



### **Deadline 3: HEART Act Requires Changes to Health FSA**

As the third in a series of six articles on looming compliance deadlines for health plans, this article will remind you of the changes to health flexible spending accounts (“Health FSAs”) included in the Heroes Earnings Assistance and Relief Tax Act (“HEART Act”).

Under this legislation, plan sponsors may amend Health FSAs to allow qualified reservist distributions of all or a portion of an unused Health FSA, provided the participant has been ordered or called to active duty for at least 180 days and the distribution is made on or after the date of the order or call to active duty and before the last day of the plan year.

*The legislation helps reservists called active duty to avoid the harsh penalties of the “use it or lose it” rule, and may provide needed funds for the family back home.*

In a later Notice, the IRS later clarified three important items:

- Compliance with the qualified reservist distribution rules is voluntary by plan sponsors;
- A plan sponsor that desires to allow such distributions must adopt retroactive amendments for 2008 and 2009 by **December 31, 2009**; and
- The amount of the distribution will be included in the participant’s income.

*Most participants would still rather pay the tax than forfeit the balance of the FSA.*

**To Do:** Employers that desire to provide this additional benefit to their reservist employees must adopt this amendment by year end, and notify employees of this important change.