



## **IRS Guidance Puts In Extended Date For FSA Limits, Relieves The Pressure On Plan Sponsors**

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Employers around the country are waking up to a serious and unexpected problem with their health care flexible spending accounts. The health reform law enacted several years ago quietly limited these popular "FSA" benefits to \$2,500 per year, effective January 1, 2013. But the express terms of the law conflict with the explanation provided by Congress, and many employers have been scratching their heads trying to figure out when plans must be changed to meet the requirements of the new law, and what amendment language must say.

Last week, the IRS issued long awaited guidance which answers many of the questions surrounding the new limit (Notice 2012-40). The Notice also may open the door for addressing some policy issues built into the deferral ceiling.

Here's the problem: The law says that FSAs are not "qualified" under tax law unless the plan provides that an employee's salary deferral to fund the FSA does not exceed \$2,500 "for any taxable year" beginning after December 31, 2012. "Qualified" status is important because if an FSA is not qualified, benefits payable under the plan become taxable income.

Last week's IRS guidance indicates the \$2,500 limit will apply to the FSA's plan year beginning in 2013. That means, in the case of the year ending June 30, 2012, the new limit is effective for deferrals on and after July 1, 2013. Employee elections for the 2012 – 2013 year will remain in place for the entire plan year, and the FSA will be administered in the 2012 – 2013 year without the new limit.

Plan amendments incorporating the new limit do not have to be adopted until the end of calendar year 2014. The extended date relieves the pressure on plan sponsors and administrators to amend plans for the limit within the next seven months. Before amendment, FSAs must be operated consistently with the new ceiling one it is effective so the plan will remain qualified. If the limit is inadvertently exceeded, the Notice provides a relief mechanism for correcting the excess and avoiding disqualification of the plan.

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