Employer-Funded Health FSAs Must Modify the Employer Contributions

We want to share additional ACA guidance on certain employer-funded healthcare arrangements, including health flexible spending arrangements ("health FSAs").

One of the more subtle aspects of that guidance was the fact certain health FSAs that are "stand-alone" or significantly funded by employer contributions must either make changes to ensure they are offering an excepted benefit or cease to exist. Plan sponsors face the risk of excise taxes of up to $100 per day, per participant, if modifications are not implemented.

In addition to the above, plan sponsors must designate their plan to adopt either a "cash-out" or "no cash-out" provision to the employer contributions. The summary below explains the impact of each option.

Health FSAs as "excepted benefits"

Health FSAs are considered to provide only excepted benefits if they meet two requirements:
1. The plan sponsor also makes available to the same class of participants group health plan coverage that is not limited to excepted benefits (e.g., a major medical health plan); ***and***
2. The health FSA is structured so the maximum benefit payable to any participant cannot exceed two times the participant's salary reduction election for the health FSA for the year, or, if greater, cannot exceed $500 plus the amount of the participant's salary reduction election. The amount of any participant salary reduction election may not exceed the plan maximum in a plan year. Maximum benefit payable is the combined total of employee and employer funding.

Summary

To comply with this guidance, beginning with plans renewing or beginning January 1, 2015, we will be contacting our clients who currently offer employer funded contributions to health FSAs to discuss potential solutions to modify their plan.

a. Convert the existing health FSA to a Health Reimbursement Arrangement (HRA) Plan

b. Clients that offer a "cash-out" provision will need to identify the potential cash-out options:
   i. Designate if employees are given the choice to cash-out 100% of employer funds
      - Under this design employer funds are considered a salary reduction. The employer funding and the employee election is combined; not to exceed the plan maximum.

   ii. Designate if employees are allowed only a partial cash-out of employer funds
      - Under this design employee and employer funding remains separate. Employer Funding shall not exceed the greater of: the participant's salary reduction election or $500.

c. Clients that do not offer a "cash-out " provision must follow new plan maximum guidance:
   i. Under this design employee and employer funding remains separate. Employer Funding shall not exceed the greater of: the participant's salary reduction election or $500.

Examples of Partial Cash-Out and No Cash-Out Provisions:

- Employer Funded spending account of $2550 or less annually:
  - If participant elects to defer $100 under the plan, employer funding is $500
  - If participant elects to defer $700 under the plan, employer funding is $700
  - If participant elects to defer $2550 under the plan, employer funding is $2550

- Employer Funded spending account of $1200 or less annually:
  - If participant elects to defer $100 under the plan, employer funding is $500
  - If participant elects to defer $700 under the plan, employer funding is $700
  - If participant elects to defer $2550 under the plan, employer funding is $1200

- Employer Funded spending account of $400 annually:
  - If participant elects to defer $100 under the plan, employer funding is $400
  - If participant elects to defer $700 under the plan, employer funding is $400
  - If participant elects to defer $2550 under the plan, employer funding is $400