

August 24, 2004

Senate Finance Chairman Requests Rewrite of FSA "Use or Lose" Rule

Senate Finance Chairman Chuck Grassley yesterday urged the Treasury Department to rewrite the "use it or lose it" rule. In a letter to Secretary John Snow, also released as a press release (<http://finance.senate.gov/press/Gpress/2004/prg082304.pdf>), Sen. Grassley commented that it was unjust to employees and encouraged an inefficient allocation of health care dollars.

While acknowledging a variety of legislative proposals has been advanced to modify or eliminate the rule, he noted that "use it or lose it" was created administratively (even though the proposed regulations have never been finalized) thus, it would seem that the Treasury Department does have such authority to reinterpret the rule.

Sen. Grassley said that he had heard from numerous Iowans and from taxpayers across the country that the rule makes no sense. And modifying this rule would help millions of Americans meet their health care expenses and make the FSA rules more rational.

The letter makes a point that, "First and foremost, I am aware of no other area of benefits law in which we allow-let alone mandate-that employee dollars set aside for benefit expenses revert back to the employer. The current rule unjustly enriches employers at the expense of hard-working employees who participate in FSAs." ECFC members will immediately recognize that this letter does not advocate changing the "uniform coverage" rule to help employers who must pre-fund FSAs regardless of salary-reduction contributions early in the plan year.

The letter, from one of the highest ranking senators, will receive a prompt response by Treasury. When and what it will say is hard to gage at this point. Review and updating the proposed cafeteria plan regulations has been on the list of things to do for several years and has taken a back seat to guidance for HRAs and HSAs.

It is encouraging that the Senate Finance Chairman is aware of our concerns and is working both legislatively and through the Bush Administration to advance improvements to flexible spending accounts. ECFC will continue to press for a legislative solution as well as encouraging Treasury and the IRS to make cafeteria plans and FSAs work for both employers and employees. Time is limited in this Congress; the upcoming month is likely to be dedicated to budget and appropriation bills and a post-election "lame duck session," is probable.