Flexible Spending Account Plan Fund Forfeitures
Proposed One-Time Distribution to FY24 FSA Plan Participants

In accordance with federal IRS rules, the State's health and dependent care flexible spending account plan rules state that plan participants who fail to use all of their monies, will forfeit those funds to the State. Historically, the State has used fund forfeitures to pay the administrative fees on behalf of plan participants and also to account for health care FSA dollars lost/expended (by participants who leave State employment during the plan year after being reimbursed for health care expenses in excess of contributions made).

Statewide Benefits Office (SBO) and the FSA administrator, ASI Flex, follow a plan year close-out process to determine the final forfeiture balances. This is typically completed 9 months past the end of the plan year (for example, the FY22 plan year will be officially closed by 3/31/23). On average, the admin fees/lost dollars run about $275,000 per plan year. In the last 10 years, the State has maintained a running balance carryover sufficient to cover the following year's estimated admin fees/lost dollars. This strategy has avoided SBO requesting general funds to cover the admin costs and/or imposing a monthly participant fee.

Currently, we have two FSA plans years which overlap with the COVID-19 PHE and are officially closed. The FSA fund forfeitures in each of these two plan years were about 40% higher than prior to the COVID-19 Public Health Emergency (PHE) and represent $1.1M in fund forfeitures. The increase in fund forfeitures is expected to continue at a slightly lower rate for the FY22 plan year and is estimated to bring the running balance to approximately $1.5M.

SBO and ASI Flex discussed several IRS permissible options for reducing the running balance with only one being administratively feasible, plan participant friendly and easy to understand – **establish a reasonable and consistent amount to add to the FY24 FSA Health and Dependent Plan Year Maximums as a one-time plan contribution.**

1. The IRS does permit the employer or plan to make a contribution above the employee maximum as long as the amount is the same for all FSA eligible participants and is noticed to FSA benefit eligible employees in advance and for the following plan year. IRS also requires the plan documents are amended to reflect the employee and employer/plan year amounts.
2. SBO is estimating the one-time plan contribution to be in the range of $150 to $165. The amount was derived by using the current plan year FSA participation of 6,221 employees and estimating a 10% increase for FY24 (6,843 participants).
3. SBO is also proposing an increase in the FY24 plan year employee minimum for health care and dependent care FSA is increased from the current $50 to $150 to $165 for both to deter employees from enrolling in FSA simply to get the one-time contribution. The plan can return the min to $50 the following year.
4. If approved, the plan documents, communications and FSA enrollment portal would reflect the health care and dependent FSA IRS employee contribution maximums (which would not be reduced by the one-time plan contribution) and also indicate a one-time State plan contribution of $150.
5. During OE, the employee would be able to elect how they would want to apply the $150 to $165 amount to either health or dependent care.

Next Steps:

- Address any questions from the SEBC
- Finalize the recommended FY24 fund forfeiture per plan participant amount
- Present for vote and approval at the March 6, 2023 SEBC meeting