PROTECTING THE CONSUMER'S FUTURE

NAHU

National Association of Health Underwriters

AMERICA'S BENEFITS SPECIALISTS

GET YOUR HEALTH FSAS, HRAS AND HSAS INTO COMPLIANCE!

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THE SLIDES WILL BE ARCHIVED ON WWW.NAHU.ORG COMPLIANCE CORNER

COMPLIANCE CORNER WEBINARS

- **Slides will be archived on nahu.org under the Compliance Corner tab**
- **The session is being recorded and will be archived in Compliance Corner**
- ****Compliance discussions and responses offer NAHU's interpretation and research regarding application of the provisions of the Patient Protection and Affordable Care Act (PPACA). NAHU is providing this guidance as an informational resource for NAHU members. This general information is not a substitute for legal or tax advice.***

ABOUT YOUR PRESENTERS

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PPACA Certified

TOPICS TODAY

- **Health Flexible Spending Arrangements (Health FSAs)**
- **Health Reimbursement Arrangements (HRAs)**
- **Health Savings Accounts (HSAs)**

- **We'll go through the following topics for each:**
  - Eligibility
  - Contributions
  - Distributions
  - Discrimination
  - Implementation Issues

HEALTH FSA'S

HEALTH FLEXIBLE SPENDING ACCOUNT ARRANGEMENTS

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COMPLIANCE CORNER

Health FSA's

ELIGIBILITY

Health FSA's

Two types of health FSAs

- Excepted
- Nonexcepted

Historically, nonexcepted health FSA's were subject to additional requirements that otherwise it would be exempt from, such as:

- Summary of Benefits and Coverage (SBC)
- PPACA mandates
- Full 18-36 months of COBRA continuation
- HIPAA Portability

2014- Nonexcepted health FSA's are no longer permitted

Health FSA's

IRS Notice 2013-54, issued September 13, 2013, states:

"If an employer provides a health FSA that does not qualify as excepted benefits, the health FSA generally is subject to the market reforms, including the preventive services requirements. Because a health FSA that is not excepted benefits is not integrated with a group health plan, it will fail to meet the preventive services requirements."

EXCEPTED HEALTH FSA: TWO-PART TEST

Maximum Benefit Condition- The maximum benefit payable to any participant in the class for a year cannot exceed two times the participant's salary reduction election under the arrangement for the year (or, if greater, cannot exceed $500 plus the amount of the participant's salary reduction election).

Availability Condition- Other group health plan coverage is made available for the year to the class of participants.

WHO IS ELIGIBLE FOR A HEALTH FSA?

- Must be offered a group medical plan with the same entry date as the health FSA
- Same plan year as medical plan*
- Must be an employee of the employer

*More guidance is needed on this point.

Health FSA's

CONTRIBUTIONS

CONTRIBUTIONS

Maximum employee contribution per plan year: $2,550 in 2015 (indexed)

Does not include employer contributions (unless the employee has the option to receive employer contribution as a taxable benefit)

FAQ

Do married spouses share the $2,550?

- No, each eligible employee is permitted to contribute up to $2,550

FAQ

Is an employee permitted to change their health FSA election mid-year?

- Yes, in limited circumstances. The only qualifying events that apply are the identified qualifying events.

Marriage	Divorce
Adoption	Birth
Change in employment status	Dependent ceases to be eligible

FAQ

If an employee has overspent their FSA (been reimbursed for more than what was contributed), may the employer deduct the overage from the employee's final pay?

- No. The uniform coverage rule requires that the maximum election amount be available at all times during the period of coverage and cannot relate to the amount that has been contributed. IRS Chief Counsel Advice (#201012060), dated December 17, 2009 states:

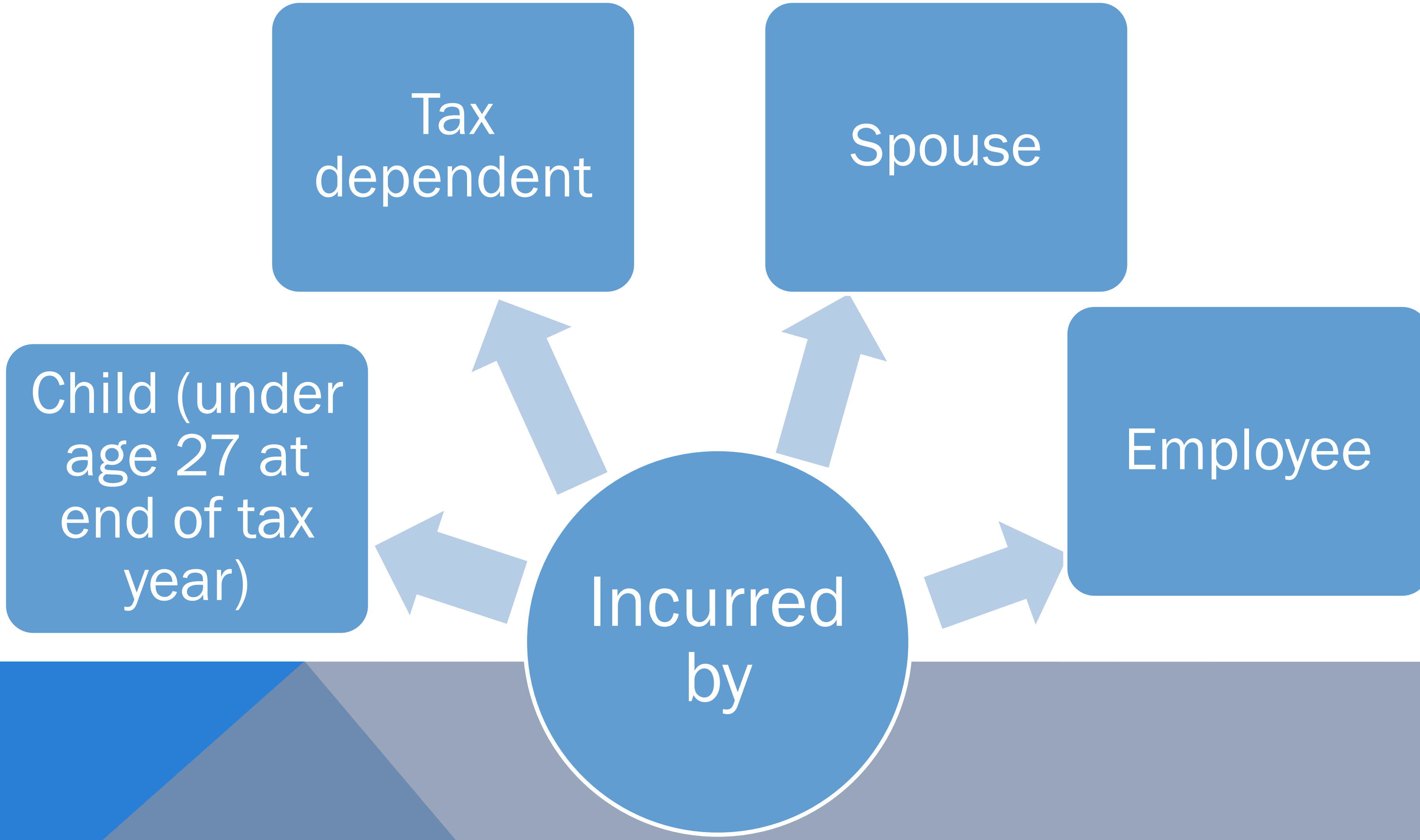
  "If an employee's reimbursements from the health FSA exceed his contributions to the health FSA at the time of lay-off or termination, the employer cannot recoup the difference from the employee."

  http://www.irs.gov/pub/irs-wd/1012060.pdf

Health FSA's

DISTRIBUTIONS

ELIGIBLE EXPENSES



ELIGIBLE EXPENSES

Must be for medical care

- Diagnosis, cure, mitigation, treatment or prevention of disease
- Includes transportation

Over the counter drugs only with prescription

No insurance premiums

No double dipping

Health FSA's

DISCRIMINATION

TWO TYPES OF DISCRIMINATION RULES

Self-funded	Pre-tax employee contributions
Section 105(h)	Section 125

SECTION 125 NONDISCRIMINATION RULES

Prohibit discrimination in favor of highly compensated and key employees

Highly compensated includes:

- Officer
- Shareholder owning more than 5%; or
- Compensation greater than $115,000 (2014) and $120,000 (2015)

Key employee includes:

- Officers with annual compensation greater than $165,000 (2014) and $170,000 (2015)
- More than 5% owners
- More than 1% owners with compensation over $150,000

Penalty for noncompliance: The contributions made by the employer and employee would be taxable income.

SECTION 105(H) NONDISCRIMINATION RULES

Prohibit discrimination in favor of highly compensated and key employees

Highly compensated includes:

- Five highest paid officers
- Shareholder owning more than 10%; or
- The highest paid 25% of all employees

Also prohibits discrimination in benefits based on age and years of service

Penalty for noncompliance: The excess benefits provided to highly compensated employees would be taxable.

Health FSA's

BONUS! ROLLOVERS

LIMITED ROLLOVER PROVISION

IRS Notice 2013-71, issued Oct. 31, 2013

Employees may rollover up to $500 of unused funds to following plan year

Rollover does not count toward $2,550 annual limit

Optional

Plan may not have grace period

Applies to health FSA, not dependent care FSA

PLAN AMENDMENT DEADLINE

Plan Year End Date	Plan Amendment Deadline
November 30, 2013	November 30, 2013
December 31, 2013	December 31, 2014
December 31, 2014	December 31, 2014
December 31, 2015	December 31, 2015

PROS AND CONS OF ADOPTING CARRYOVER

Pros	Cons
Increased participation of employees (FICA savings)	Loss of forfeitures (employer advantage)
Ending wasteful end-of-year spending	Requires cancellation of grace period (likely prospectively)
A positive for employees	Some additional administration
	Some HSA complications

HRA'S

HEALTH REIMBURSEMENT ARRANGEMENTS

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HRA's

ELIGIBILITY

WHO IS ELIGIBLE FOR AN HRA?

- **Must be offered an "integrated" group medical plan**
- **Must be an employee of the employer**

WHAT IS AN INTEGRATED HRA?

1) The employer offers another group health plan that is not an excepted benefit;

2) The employee receiving the HRA (i.e., premium reimbursement arrangement) is enrolled in a group health plan (although it may be the spouse's group health plan);

3) The HRA is available only to employees who are enrolled in a group health plan;

4) The HRA only reimburses co-payments, co-insurance, deductibles and premiums (as well as medical care that does not constitute essential health benefits); and

5) Under the terms of the HRA, an employee (or former employee) is permitted to waive future reimbursements from the HRA.

WHO IS *INELIGIBLE* FOR AN HRA?

Self-employed individuals

- **Includes sole proprietors, partners, more than 2% subchapter S corporation shareholders (they are not “employees”).**

HRA's

CONTRIBUTIONS

CONTRIBUTIONS

HRA's must be funded solely by the employer and not with salary reductions or under a cafeteria plan.

No salary reductions

No flex credits

No relationship between amounts credited to HRA and amounts forfeited under health FSA

No relationship between accruals under the HRA that correlate to salary reduction changes

No unused vacation or sick time can fund an HRA if the employee has a choice whether to payout time in cash or fund an HRA

FAQ

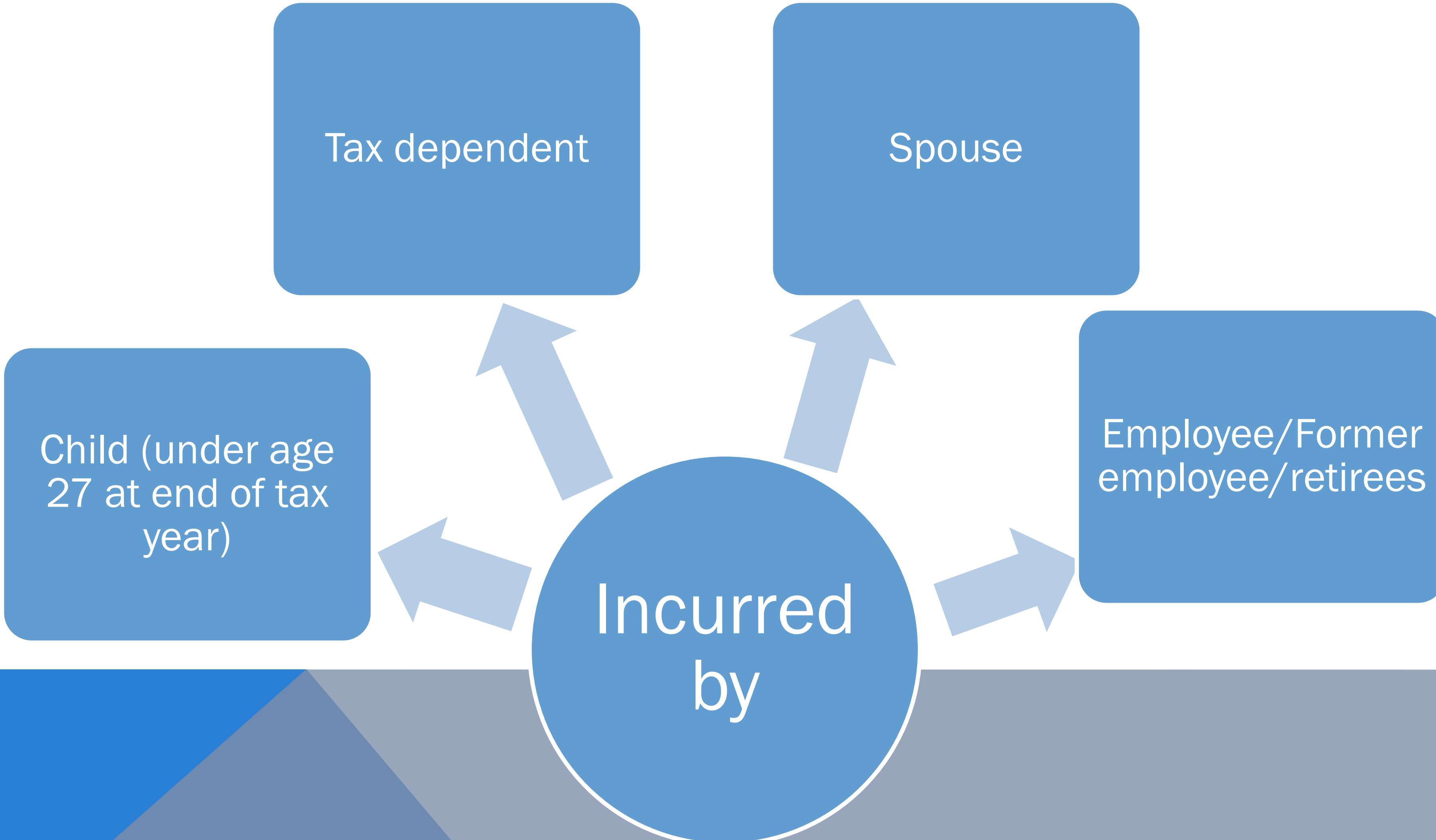
Are HRAs subject to the health care reform annual dollar limit on FSA contributions?

- No, the $2,550 limit that applies to health FSAs does not apply to HRAs, because HRAs cannot be funded with salary reduction contributions.

HRA's

DISTRIBUTIONS

ELIGIBLE EXPENSES



ELIGIBLE EXPENSES

HRAs may only reimburse Code 213(d) expenses

No long-term care premiums

Medicine or drug must be prescribed, even if it is an over-the-counter drug (other than insulin)

OTC items such as equipment, supplies, medical devices (crutches, bandages, blood sugar test kits, eyeglasses) may be reimbursed

Out-of-pocket medical expenses (same as health FSAs) such as co-pays, deductibles, medical expenses not covered by employer's major medical plan

No Individual Policy Premiums (IRS Notice 2013-54)

OTHER NAMES FOR AN HRA

MERP

Employer Payment Plan (EPP)

Section 105 Plan

Employer Health Care Arrangements

IRS GUIDANCE

Q1. What are the consequences to the employer if the employer does not establish a health insurance plan for its own employees, but reimburses those employees for premiums they pay for health insurance (either through a qualified health plan in the Marketplace or outside the Marketplace)?

Under IRS Notice 2013-54, such arrangements are described as employer payment plans. An employer payment plan, as the term is used in this notice, generally does not include an arrangement under which an employee may have an after-tax amount applied toward health coverage or take that amount in cash compensation. As explained in Notice 2013-54, these employer payment plans are considered to be group health plans subject to the market reforms, including the prohibition on annual limits for essential health benefits and the requirement to provide certain preventive care without cost sharing. Notice 2013-54 clarifies that such arrangements cannot be integrated with individual policies to satisfy the market reforms. Consequently, such an arrangement fails to satisfy the market reforms and may be subject to a $100/day excise tax per applicable employee (which is $36,500 per year, per employee) under section 4980D of the Internal Revenue Code.

http://www.irs.gov/Affordable-Care-Act/Employer-Health-Care-Arrangements

HRA's

DISCRIMINATION

DISCRIMINATION RULES

Self-funded
Section 105(h)- *NOT ON HOLD!!*

SECTION 105(H) NONDISCRIMINATION RULES

Prohibit discrimination in favor of highly compensated and key employees

Highly compensated includes:

- Five highest paid officers
- Shareholder owning more than 10%; or
- The highest paid 25% of all employees

Also prohibits discrimination in benefits based on age and years of service

Penalty for noncompliance: The excess benefits provided to highly compensated employees would be taxable.

HRA's

IMPLEMENTATION ISSUES

HRA'S MUST COMPLY WITH….

ERISA

Written plan document, Form 5500, SPD, Statement of ERISA rights

COBRA

Premium determined by calculating the employer's actual cost during year

HIPAA

Self-funded health plans receiving employee's PHI must comply with the full scope of HIPAA's privacy and security regulations including implementing policies, procedures, distributing notices, training of staff. Exception if self-administered plan has fewer than 50 participants.

Substantiation

Claims must be substantiated before reimbursed and DOL claims procedures apply

HRA'S MUST COMPLY WITH….

PCOR

Applies to plan years ending after Oct. 1, 2012 and before Oct. 1, 2019. Plan sponsors must report and pay via IRS Form 720 by the end of July of the calendar year following the end of the plan year.

Medicare Section 111 Reporting

Insurer is responsible for a fully insured plan, TPA for a self-funded plan, but plan administrator for a self-funded plan that self-administrators benefit of $5,000 or more must report

Medicare Creditable Coverage Reporting

HRA sponsors must provide Part D eligible individuals with creditable coverage disclosure if plan pays for prescription drug coverage. Also notify CMS 60 days following beginning of plan year.

SPECIALLY DESIGNED HRA's

Limited purpose- HRA would only reimburse expenses for dental, vision, and preventive care

Post-deductible- HRA would not reimburse any expense until the statutory deductible is met.

Combination limited purpose / post-deductible- HRA would reimburse dental, vision, and preventive care before the statutory deductible is met, and any qualified medical expense after that.

HSA’S

HEALTH SAVINGS ACCOUNTS

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HSA's

ELIGIBILITY

WHO IS ELIGIBLE FOR AN HSA?

Qualified HDHP coverage

- Minimum Deductible: $1,300/$2,600
- Max OOP: $6,450/$12,900
- No benefits paid until statutory deductible is met (exception for preventive care, dental, and vision expenses)

WHO IS NOT ELIGIBLE FOR AN HSA?

- Can be claimed as a tax dependent of another
- Medicare entitled (eligible AND enrolled)
- TRICARE
- Medicaid
- General purpose HRA or health FSA coverage of EE or spouse
- Receipt of VA medical benefits during the preceding 3 months
- Receipt of medical services from an Indian Health Service facility during the preceding 3 months
- On-site medical clinic providing “significant” medical benefits

HSA's

CONTRIBUTIONS

CONTRIBUTIONS

Tier	2015	2014
Single	$3,350	$3,300
Family	$6,650	$6,550

Those aged 55 or older are eligible for a catch-up contribution of $1,000.

FAQ

What if the employee's spouse is enrolled in Medicare?

- Only the employee's eligibility matters. If a spouse or child has other coverage, the employee is still eligible for the HSA.

- The contribution limit is still based on the tier of coverage.

EXCESS CONTRIBUTION

Susie has EE coverage eff. Jan. 1

By April, has made full contribution of $3,350

Enrolls in Medicare Aug. 1

Owes income and 6% excise tax on excess ($1,395)*

** Excise tax would be avoided if the excess and associated interest are distributed out of the account by the tax filing deadline (following April 15).*

FULL CONTRIBUTION RULE

HSA eligible on Dec. 1 → **Full annual max**

- Based on tier of coverage on Dec. 1. Also permitted to contribute monthly total, whichever is greater
- Must remain HSA eligible for next 13 months (testing period), or face tax consequences

NOT HSA eligible on Dec. 1 → **Total of monthly contributions**

FAQ

What if employee's tier of coverage changes mid-year?

- Under the full contribution rule, they can contribute 1) the full amount based on tier of coverage on Dec. 1st or 2) the total of monthly contributions- whichever is greater

- John has single coverage effective Jan. 1. He gets married and adds his spouse to his HDHP Aug. 17.
  - Monthly total: He had single coverage for 8 months ($2,233) and family coverage for 4 months ($2,216) for a total contribution of $4,449. OR
  - Full contribution: $6,650

FAILURE TO SATISFY TESTING PERIOD

John made full contribution of $6,650 (vs. monthly total of $4,449)

Terminates following March

Owes income and 10% penalty tax on excess ($2,201)

FAQ

If employees contribute to the HSA on a pre-tax basis, when may they change their election amount?

- Employees may change their election amount any time during the year without a qualifying event (at least monthly).

FAQ

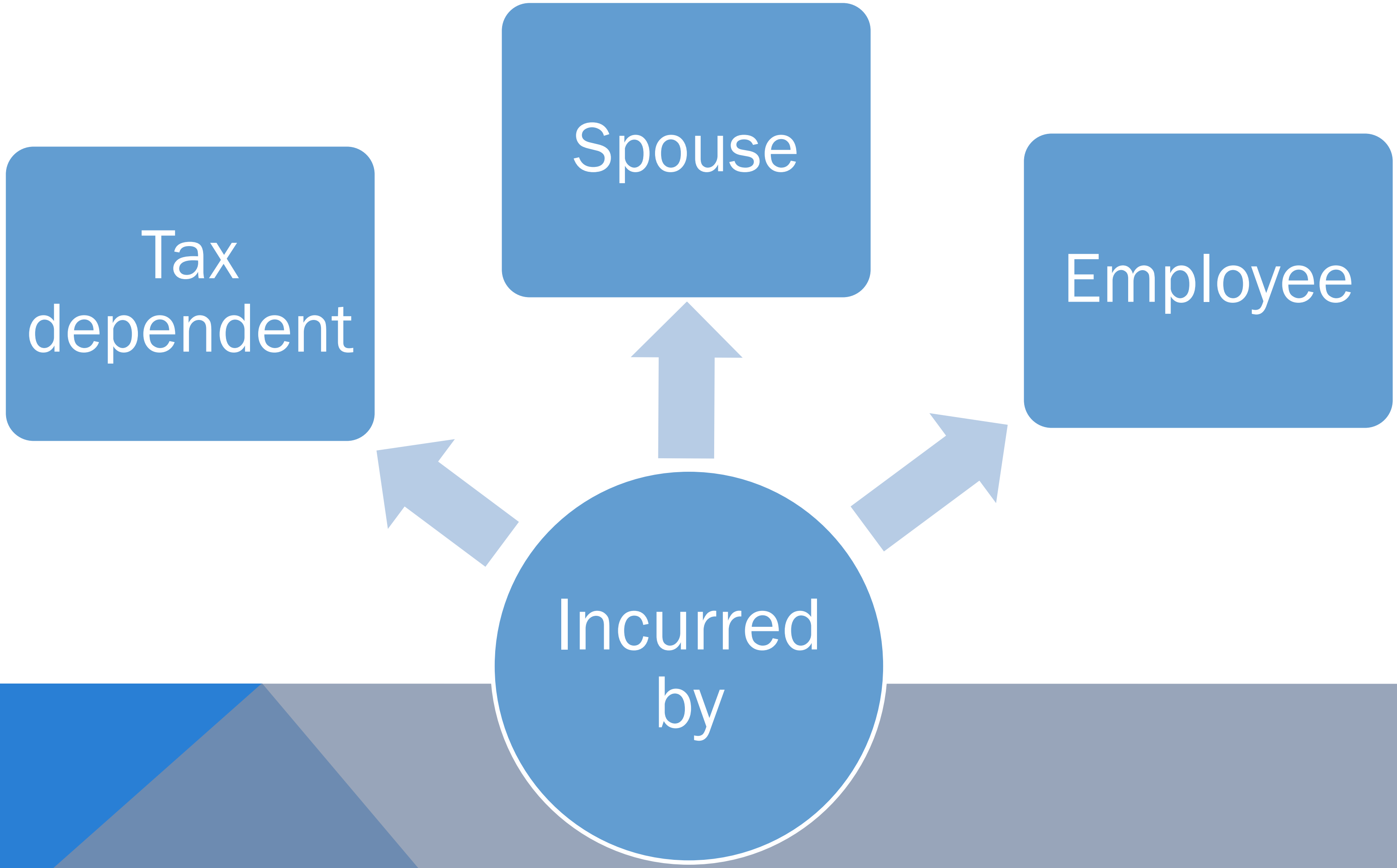
Is an employer required to contribute to the account of a COBRA participant?

- No, HSA's are generally not subject to COBRA. COBRA would not be offered on the HSA, but would need to be offered on the HDHP.

HSA's

DISTRIBUTIONS

ELIGIBLE EXPENSES



FAQ

What if the employee uses the funds to pay for a nonqualified expense?

- The distribution is included in the account holder's gross income and is subject to an additional 20% penalty tax. PPACA increased the penalty tax to 20%, effective January 1, 2012- it was previously 10%.
- The 20% penalty tax does not apply to nonqualified distributions:
  - Following the account holder's death
  - After the account holder is aged 65
  - After the account holder becomes disabled

HSA's

DISCRIMINATION

TWO TYPES OF DISCRIMINATION RULES

Pre-tax employee contributions	Post-tax employee contributions or no employee contributions
Section 125 rules	Comparability rules

SECTION 125 NONDISCRIMINATION RULES

Prohibit discrimination in favor of highly compensated and key employees

Highly compensated includes:

- Officer
- Shareholder owning more than 5%; or
- Compensation greater than $115,000 (2014) or $120,000 (2015)

Key employee includes:

- Officers with annual compensation greater than $165,000 (2014) or $170,000 (2015)
- More than 5% owners
- More than 1% owners with compensation over $150,000

Penalty for noncompliance: The contributions made by the employer and employee would be taxable income.

COMPARABILITY RULES

Employer contributions must be the same for comparable participating employees (based on tier of coverage):

- Collectively bargained v. non-collectively bargained
- Full-time v. part-time
- Current v. former

May contribute more to non-highly compensated

Matching contributions not allowed

Wellness incentives not allowed

Penalty for noncompliance: Employer contributions subject to a 35% excise tax

HSA's

IMPLEMENTATION ISSUES

FAQ

The employer is adding an HDHP and HSA mid-year. They already have a health FSA.

- The employees participating in the health FSA will not be eligible for the HSA until the end of the FSA plan year (or grace period, if applicable)
- The addition of the HSA and HDHP is not a qualifying event permitting employees to change their FSA election.

FAQ CONTINUED

Options

Convert the entire general purpose FSA to an HSA compatible FSA

- Limited purpose
- Post-deductible
- Combination

Terminate the entire health FSA

Permit only those employees not enrolled in the health FSA to participate in the HSA

THANK YOU FOR ATTENDING!

Questions? Check out NAHU's *Compliance Corner* premier member benefit.