

**DESCRIPTION OF H.R. 6313, THE  
“RESPONSIBLE ADDITIONS AND INCREASES TO SUSTAIN  
EMPLOYEE HEALTH BENEFITS ACT OF 2018”**

Scheduled for Markup  
by the  
HOUSE COMMITTEE ON WAYS AND MEANS  
on July 11, 2018

Prepared by the Staff  
of the  
JOINT COMMITTEE ON TAXATION



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## INTRODUCTION

The House Committee on Ways and Means has scheduled a markup on July 11, 2018, of H.R. 6313, the “Responsible Additions and Increases to Sustain Employee Health Benefits Act of 2018,” which provides that a plan shall not fail to be treated as a health flexible spending account (“health FSA”) merely because such arrangement’s account balance (or any portion thereof) determined as of the end of any plan year may be carried forward to the succeeding plan year. This document,<sup>1</sup> prepared by the staff of the Joint Committee on Taxation, provides a description of the bill.

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<sup>1</sup> This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 6313, the “Responsible Additions and Increases to Sustain Employee Health Benefits Act of 2018”* (JCX-59-18), July 10, 2018. This document can also be found on the Joint Committee on Taxation website at [www.jct.gov](http://www.jct.gov). All section references herein are to the Internal Revenue Code of 1986, as amended, unless otherwise stated.

## **A. Carryforward of Health Flexible Spending Arrangement Account Balances**

### **Present Law**

#### **Exclusion from income for employer-provided health coverage**

Employees are not taxed on (that is, may exclude from gross income) the value of employer-provided health coverage under an accident or health plan.<sup>2</sup> In addition, any reimbursements under an employer-provided accident or health plan for medical care expenses for employees, their spouses, their dependents, and adult children under age 27 generally are excluded from gross income.<sup>3</sup> The exclusion applies both to health coverage in the case in which an employer directly pays the cost of employees' medical expenses not covered by insurance (*i.e.*, a self-insured plan) and an employer purchased health insurance coverage for its employees. There generally is no limit on the amount of employer-provided health coverage that is excludable. A similar rule excludes employer-provided health insurance coverage from the employees' wages for employment tax purposes.<sup>4</sup>

Employers may also provide health coverage in the form of an agreement to reimburse medical expenses of their employees, their spouses, their dependents, and adult children under age 27, not reimbursed by a health insurance plan, through arrangements which allow reimbursement for medical care not in excess of a specified dollar amount (either elected by an employee under a cafeteria plan or otherwise specified by the employer). An employer may agree to reimburse expenses for medical care of its employees (and their spouses and dependents), not covered by a health insurance plan, through a flexible spending arrangement ("FSA") which allows reimbursement for medical expenses not in excess of a specified dollar amount. The amounts available for reimbursement must be exclusively for reimbursement for medical care.<sup>5</sup>

Reimbursements may be either elected by an employee under a cafeteria plan ("health FSA") or otherwise specified by the employer under a health reimbursement arrangement ("HRA"). Reimbursements under these arrangements are excludable from gross income as reimbursements for medical care under employer-provided health coverage.<sup>6</sup>

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<sup>2</sup> Sec 106.

<sup>3</sup> Sec. 105(b).

<sup>4</sup> Secs. 3121(a)(2), 3231(e)(1) and 3306(a)(2).

<sup>5</sup> Treas. Reg. sec. 1.105-2.

<sup>6</sup> Sec. 106.

## Cafeteria plan

### General rules

A cafeteria plan is a separate written plan of an employer under which all participants are employees, and participants are permitted to choose among at least one permitted taxable benefit (for example, current cash compensation) and at least one qualified benefit (generally an employer-provided benefit excludable from gross income, such as employer-provided health coverage). If an employee receives a qualified benefit based on his or her election between the qualified benefit and a taxable benefit under a cafeteria plan, the qualified benefit generally is not includible in gross income.<sup>7</sup> The amount of the cash compensation forgone pursuant to an election under a cafeteria plan is generally referred to as a salary reduction contribution. However, if a plan offering an employee an election between taxable benefits (including cash) and nontaxable qualified benefits does not meet the requirements for being a cafeteria plan, the election between taxable and nontaxable benefits generally results in gross income to the employee, regardless of what benefit is elected and when the election is made.<sup>8</sup> A cafeteria plan generally may not provide for deferral of compensation.

### Health flexible spending arrangement under a cafeteria plan

A flexible spending arrangement for medical expenses under a cafeteria plan (commonly called a “health FSA”) is health coverage in the form of an arrangement under which employees are given the option to reduce their current cash compensation and instead have the amount of the salary reduction contributions made available for use in reimbursing the employee for his or her medical expenses.<sup>9</sup> For 2018, the maximum amount of salary reduction contributions for a year is limited to \$2,650.<sup>10</sup>

Health FSAs are subject to the general requirements for cafeteria plans, including a requirement that such plans may not be plans of deferred compensation. This generally means that amounts remaining under a health FSA at the end of a plan year must be forfeited by the employee (referred to as the “use-it-or-lose-it rule”).<sup>11</sup> However, guidance provides a grace period of two and one-half months after the end of the plan year for the carryover of excess benefits or contributions in a health FSA.<sup>12</sup> As an alternative to a grace period, an employer may amend the cafeteria plan document to provide for \$500 of any unused amounts in a health FSA

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<sup>7</sup> Sec. 125(a). However, in order to be excludable, any qualified benefit elected under a cafeteria plan must independently satisfy any requirements under the Code section that provides the exclusion, such as section 105(b) or 106.

<sup>8</sup> Prop. Treas. Reg. sec. 1.125-1(b).

<sup>9</sup> Sec. 125 and Prop. Treas. Reg. sec. 1.125-5.

<sup>10</sup> Rev. Proc. 2017-58, 2017-45 I.R.B. 489 (Nov. 6, 2017).

<sup>11</sup> See sec. 125(d)(2).

<sup>12</sup> See, e.g., Notice 2005-42, 2005-23 I.R.B. 1204 (June 6, 2005).

to be continuously rolled over.<sup>13</sup> If an employee leaves employment during a year and has a balance in a health FSA (but no eligible unreimbursed medical expenses), that amount will be forfeited.

### **Description of Proposal**

Under the proposal, a plan shall not fail to be treated as a health flexible spending arrangement merely because such arrangement's account balance (or any portion thereof) determined as of the end of any plan year may be carried forward to the succeeding plan year. To the extent that amounts in a health flexible spending arrangement may be carried forward as of the end of any plan year to the succeeding plan year, the carryover of such amounts will not cause the cafeteria plan to be treated as a plan which provides deferred compensation.

### **Effective Date**

The provision is effective for plan years beginning after December 31, 2018.

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<sup>13</sup> See Notice 2013-71, 2013-47, I.R.B. 532 (November 18, 2013).