income from spouse and can no longer afford medical plan, do they HAVE to stay on plan?

A: Typically, the employee can drop medical coverage at any time; however, the cafeteria plan generally only allows pre-tax election changes mid-plan year if there is a permissible 'change in status' under section 125 rules. Although the group plan (carrier) generally will allow the change and no longer require the premium to be paid, the pre-tax election (employee portion of the premium) through the section 125 cafeteria plan cannot be changed and would be forfeited, unless the plan allows the mid-year change for a permissible 'change of status'. A change in a spouse's income would not permit an employee to make an election change under section 125 rules.

Q: Employee's coverage under her employer plan increased significantly, so the employee wants to terminate coverage and enroll in spouse's employer plan. Is this mid-year change allowed?

A: It depends - section 125 rules will allow a mid-year change in pre-tax elections for a significant cost change. For a significant cost increase, the employee will be allowed to drop coverage only if alternative similar coverage is not available. Keep in mind, even if the rules allow for the change, plans are not required to allow the change; the employee must also check with both the employer and spouse's employer plan documents to make sure that both plans allow for mid-year election changes.

Q: Are you able to define "significant" cost change?

A: Unfortunately, the regulations provide little guidance as to when a cost change will be significant. Consequently, plan sponsors will need to make the "significant vs. insignificant" determination based upon all the facts and circumstances, including the dollar amount or percentage of cost increase.

Q: If you have immediate eligibility on medical benefits wherein employees are effective their first date of employment but they often don't make a decision on their benefits for a week or two, can you deduct the contribution for that first pay period or two post tax versus pre tax? So that the company receives the employee's portion of the premium.

A: The 2007 IRS proposed regulations include a special rule allowing for retroactive coverage (up to 30 days) for new hires. Under this rule, a cafeteria plan may give new employees a window of up to 30 days after their hire date to make elections. Elections made during this window can be effective as of the employee's hire date (i.e., on a retroactive basis).

Q: We have medical, dental and life insurance plans, as well as medical and dependant care FSAs under our cafeteria plan. Do we need to have two separate sets of plan documents and SPD for just the cafeteria plan and one set for ERISA compliance?

A: One cafeteria plan document can be used to cover all the cafeteria plan elements.

Q: Am I supposed to have a cafeteria plan document and also a welfare plan document? I have been told they are not the same thing.

A: A Section 125 cafeteria plan document and a health and welfare plan document and SPD are separate things with different requirements.

Q: Do all companies, even those with less than 50 employees, need to have a written plan?

A: Yes, all employers with a cafeteria plan are required to have a written plan document that is formally approved and established prior to the start of the plan year.

Q: Some ministers are exempt from fed tax withholding. Are they eligible to participate in the cafeteria plan?

A: If a minister is an employee of the organization, the minister is eligible to participate in a cafeteria plan.

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