



U.S. SENATE COMMITTEE ON

# Finance

SENATOR CHUCK GRASSLEY, OF IOWA - CHAIRMAN

<http://finance.senate.gov>

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## MEMORANDUM

To: Reporters and Editors  
Re: Treasury response on use-it-or-lose-it rule  
Da: Wednesday, Jan. 5, 2005

Sen. Chuck Grassley, chairman of the Committee on Finance, last August asked the Treasury Department to improve the use-it-or-lose-it rule for Flexible Spending Accounts (FSAs). He made the following comment today on the Treasury Department's response.

"I'm glad the Treasury Department is looking at ways to improve the use-it-or-lose-it rule, but I'm disappointed that the department seems reluctant to make changes to a proposed rule that's never been finalized. That rule doesn't pass the common sense test, and it's hurt taxpayers for more than 20 years. I also don't understand the argument that the Treasury Department and the IRS don't have the power to change the rule. If they wrote it, surely they have the power to change it. Regardless, I want to resolve this issue, and I'm looking for the best way to do that. Americans need every possible tool to meet their health care expenses. I hope they don't have to wait another 20 years before someone writes a more common sense rule."

Grassley's initial request to the Treasury Department follows. The Treasury Department's response is attached.

For Immediate Release  
Monday, Aug. 23, 2004

### Grassley Urges Rewrite of Rule Costing Employees Health Savings

WASHINGTON – Sen. Chuck Grassley, chairman of the Committee on Finance, today urged the Treasury Department to change a decades-old policy penalizing employees who use tax-favored flexible spending accounts for health care.

"These flexible spending accounts are a good way to help employees meet their health care needs," Grassley said. "Unfortunately, employees have to use the money in their accounts by the end of the year, and they lose that money if they don't. That doesn't make any sense. And it's a deterrent to using flexible spending accounts. I hope the Treasury Department will fix this problem so more Americans will feel comfortable setting up these useful accounts."

Grassley wrote a letter to Treasury Secretary John Snow, saying the Treasury Department should use its administrative authority to rewrite the “use it or lose it” rule so employees don’t lose all of the money in their health flexible spending accounts at the year’s end. The text of his letter follows.

August 23, 2004

The Honorable John W. Snow  
Department of Treasury  
1500 Pennsylvania Ave.  
Washington, D.C. 20220

Dear Secretary Snow:

I am writing with regard to the so-called “use it or lose it” rule that applies to health flexible spending accounts (FSAs). As you know, section 125 of the Internal Revenue Code permits employees to contribute at the beginning of the year to an FSA in lieu of other forms of compensation. Then, as out-of-pocket (i.e., not covered by insurance) health expenses are incurred, the employee may pay for them out of the FSA with pre-tax funds. Under proposed section 125 regulations, the employee forfeits unused FSA balances at the end of the year to the employer (the “use it or lose it” rule).

The Administration advanced proposals to modify the “use it or lose it” rule in the Treasury Department’s FY2002, FY2003, and FY2004 budget proposals. I believe that there are strong policy justifications for taking such action. 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.

In addition, the “use it or lose it” rule causes inefficient allocation of health care dollars by providing an incentive for employees to incur unnecessary health care expenses at the end of the year to use up the account. Of course, the “use it or lose it” rule also has the effect of dramatically reducing employee participation in FSAs because employees do not want to risk forfeiting or wasting their hard-earned money.

I know that a variety of legislative proposals have been advanced to modify or eliminate the “use it or lose it” rule. However, I would urge the Treasury Department to examine closely its authority to modify the “use it or lose it” rule administratively. Since the “use it or lose it” rule was created administratively -- and was done so through proposed regulations that have never been finalized -- it would seem that the Treasury Department does have such authority. I have heard from numerous Iowans in my home state and from taxpayers across the country that the “use it or lose it” rule makes no sense. Modifying this rule would help millions of Americans meet their health care expenses and make the FSA rules more rational.

Thank you in advance for your consideration of this letter. I look forward to your response.

Sincerely,

Chuck Grassley  
Chairman, Finance Committee

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