

SESSION  
CASES

legislativeUPDATE

June 2012

## New Transition Relief for FSA Plan Year Limit

Healthcare reform added a new rule limiting salary reduction contributions to a health flexible spending account (FSA) to \$2,500 effective for “taxable years” beginning after December 31, 2012. New [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. The notice also requests comments on potential modifications to the “use-it-or-lose-it” rule.

The notice provides the following significant transition relief:

- the \$2,500 limit will not apply for plan years that begin before January 1, 2013 (transition relief is available for non-calendar year plans that begin before 2013), and
- plans may adopt the required amendments to retroactively reflect the new \$2,500 limit at any time through the end of calendar year 2014, provided that the plan otherwise operates in accordance with the requirements.

Additionally, the notice clarifies that:

- the term “taxable year” refers to the plan year of the cafeteria plan and not the tax year of the sponsor;
- a plan can't change its plan (tax) year for the principal purpose of delaying the application of the \$2,500 limit;
- if a cafeteria plan has a short plan year beginning after 2012, the \$2,500 limit must be prorated accordingly;
- in the case of a plan providing a grace period (which may be up to 2-1/2 months), unused salary reduction contributions to the health FSA for plan years beginning in 2012 or later that are carried over into the grace period for that plan year will not count against the \$2,500 limit for the subsequent plan year;
- the \$2,500 limit applies only to employee salary reduction contributions under a health FSA and doesn't affect the amount permitted for reimbursement under other employer-provided coverage, such as a dependent care FSA; and
- 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.

The agencies are also considering modification of the “use-it-or-lose-it” rule,” which prohibits any unreimbursed FSA contribution or benefit from reverting back to the employee or applying to a

subsequent plan year or period of coverage. Notice 2012-40 requests comments on whether the rule should be modified to provide a different form of administrative relief (instead of, or in addition to, the current 2-1/2 month grace period rule). IRS is seeking comments by August 17, 2012 on whether and how the rule should be modified.

The Obama administration continues to issue guidance implementing healthcare reform according to the original timetable set out under the 2010 law, with the assumption that healthcare reform will survive the Supreme Court challenge and this year's election cycle. Accordingly, 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.](#)