



## IRS Informal Guidance Sheds Light on the Health FSA Carryover/HSA Eligibility Dilemma

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IRS Notice 2013-71 permits a cafeteria plan to allow participants to use up to \$500 of amounts remaining unused in participants' health flexible spending accounts (health FSAs) in the immediately following plan year as an alternative to the two-and-a-half month grace period previously permitted (during which you can submit a claim for reimbursement for qualified benefits incurred during the prior plan year or the grace period).

This new option has raised various issues relating to whether a participant carrying over unused health FSA amounts is prevented from contributing to a health savings account (HSA) in the carryover year. Fortunately, plan administrators faced with these issues can now refer to the informal guidance recently released by the IRS Office of Chief Counsel addressing this topic.

By way of background, you may qualify for an HSA (i.e., be an "eligible individual" within the meaning of Code Section 223(a) governing HSAs), if, among other requirements, you are covered under a high deductible health plan (HDHP) on the first day of the month and have no other health coverage, subject to certain exceptions. However, if you are covered by a health FSA that pays or reimburses qualified medical expenses without other restrictions, you generally cannot make contributions to an HSA (i.e., in this circumstance, the health FSA is generally considered "other health coverage") and are disqualified from participating in an HSA for the entire plan year.

Among other important highlights, the IRS informal guidance generally confirms the following:

- If you otherwise constitute an "eligible individual," but participate in a general-purpose health FSA (described above) solely as a result of a carryover of unused health FSA amounts from the prior year, you lose your "eligible individual" status;
- If you participate in a general-purpose health FSA solely as a result of a health FSA carryover as per the above bullet, you are disqualified from contributing to an HSA during the entire carryover year;
- If your cafeteria plan offers both a general-purpose health FSA and an HSA-compatible health FSA, you may automatically treat an individual that elects coverage in an HDHP for the following year as an enrollee in the HSA-compatible health FSA and carry over any unused amounts from the individual's general-purpose health FSA to the HSA-compatible health FSA for the following year (assuming your cafeteria plan has adopted the health FSA carryover option); and

- If an individual participates in a general-purpose health FSA providing for a carryover of unused amounts, the individual may elect, prior to the beginning of the following year, to waive the health FSA carryover for the following year, in which case the individual waiving the carryover may contribute to an HSA during the following year (assuming your cafeteria plan provides for the waiver and the individual is otherwise an “eligible individual”).

A copy of the IRS informal guidance is available [here](#).

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