

# WEBINAR TAKEAWAYS: HEALTH FSAs

A Health Flexible Spending Account allows individuals to set aside money from their paycheck on a pre-tax basis to use to pay for certain qualified expenses.

FSAs qualify as Cafeteria Plans AND Group Health Plans.

**Cafeteria Plan = Subject to Code Section 125**

- » Must have written plan document
- » Subject to Section 125 Nondiscrimination Testing
- » Elections are irrevocable



**Group Health Plan = Subject to Code Section 105**

- Also subject to:
- » ERISA
  - » COBRA
  - » HIPAA
  - » Health Care Reform

**How do FSAs work?**

- » **Irrevocable elections:** Only certain types of mid-year election changes are permissible
- » **Max Contribution:** There is a maximum amount employees may contribute to their Health FSA. (2018=\$2650)
- » **Qualified Expenses:** co-pays, co-insurance, dental expenses, vision expenses, prescriptions
  - » See Publication 502 for more info.
- » **Use it or Lose it:** FSA contributions must be used by the end of the plan year (unless the plan includes a grace period).
  - » Funds that have not been used = Forfeitures.
- » **Forfeitures:** Internal Revenue Code determines what an employer can do with the balance.

Every Health FSA should be designed so that it qualifies as an excepted benefit.

**Requirements:**

1. Other group health plan coverage must be made available for the year to FSA participants.
2. The max annual benefit payable to any participant can't exceed 2x the participant's salary reduction election under the arrangement for the year.

Excepted benefits are NOT subject to HIPAA nondiscrimination provisions + are exempt from ACA mandates.

**COBRA applies to an FSA if:**

the total of the COBRA premiums the individual would be required to pay < the reimbursement amount that might be possible for that individual.

Most FSAs are subject to ERISA.

**Disclosure Requirements:**

- » Written Plan Document
- » Distribution of SMMs and SARs
- » Distribution of SPD

**Reporting Requirements:**

- » Form 5500
- » Providing SAR

**Bonding Requirements:**

- » Apply to employers using internal personnel to pay claims

**FSAs must comply with DOL claims & appeals procedures.**

**Health FSAs are subject to HIPAA Privacy & Security Rules.**

Because FSAs fall under 2 categories, they are subject to Nondiscrimination Testing for both.

**Code Section 125 Testing:**

- » Eligibility Test
- » Contributions & Benefits Test
- » Key Employee Concentration Test



**Code Section 105 Testing:**

- » Eligibility Test
- » Benefits Test



**5 tests total**

Have questions? Contact [admin@compliancecalendar.net](mailto:admin@compliancecalendar.net).