



CONNER
STRONG &
BUCKELEW

legislativeUPDATE

December 18, 2012

Health FSA \$2,500 Plan Year Limit

Healthcare reform added a new rule limiting salary reduction contributions to all health flexible spending accounts (FSAs) to \$2,500. This limit applies on a plan year basis and is effective for health FSA plan years beginning after December 31, 2012. IRS [Notice 2012-40](#) provides guidance on the effective date of the \$2,500 limit and when and how plans should be amended to comply with the limit.

If a plan's maximum health FSA election is \$2,500 or less, it is not necessary to make any changes. If a plan's current maximum health FSA election exceeds the \$2,500 limit, the plan document must be amended by the start of the plan year beginning after December 31, 2012 to state the new health FSA election amount. A cafeteria plan offering a health FSA that fails to comply with the limit and include the limit in the plan document will potentially result in the cafeteria plan's loss of its qualified status and taxation of all benefits. The good news is that plan sponsors actually have until December 31, 2014 to adopt a plan amendment to comply with this \$2,500 limit. The amendment can be effective retroactively, provided the plan operates in accordance with the new limit for plan years beginning on or after December 31, 2012. The plan amendment and Summary of Material Modification (SMM) language can be as simple as: "The Health Flexible Spending Account maximum annual contribution per participant shall be \$2,500 effective January 1, 2013."

There are various decisions to be made and actions to be taken in order to implement the \$2,500 limit. SPDs, election forms, enrollment materials, and other employee communications should be reviewed and revised as needed to describe the limit. Other guidance and clarifying rules should be considered:

- In the case of a short health FSA plan year that begins after 2012, the limit must be prorated based on the number of months in the short plan year.
- The limit applies only to salary reduction contributions under a health FSA and doesn't affect the amount permitted for reimbursement under other employer-provided coverage under the cafeteria plan, such as a dependent care FSA.
- The limit applies to health FSA employee salary reduction contributions. Non-elective employer contributions to a health FSA (e.g., matching or seed contributions, or flex credits) generally do not count toward the limit. However, if employees may elect to receive the employer contributions in cash or as a taxable benefit, then the contributions will be treated as salary reductions and will count toward the limit if contributed to the health FSA.
- In the case of a plan providing a grace period (which may be up to 2-1/2 months), unused

health FSA salary reductions that are carried over for use during the grace period will count toward the limit only in the plan year for which they were made; they do not count toward the limit for the subsequent plan year.

- If an employee participates in multiple health FSAs maintained by members of a controlled group or affiliated service group, then salary reductions to the health FSAs are aggregated and a single \$2,500 limit applies. In contrast, if the employers are not members of a controlled group or affiliated service group, then the employee may make salary reductions of up to \$2,500 under each employer's health FSA.
- The limit is a flat dollar amount and applies on a per-employee basis, regardless of how many other individuals' medical expenses are reimbursable under the employee's health FSA (e.g., a spouse or other family members). Therefore, employees with family members are not permitted to make higher health FSA salary reductions. However, spouses who are each eligible for their own employment-based health FSAs will have separate limits and can each make health FSA salary reductions up to the limit (or, if lower, the limit under the applicable health FSA), even if they have the same employer and participate in the same health FSA.
- Relief is provided for certain salary reduction contributions exceeding the \$2,500 limit that are due to a reasonable mistake and not willful neglect and that are corrected by the employer.

Employers are advised to continue to monitor healthcare reform developments. Should you have questions about this or any aspect of federal health insurance reform, contact your Conner Strong & Buckelew account representative toll free at 1-877-861-3220. For a complete list of Legislative Updates issued by Conner Strong & Buckelew, visit our online [Resource Center](#).



connerstrong.com



877-861-3220



news@connerstrong.com



Change My Preferences

CONNER
STRONG &
BUCKELEW

INSURANCE | RISK MANAGEMENT | EMPLOYEE BENEFITS

in

[Click here to change your email preferences or unsubscribe from all communication.](#)