



Use or Lose Rule Modified: FSA Carryovers Up to \$500 Allowed

The flexible benefits community has supported a change/elimination of the health FSA use or lose rule for many years. With Notice 2013-71, the IRS modifies the long-standing rule and allows participants to carryover up to \$500 of unused health FSA amounts remaining at the end of a plan year.

Background

Effective for plan years beginning after 12/31/12, healthcare reform limits a participant's annual health FSA salary reduction contribution to \$2500.

Under the use or lose it rule, unused health FSA account balances at the end of the FSA plan year were forfeited unless a plan had a grace period. The grace period rules allow participants to use unused health FSA amounts at the end of a plan year to reimburse expenses incurred during a grace period of up to 2 ½ months after the end of the plan year. The health FSA plan document must specifically provide for a grace period. In addition to a grace period, health FSAs may also provide a "run-out period" which allows participants additional time to submit claims incurred during the plan year.

Carryover vs. Grace Period

Employers can now offer a carryover or a grace period, but not both. Since the features of each vary, it is important to carefully consider which option to offer. In addition to timing issues, employers considering whether to adopt a carryover for the 2013 plan year (carryover of unused funds from 2013 to 2014) should consider potential claims of employees who planned to have more than \$500 available during the grace period.

Offering a Carryover

There are significant issues to consider (e.g. impact on HSA eligibility) and steps to take to adopt the new carryover feature.

Health FSA plan documents must be timely amended to offer a carryover and to eliminate a grace period. Additionally, participants must be informed about the carryover provision and how it operates.

While IRS Notice 2013-71 provides welcome relief from the use or lose rule, it also creates timing, communication, and compliance issues for employers. We can help you navigate through these issues. Please contact our office if you have any questions.

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