

## Section 125 FSA Checklist

<b>Definition of Terms</b>	<ul style="list-style-type: none"> <li>✓ A Health Flexible Spending Account (Health FSA) is sometimes referred to as a "Flexible Benefit Plan" or "Flex Plan." It is a type of Section 125 Cafeteria Plan.</li> </ul>	
<b>Advantages</b>	<ul style="list-style-type: none"> <li>✓ Reduces the tax burden for the employer and employees.</li> <li>✓ Enhances benefit offerings and improves employee morale.</li> <li>✓ Increases employee engagement in managing costs through consumer-driven healthcare.</li> </ul>	
<b>Administration</b>	<ul style="list-style-type: none"> <li>✓ The program may be self-administered or administered by a TPA (recommended).</li> </ul>	
<b>Economic Factors</b>	<ul style="list-style-type: none"> <li>✓ Costs associated with offering the plan may include administration, documents/amendments, nondiscrimination testing, and employer contributions to the plan.</li> <li>✓ Although employee contributions are collected periodically (typically, by pay period), the full election amount (plus any employer contribution) will be made available to employees on the first day of the plan year. In certain cases, this may result in a loss to the employer (e.g., if an employee spends the full election amount and then terminates employment).</li> <li>✓ In certain cases, employees may be forced to forfeit unspent funds. The employer may generally retain these forfeitures.</li> </ul>	
<b>Timing of Implementation</b>	<ul style="list-style-type: none"> <li>✓ A health FSA may be established on a short plan year or at renewal.</li> <li>✓ The renewal date for a Health FSA may be different from other coverages (use caution).</li> </ul>	
<b>Plan Components</b>	<p>A Cafeteria Plan may include:</p> <ul style="list-style-type: none"> <li>✓ Premium Only Plan (POP)</li> <li>✓ Health FSA</li> <li>✓ Adoption Assistance</li> <li>✓ Dependent Care Assistance</li> <li>✓ Health Savings Account (HSA)</li> </ul> <p>Smaller employers with nondiscrimination concerns may consider establishing a Simple Cafeteria Plan.</p>	<p>A Cafeteria Plan may <u>not</u> include:</p> <ul style="list-style-type: none"> <li>✓ Deferred Compensation</li> <li>✓ Educational Assistance</li> <li>✓ Long Term Care</li> <li>✓ Transportation Benefits</li> <li>✓ Moving expenses, meals, travel, etc.*</li> </ul> <p>*See <a href="#">IRS Publication 15-B</a> for additional details.</p>
<b>Plan Design Considerations</b>	<ul style="list-style-type: none"> <li>✓ Eligibility (Note: only those employees who are eligible for the Group Health Plan may enroll).</li> <li>✓ Maximum employee contribution limits (as per IRS rules).</li> <li>✓ Employer contribution amount, if applicable (Note: must comply with "excepted benefit" rules).</li> <li>✓ 2 ½ month grace period or \$550 carryover (rollover).</li> <li>✓ Debit card options.</li> </ul>	
<b>Coordination with Other Plans</b>	<ul style="list-style-type: none"> <li>✓ If an HSA and/or HRA is offered, a Health FSA should be carefully designed to coordinate with these plans. Consider whether a limited purpose and/or post-deductible FSA may be advisable.</li> </ul>	
<b>Compliance Tips</b>	<ul style="list-style-type: none"> <li>✓ Only employees may participate in a Cafeteria Plan. Also, note that 2% owners in an S-Corp, partners in a partnership, LLC members, and 1099 contractors generally may not participate.</li> <li>✓ A Health FSA is generally subject to ERISA. An SPD must be distributed, and the Plan Sponsor bears fiduciary responsibility.</li> <li>✓ A Health FSA is a self-funded arrangement that is generally subject to HIPAA Privacy and Security requirements.</li> <li>✓ A Health FSA is generally subject to COBRA (may be offered to all Qualifying Beneficiaries or only to those whose accounts are not overspent).</li> <li>✓ A Health FSA is subject to Tax Code nondiscrimination requirements. Nondiscrimination testing should be conducted annually.</li> <li>✓ Plan Documents should be formally amended from time to time, as needed, and restated within a maximum of five years.</li> </ul>	