

The logo for VORYS, featuring the word "VORYS" in a bold, white, sans-serif font. The letters are spaced out, with the "O" and "R" being slightly larger than the other letters. The background of the slide is a dark blue with a pattern of overlapping, stylized, light blue geometric shapes that resemble architectural or structural elements.

VORYS

New thinking.
Since 1909.

Beyond Basic Benefits: Emerging Trends and Potential Traps for the Unwary

Dawne McKenna Parrish
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Lifestyle Spending Accounts

What are Lifestyle Spending Accounts (LSAs) and what benefits may be offered under an LSA?

Why do employers offer LSAs and how do they work?

Are there any compliance risks associated with LSAs?

What are Lifestyle Spending Accounts (LSAs)?

**Employer-provided
spending accounts.**

**Employers fund LSAs
from general assets
and decide what is
an eligible expense.**

What benefits can be offered under an LSA?

**Financial
Wellness**

Fitness

**Household
Expenses**

**Grocery/Meal
Delivery**

**Physical/Mental
Wellness**

Child Care

Pet Care

Transportation

Entertainment

Travel

Lifestyle Spending Accounts

Financial Wellness

- Financial Planning
- Debt/Credit Counseling
- Student Loan Repayment*
- Tuition Assistance*

Fitness

- Gym Membership*
- Personal Training
- Yoga, Pilates Classes
- Walking/Running Club
- Tennis/Swim Lessons

Lifestyle Spending Accounts

Household Expenses

- Home Repair
- Mowing/Landscaping
- Snow Removal
- Automobile Maintenance/Repair

Groceries/Meal Delivery

- Grocery Store
- Farmer's Market
- Uber Eats/DoorDash
- Prepared Meal Subscriptions
- Personal Chef Services
- Weight Loss Food and Beverages*

Lifestyle Spending Accounts

Physical/Mental Wellness

- Weight Loss Programs*
- Nutritional Counseling*
- Vitamins/Supplements*
- Meditation
- Forest Bathing
- Massage
- Counseling/Therapy*

Child Care

- Babysitting*
- Nanny*
- Summer Camp*

Lifestyle Spending Accounts

Pet Care

- Veterinary Care
- Pet Grooming
- Dog Walking
- Pet Sitting

Transportation

- Uber/Lyft
- Taxi
- Subway/Mass Transit*
- Parking*

Lifestyle Spending Accounts

Entertainment

- Movie/Show Tickets
- Amusement Park Tickets
- Sporting Events
- Concerts
- Ski Pass

Travel

- Airplane/Train Fare
- Cruise Fare
- Hotel Stays
- Short-Term Rental (e.g., Airbnb)

Why Do Employers Offer LSAs?

**Attract
Talent**

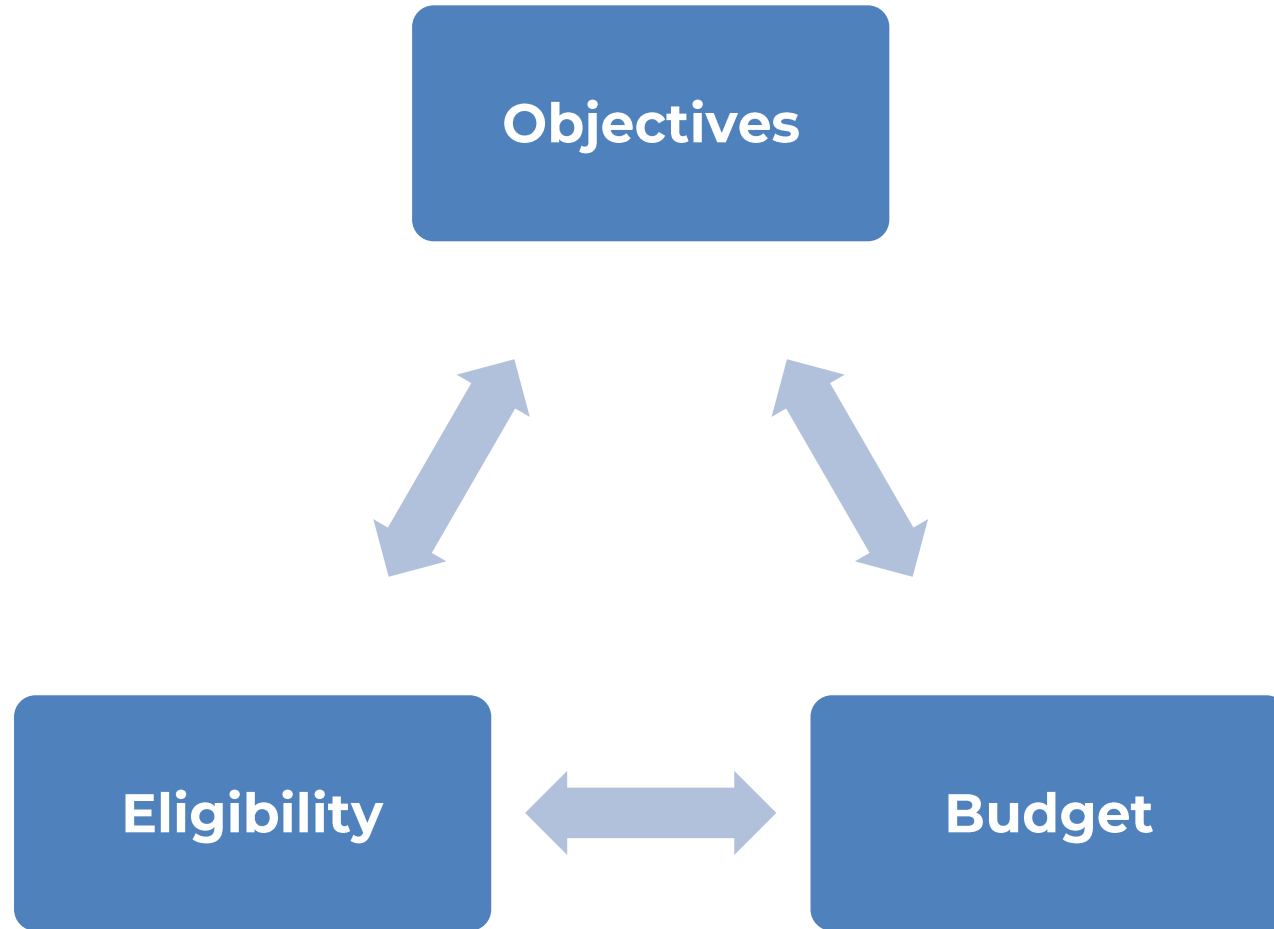
**Retain
Talent**

**Boost
Morale**

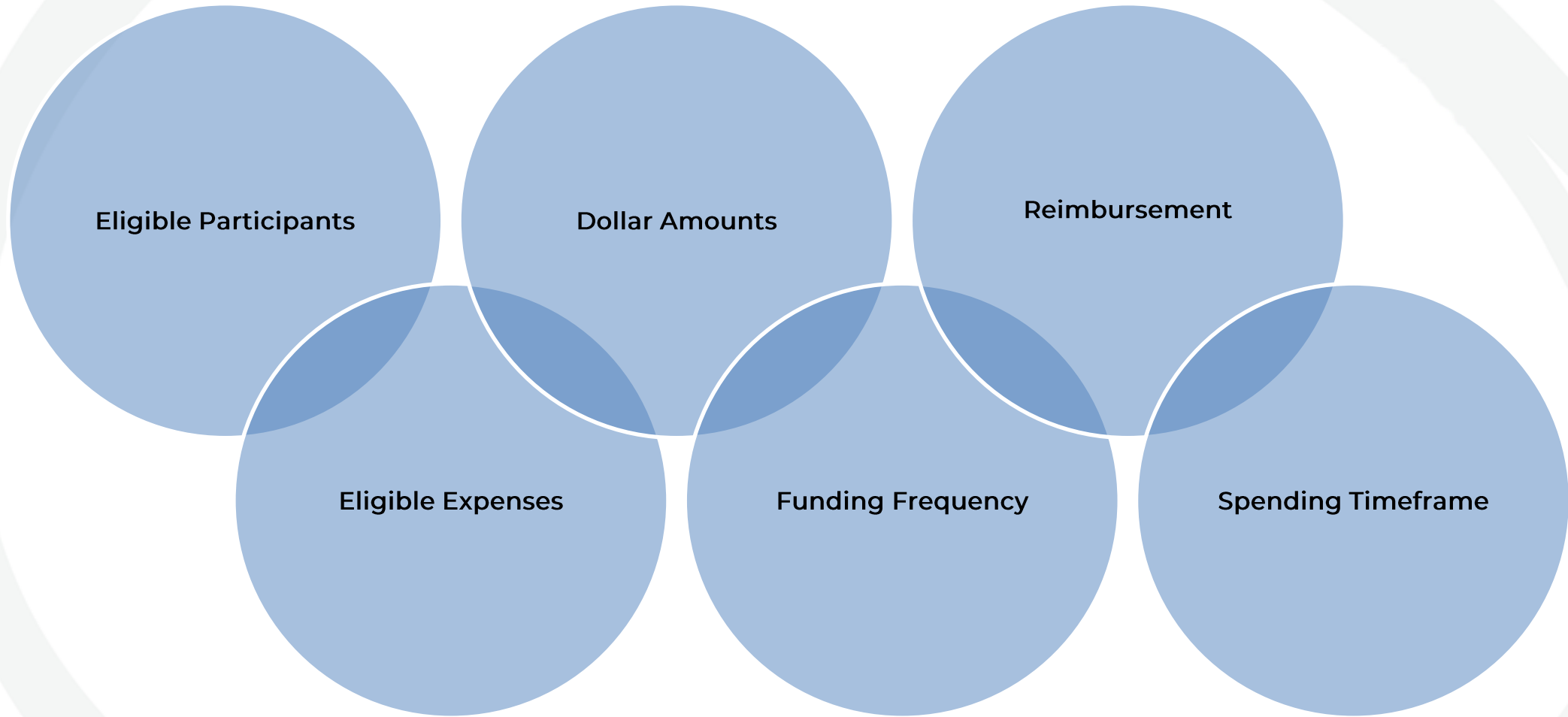
**Provide
Flexibility**

**Employee
Engagement**

LSA Design Considerations



LSAs: Design and Administration



Administration of LSAs

- In-house vs. third party administration
- Third party administrator/Selecting a Vendor
 - Scale and experience
 - Services agreement
 - Systems changes
- Reimbursement Process
 - Submit claims or utilize vendor's online platform/mobile app
 - Appeal process?

Federal Income Tax Treatment

- General rule: Under Internal Revenue Code Section 61, all income, including “compensation for services,” is taxable unless a specific exclusion applies.
- **Examples of income tax exclusions:**

Section 79
Life Insurance

Sections 105 and
106
Accident and
Health Plans

Section 117
Qualified
Scholarships

Section 119
Meals/Lodging for
Employer
Convenience

Section 125
Cafeteria Plans

Section 127
Educational
Assistance
Programs

Section 129
Dependent Care
Assistance
Programs

Section 137
Adoption
Assistance

Section 132
Fringe Benefits
(including Qualified
Transportation Fringe
Benefits)

Federal Employment Tax Treatment

Federal income
tax withholding
(FITW)

Social Security
and Medicare
taxes (FICA)

Federal
unemployment
tax (FUTA)

Railroad
retirement taxes
(RRTA)

General rule: Benefits, including lifestyle spending account benefits, are subject to employment taxes unless a specific exclusion applies.

Note: Even benefits that are excludable from income for income tax purposes are not always excludable for employment tax purposes.

Federal Tax Treatment – Employer Deductions

- General rule: Under Internal Revenue Code Section 162(a), employers can claim a tax deduction for ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business.
 - Includes “a reasonable allowance for salaries or other compensation for personal services actually rendered.”

Benefits Provided Under LSAs: Tax Treatment

- LSAs are **not** a tax-advantaged account like FSAs, HSAs and HRAs.

Lifestyle
Spending
Accounts (LSAs)



Flexible
Spending
Accounts (FSAs)

Health Savings
Accounts
(HSAs)

Health
Reimbursement
Arrangements
(HRAs)

Comparison to Tax Advantaged Accounts

- Tax advantaged accounts are subject to certain contribution limits and are subject to other limiting rules.
 - Contribution Limits set by IRS. Limits for 2024:
 - Health FSAs - \$3,200
 - HSAs - \$4,150 single/\$8,300 family
 - DCAPs - \$2,500 single/\$5,000 married
 - HRAs – \$2,100 for an excepted benefit HRA
 - Other Rules – for example:
 - FSAs are subject to the uniform availability rule and “use it or lose it” rule
 - HSAs must be coupled with a high deductible health plan and no other disqualifying coverage is permitted

Comparison to Tax Advantaged Accounts

- Only eligible expenses may be reimbursed under tax advantaged accounts.
 - **Health FSA, HRA and HSA** – only reimburse for qualified medical expenses
 - Internal Revenue Code Section 213(d) medical care
 - IRS Frequently Asked Questions about medical expenses related to nutrition, wellness and general health
 - IRS Publication 502, Medical and Dental Expenses
 - **DCAP** – only reimburse for qualified dependent care expenses
 - Internal Revenue Code Sections 129(e) and 21(b)(2)

Lifestyle Spending Accounts: Tax Treatment

- Generally, reimbursements from an LSA are taxable to employees/participants.
 - Employers may not want to offer reimbursement for those benefits in which a specific exclusion from income tax applies (e.g., medical care) as part of an LSA.
- Consider when the taxable event for the employee occurs.
 - Doctrine of Constructive Receipt.
- Consider Internal Revenue Code Sections 409A and, if applicable, 457(f).
- Consider whether employer may deduct reimbursement of expenses for LSA

Are LSAs subject to ERISA?

- ERISA covers two types of plans: *employee pension benefit plans* and *employee welfare benefit plans*. An “employee welfare benefit plan is -

“... any **plan, fund or program** which was heretofore or is hereafter **established or maintained by an employer** or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained **for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or otherwise, (A) medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 302(c) of the Labor Management Relations Act, 1947 (other than pensions on retirement or death, and insurance to provide such pensions).**” ERISA Sec. 3(1).

Are LSAs Group Health Plans?

- A **group health plan** is -

“an employee welfare benefit plan to the extent that the plan provides **medical care** ... to employees or their dependents ... directly or through insurance, reimbursement, or otherwise.”

– **Medical care** means “amounts paid for –

- (A) the diagnosis, cure, mitigation, treatment, or prevention of disease, or amounts paid for the purpose of affecting the structure or function of the body,
- (B) amounts paid for transportation primarily for and essential to medical care referred to in subparagraph (A), and
- (C) amounts paid for insurance covering medical care referred to in subparagraphs (A) and (B).”

ERISA Sec. 733(a).

Group Health Plan- Excepted Benefits

- If a benefit provides medical care and is a group health plan, does it qualify as an “excepted benefit”?
 - **If yes**, the benefit is not subject to HIPAA’s portability rules, ACA’s market reform mandates, MHPAEA, surprise billing and transparency requirements.
 - **If no**, the benefit must be offered as part of a group health plan that meets the full range of group health plan requirements.

LSAs: Legal and Compliance Recap

- Because LSAs are taxable, LSAs avoid many legal, regulatory and compliance requirements applicable to tax-advantaged accounts.
- Employers should be careful that LSAs do not to create a group health plan.
- Consider written plan/program document and communication to employees.

Questions?



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Thank You