



EMERSON, REID & Co.

Informal Guidance Clarifies Rules

HSA Eligibility and Health FSA Carryovers



Issued date: 04/11/14

Near the end of 2013, the IRS issued Notice 2013-47 that permits a cafeteria plan to provide for the use of up to \$500 of any unused amount remaining in the health FSA in the immediately following plan year (the “carryover” provision). This provision is optional, requires a plan amendment, and cannot be offered if the cafeteria plan allows a grace period.

One of the outstanding questions around the carryover provision is the effect it has on HSA eligibility. Recently, the Office of Chief Counsel for the Internal Revenue Service issued a memorandum that informally addresses the interaction of the carryover on HSA eligibility and provides some solutions that may allow an individual retain HSA eligibility and the carryover.

While the memorandum cannot be cited as precedent, it does provide (at least informally) some helpful guidance on these issues. Hopefully, the IRS will codify this guidance in the form of regulation.

The memorandum states that remaining balances in a general purpose health FSA that are carried over to a general purpose FSA in the following year constitutes **disqualifying coverage** for purposes of HSA eligibility for every month in the plan year, even after the health FSA funds are exhausted before the end of the plan year.

However, the guidance provides options that may allow an individual to both retain their carryover and HSA eligibility.

1. Carryover from General Purpose Health FSA to HSA-Compatible Health FSA. Carryover up to \$500 of health FSA funds from a general purpose health FSA into an HSA-compatible FSA (i.e., a limited purpose health FSA) in the following year. The plan may not allow a carryover of these funds to a non-health FSA or other qualified benefit under the cafeteria plan.

2. Automatic Carryover to an HSA-Compatible Health FSA tied to HDHP enrollment. A cafeteria plan that provides both a general purpose health FSA and an HSA-compatible health FSA may be designed to automatically treat an individual who elects HDHP coverage for the following year as enrolled in the HSA-compatible health FSA and carry over any unused amounts from a general purpose health FSA into the HSA-compatible FSA.
3. Decline or Waive the Carryover. The cafeteria plan may allow an individual to elect, prior to the beginning of the following year, to decline or waive the carryover for the following year. By electing to decline or waive the carryover of a general purpose FSA into a general purpose FSA, the individual may retain HSA eligibility (assuming he or she is otherwise HSA eligible).

Uniform Coverage Rule

If an individual elects to carry over unused amounts from a general purpose health FSA to an HSA-compatible health FSA (1 or 2 above), the uniform coverage rules may be applied during the run-out period of the general purpose health FSA as follows:

- During the run-out period for the general purpose health FSA, the unused health FSA amounts may be used to reimburse any qualified medical expenses incurred prior to the end of the general purpose health FSA plan year.
- Any claims covered by the HSA-compatible health FSA must be timely reimbursed up to the amount elected for the HSA-compatible health FSA plan year.
- Any claims in excess of the elected amount may be reimbursed after the run-out period when the amount of any carryover is determined.

For a copy of the memorandum, visit
<http://www.irs.gov/pub/irs-wd/1413005.pdf>.

