

# Summary of Compliance Rules Applicable to HSAs, FSAs, HRAs Including New Option ICHRAs, EBHRAs and Current QSEHRAs

	HSA	FSA	HRA
<b>ELIGIBILITY</b>	<p>Enrolled in a qualified high deductible health plan (HDHP), not enrolled in any disqualifying coverage, not anyone's tax dependent. General purpose FSAs and HRAs are disqualifying coverage (unless post-deductible).</p> <p>A HDHP is qualified if it complies with minimum deductible and maximum out-of-pocket limits (set annually by regulations).</p>	<p>Must be a common-law employee (or former employee) of the employer. Subject to employer's plan eligibility provisions. Eligibility not precluded because of enrollment in other coverage.</p> <p>If not limited in purpose to vision or dental, all employees eligible for the FSA must also be eligible for major medical coverage.</p>	<p>Must be a common-law employee (or former employee) of the employer. Subject to employer's plan eligibility provisions. Eligibility not precluded because of enrollment in other coverage.</p> <p>If not limited in purpose to vision or dental, the general rule is that individuals eligible for HRA reimbursement (generally including spouse and dependents) must be enrolled or eligible for major medical coverage, depending upon the type of HRA.</p>
<b>CONTRIBUTION SOURCE</b>	Employer or employee	Employer or employee	Employer only
<b>CONTRIBUTION MAXIMUM</b>	Set annually by regulations. Affected by number of months eligible out of the year, level of coverage enrolled in (single or family), and age (whether 55 or older). Employer contributions count toward the maximum.	Set annually by regulations. Employer contributions do not count toward the maximum unless employees can receive amounts as cash or other taxable benefit. Employer contributions must be limited to a match or \$500.	In general, the employer determines. However, some types of HRA contribution maximums are set annually by regulations (e.g. excepted benefit HRA and QSEHRA).
<b>AVAILABILITY OF FUNDS</b>	Funds are available to use once actually contributed, not before. Employer generally cannot remove funds once contributed.	Subject to uniform availability requirement. Entire election must be available upon first day of plan year (before the entire election is actually contributed).	Funds are available as determined by the employer. Employer can make the full amount available annually, or on a pro-rata basis (e.g. monthly or quarterly).
<b>PLAN DESIGN AND WITHDRAWAL RULES</b>	Account is owned by employee; therefore, the employer cannot limit eligible expenses beyond what the tax code permits.	Regulations permit reimbursement of any 213(d) medical expense except for insurance premiums, but employer can further limit.	Regulations permit reimbursement of any 213(d) medical expense; employer can further limit.

## HSA, FSA, and HRA Rules (CONTINUED)

	HSA	FSA	HRA
<b>INDIVIDUALS WITH ELIGIBLE EXPENSES</b>	HSA account holder, spouse, and tax dependents (as defined by §152). Individuals do not have to be eligible to contribute to an HSA in order to have eligible expenses.	Employee, spouse, employee's child who has not attained age 27, and tax dependents who incur eligible expenses during the plan coverage period. Subject to plan eligibility requirements.	Employee, spouse, employee's child who has not attained age 27, and tax dependents who incur eligible expenses during the plan coverage period. Subject to plan eligibility requirements. Some types of HRAs require individuals to be enrolled in integrated coverage in order to have eligible expenses.
<b>CARRYOVER/ROLLOVER</b>	Account is owned by employee, and therefore it is portable from employer to employer. No forfeiture from year to year.	Subject to the use-or-lose rule (used for expenses during coverage period or forfeited). \$500 carryover, or 2½ month grace period permitted (one or the other, not both).	Employer may allow carryover to subsequent plan year. No transfer to other employer or HSA.
<b>COBRA</b>	Continued coverage under the HDHP must be offered. Employer does not have to continue making contributions to employee's HSA.	Only required where the account is "underspent" (health FSA benefit still available is greater than the COBRA premium due for the remainder of the year) and only to the end of the current plan year.	Must be offered. If individual elects COBRA for the HRA, access must be given to unspent HRA balance and to any monthly or annual accruals that active employees get. COBRA premium should be blended (the same for all qualified beneficiaries regardless of account balance).
<b>MID-YEAR CHANGES</b>	Must be permitted on a monthly basis if contributions are made through Section 125 cafeteria plan.	Subject to Section 125 rules regarding permitted midyear pre-tax election changes. In general, should be permitted only where eligibility for FSA coverage is affected.	Employer determines.
<b>NONDISCRIMINATION</b>	If contributions are not made through a Section 125 cafeteria plan, HSA contributions by employer are subject to comparability requirements. If contributions are made through Section 125 cafeteria plan, HSA contributions are included in overall Section 125 nondiscrimination testing.	Subject to both Section 105 (self-insured health plan) and Section 125 (cafeteria plan) nondiscrimination rules.	Subject to Section 105 (self-insured health plan) nondiscrimination rules.

# HRA OPTIONS

	<b>ELIGIBLE EMPLOYERS</b>	<b>ELIGIBLE PARTICIPANTS</b>	<b>CONTRIBUTIONS (EMPLOYER-FUNDED)</b>	<b>REIMBURSEMENT</b>
<b>HRA INTEGRATED W/ GROUP MEDICAL PLAN</b>	Employers of any size who offer a group medical plan.	Employees and family members who are ENROLLED in an integrated group medical plan.	Unlimited employer contributions.	§213(d) qualifying medical expenses (except NOT individual insurance premiums) for those enrolled in an integrated medical plan.
<b>INDIVIDUAL COVERAGE HRA (ICHRA)</b>	Employers of any size.	Employees and family members who are ENROLLED in an individual health plan or Medicare and who are NOT eligible for the employer's group medical plan.	Unlimited employer contributions.	§213(d) qualifying medical expenses, including insurance premiums for those enrolled in individual health coverage or Medicare.
<b>QUALIFIED SMALL EMPLOYER HRA (QSEHRA)</b>	Small employers (fewer than 50 FTEs) who do NOT offer a group medical plan.	Employees who are enrolled in minimum essential coverage.	Maximum indexed annually <ul style="list-style-type: none"> <li>• Single coverage = \$5,150 (2019)</li> <li>• Family coverage = \$10,450 (2019)</li> </ul>	§213(d) qualifying medical expenses, including insurance premiums, of the employee and family members.
<b>EXCEPTED BENEFIT HRA</b>	Employers of any size who offer a group medical plan.	Employees and family members who are ELIGIBLE for the employer's group medical plan.	Maximum indexed annually <ul style="list-style-type: none"> <li>• \$1,800 (2020)</li> </ul>	§213(d) qualifying medical expenses, but NOT insurance premiums.
<b>RETIREE-ONLY HRA</b>	Employers of any size.	Retirees and family members who meet the plan eligibility rules.	Unlimited employer contributions.	§213(d) qualifying medical expenses, including insurance premiums.
<b>HRA LIMITED TO REIMBURSEMENT OF EXCEPTED BENEFITS</b>	Employers of any size.	Depends upon the plan eligibility rules.	Unlimited employer contributions.	Excepted benefits (e.g. limited-scope dental or vision).

## HRA OPTIONS (CONTINUED)

	NONDISCRIMINATION	HSA-ELIGIBILITY	MEDICARE INTERACTION	EMPLOYER MANDATE	ERISA & COBRA
<b>HRA INTEGRATED W/ GROUP MEDICAL PLAN</b>	Subject to §105(h) rules that restrict favoring highly compensated individuals.	Prevents HSA eligibility unless the HRA is designed to be post-deductible.	Generally prohibited from reimbursing Medicare premiums under MSP rules.	Satisfied if the integrated group medical plan provides minimum value and is affordable.	Subject to ERISA and COBRA.
<b>INDIVIDUAL COVERAGE HRA (ICHRA)</b>	Must be offered on the same terms and conditions to all employees within specified classes. Employer contributions can vary by age (3:1) or number of dependents eligible for reimbursement.	Prevents HSA eligibility unless reimbursements are limited to premiums only; or the HRA could be designed to be post-deductible or available only to reimburse excepted benefits.	Permitted to offer an ICHRA to those eligible for/enrolled in Medicare and may also reimburse Medicare and Medicare supplement premiums.	Satisfied if the ICHRA is affordable (based on the lowest cost silver plan through a public Exchange).	The ICHRA is subject to ERISA and COBRA. The individual health insurance policies purchased by participants are not subject to ERISA if certain criteria are met.
<b>QUALIFIED SMALL EMPLOYER HRA (QSEHRA)</b>	Must be provided (not just offered) uniformly to all employees, except: <ul style="list-style-type: none"> <li>• Employees &lt;90 days of service;</li> <li>• Employees who have not attained age 25;</li> <li>• Part-time or seasonal employees;</li> <li>• Non-participating employees covered by a CBA; and</li> <li>• Nonresident aliens not paid U.S. income</li> </ul>	Prevents HSA eligibility unless reimbursements are limited to premiums only; or the HRA could be designed to be post-deductible or available only to reimburse excepted benefits.	Permitted to offer a QSEHRA to those eligible for/enrolled in Medicare and may also reimburse Medicare premiums.	N/A	Subject to ERISA, but NOT COBRA.
<b>EXCEPTED BENEFIT HRA</b>	Subject to §105(h) rules, which restrict favoring highly compensated individuals.	Prevents HSA eligibility; it is designed to be post-deductible or available only to reimburse excepted benefits.	Generally prohibited from reimbursing Medicare premiums under MSP rules.	Does not satisfy employer mandate requirements.	Subject to ERISA and COBRA.

## HRA OPTIONS (CONTINUED)

	NONDISCRIMINATION	HSA-ELIGIBILITY	MEDICARE INTERACTION	EMPLOYER MANDATE	ERISA & COBRA
<b>RETIREE-ONLY HRA</b>	Subject to §105(h) rules that restrict favoring highly compensated individuals.	Prevents HSA eligibility unless reimbursements are limited to premiums only; or the HRA could be designed to be post-deductible or available only to reimburse excepted benefits.	Permitted to offer a retiree-only HRA to those eligible for/enrolled in Medicare and may also reimburse Medicare premiums.	N/A	Subject to ERISA and COBRA.
<b>HRA LIMITED TO REIMBURSEMENT OF EXCEPTED BENEFITS</b>	Subject to §105(h) rules that restrict favoring highly compensated individuals.	Will not interfere with HSA eligibility.	Generally prohibited from reimbursing Medicare premiums under MSP rules.	Does not satisfy employer mandate requirements .	Subject to ERISA and COBRA.

Disclaimer: Materials are solely for informational purposes as an educational resource. Please contact counsel to obtain advice with respect to any specific issue.

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Oswald Companies | Health Care Reform Implementation Review  
 Danielle Jarvis | Compliance Team Leader | [djarvis@oswaldcompanies.com](mailto:djarvis@oswaldcompanies.com)  
 Luke Clark | Senior Benefits Consultant | [lclark@oswaldcompanies.com](mailto:lclark@oswaldcompanies.com)

