

United States Senate

WASHINGTON, DC 20510

December 17, 2013

Director Katherine Archuleta
U.S. Office of Personnel Management
1900 E Street, N.W.
Washington, DC 20415

Dear Director Archuleta:

We write to urge you to modify the “use-or-lose” rule for Health Flexible Spending Arrangements available to federal employees through the FSAFEDS program to allow an annual rollover of up to \$500 in unspent funds.

The health FSA is an important financial tool that permits workers to set aside up to \$2,500 annually in tax-preferred accounts to pay for unreimbursed health expenses, such as copayments for doctor visits, prescription drugs, and medical supplies. Surveys of eligible participants indicate that the primary reason for declining to enroll or for underfunding their accounts is concern about the “use-or-lose” rule, which requires participants to spend their entire contribution before the end of their plan year or forfeit the unused funds back to their employer.

According to OPM data, in 2012, approximately 322,700 federal workers held health FSAs, and the average election amount was \$2,050. That year, 30,940 federal employees forfeited an average of \$392 each in contributions because of the “use-or-lose” rule. It is unreasonable to expect health FSA participants to accurately forecast their out-of-pocket medical expenses a year in advance, and it is unfair to penalize them at the end of the plan year should their estimates prove to be inaccurate.

Fortunately, on October 31, 2013, the U.S. Department of the Treasury and the Internal Revenue Service issued a notice modifying the “use-or-lose” rule for health FSAs, permitting employers to allow participants to carry over up to \$500 of their unused balances remaining at the end of a plan year. Some plan sponsors have chosen to adopt the carryover provision for 2013, but federal employees may only benefit from the Treasury/IRS ruling if your agency takes action. We are told that, as of last week, OPM had not yet decided whether to extend the carryover option to the federal workforce.

We urge you to provide this benefit to federal employees without delay.

Sincerely,









Chris Coover

Ray

Al Franken

Debra Sax

Whitman

Jenny Boddie

Butler

Jeanne Shaker

Bob Coover

Myra Gardner

Samuel Brown

Robert Jones

Elizabeth Warren

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