Automatic Enrollment in HSAs

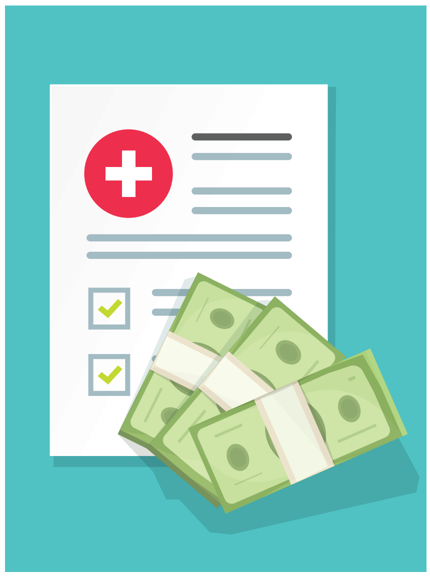
Can sponsors use an automatic enrollment feature common in 401(k) plans to boost participation in HSAs?

By Pat Jarrett and Karin M. Rettger

The Health Savings Account (HSA) continues to be one of the most misunderstood of all benefit programs. Employers are asking for simplified methods to enroll employees in HSAs. What can we do to remove the barriers? Can we include in HSAs some of the common options like automatic enrollment and default investment choice that we see in 401(k) plans? In this article we will look at offering automatic enrollment and default investment options, and the challenges and opportunities they offer.

HSA vs. IRC §125 vs. HDHP

Let's first take a step back to review a couple of important distinctions. When we talk about an HSA, we are not talking about the High Deductible Health Plan (HDHP). We are talking about the savings account that can be offered to employees if they participate in the HDHP. An HSA is different from a 401(k) in that it is typically not part of a benefit plan subject to ERISA. So, the HSA is almost always an individual account governed by the IRS and not the DOL. The HSA is individually owned by the participant and an employer cannot exercise any control over that account. To further complicate it, pre-tax contributions to a Health Savings Account are made through a cafeteria plan election under Internal Revenue Code Section 125 (IRC §125).



Is an HSA an ERISA Plan?

HSAs are not considered to be ERISA plans where employer involvement in the HSAs is limited to payroll deduction support and a selection of an account provider. Multiple HSA providers are allowed.

We recommend following due diligence on the selection of the HSA provider as you would with any other benefit offering.

Automatic Enrollment in HSAs

A frustrating problem for plan sponsors is the level of enrollment in HSAs. They are complicated to communicate, and the benefits are misunderstood. As we know, many participants fail to engage or fail to educate themselves about plan options. In 401(k) plans, we have already learned that it was difficult to engage workers even where an excellent communications and marketing strategy was offered. Automatic enrollment in 401(k)'s provided the conduit to successfully achieving participation goals. Based on the guidelines, can plan sponsors take a page out of the 401(k) auto-enrollment toolkit and apply it to HSAs?

In 401(k) plans, we auto-enroll a participant typically at a set deferral percentage (e.g., 6 percent of pay), and we give them notice telling them when that auto-deduction will begin. Since HSA elections are typically dollar amounts not tied to income, replicating this type of automatic enrollment is a little more challenging for an HSA. Here are some things to consider in solving this issue:

- If the employer is providing a contribution to the HSA, we believe that the employer can auto-enroll for the purpose of receiving the employer contribution.
  - If this is done, we suggest that your HSA provider be able to verify eligibility for the HSA.
  - While the determination of eligibility for an HSA is not currently an employer requirement (the burden falls to the employee), screening for this avoids unpleasant surprises around employee

misunderstanding or lack of education around HSA eligibility.

- For example, the HSA provider could ask if the employee is covered by Medicare, participating in a FSA through a spouse, or enrolled in any other medical plan that would make them ineligible to make a contribution to the HSA.

- If the employer wants to make an "automatic payroll contribution/deduction" for the employees participating in the HSA qualified High Deductible Health Plan (HDHP), there are two potential methods to consider if you want to make a payroll deduction:
  - Negative Election: This would be similar to a 401(k) where you provide a notice of the automatic enrollment for the HSA and the amount automatically deferred. This default would apply when the individual selected the HSA-qualifying health option (or when the individual was defaulted into the HSA-qualifying health option).
    - There are no guidelines as to how you set the deferral amount, but a couple of popular ideas:
      - You could choose a set dollar amount per pay.
      - You could default them to contribute the dollar amount of the deductible of the HDHP
      - You could choose to default them to the difference in cost between the HDHP and the higher cost insurance option (perhaps the low deductible plan).
      - You could provide matching contributions, and enroll participants at the level needed to receive the full match.
    - As with all benefits decisions, you will want to review the negative election process and wording with legal counsel.
  - Positive Election: We would always prefer a positive election to a negative election. To achieve a positive election on the payroll deduction, include the election as a choice in your HDHP enrollment — the premium for enrollment in the HDHP (which is the employee's cost to have the insurance coverage through the employer's plan), and an election to make a contribution to the HSA.
    - In this section, you could have three options:
      - Example:
      - Yes! I want to participate in the HSA plan
      - Please enroll me at:
        - The difference in cost between the HDHP and the XYZ plan
        - The deductible in the HDHP
        - $50 per pay (or another flat dollar amount)
        - $________ per pay
        - For the IRS maximum amount for my coverage level
      - No, I don't want to participate in the HSA at this time
    - If elections are made on-line using your enrollment platform, it probably includes the necessary e-signatures, but you should check with your provider. Otherwise, for a positive election, obtain a signature.

Auto Escalation and Default Investment Options

If we can accomplish automatic enrollment, can we also do automatic escalation and automatic investment deferral?

For automatic escalation, we would suggest (assuming your legal counsel concurs) that you consider an incremental increase year-over-year with an "opt-out" feature. One option would be to escalate the contribution based on the difference between the premiums for the HSA qualified plan and the next least expensive traditional plan.

Typically, the HSA provider will default the payroll deduction to a cash account and require the participant to complete additional requirements prior to transferring monies to any investment options allowed by the plan. This is primarily the default for the certainty that the accounts will not lose value. This is the most logical choice but doesn't adequately address the need for saving for healthcare expenses in retirement. The short time horizon for many HSA contributions combined with market volatility often makes mutual funds a risky choice where monies will be distributed in the short term.

For these reasons, we continue to promote the cash option as the default option on an HSA. The positive note here is that employees are saving something towards future expenses, and your HSA materials can educate employees on the available investment choices.

Summary

HSAs offer a great benefit to employees. Improving engagement, education, and participation is a common goal. Many plan sponsors want to improve participation in the HSA, and feel auto enrollment is a great potential option. Plan sponsors are also in agreement that they want to avoid ERISA status on HSAs. We have provided some thoughts on automatic enrollment, negative elections, automatic escalation and automatic investment deferral. As with all benefit changes and communication, please seek a legal opinion before proceeding. The authors of this article are providing thought leadership on these issues, and are not rendering legal advice.

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