

Amendment Deadline Approaching for Enhanced FSA Grace Periods and Carryovers

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PRACTICES Employee Benefits and Executive Compensation

As reported in our previous blog post [here](#), the Consolidated Appropriations Act, 2021 (the “**CAA**”) and IRS Notice 2021-15 (the “**Notice**”) provided plan sponsors of cafeteria plans (each, a “**Plan**”) with various options for easing the “use-it-or-lose-it” and mid-year election change rules ordinarily applicable to health flexible spending accounts and dependent care flexible spending accounts (collectively, “**FSA**”) offered under a Plan. Among these options, the CAA and the Notice provided for (i) enhanced flexibility with respect to carryovers of unused FSA amounts from the 2020 and 2021 plan years (the “**Enhanced Carryover**”); and (ii) an extension of the permissible period for incurring FSA claims for plan years ending in 2020 and 2021 (the “**Enhanced Grace Period**”).

In order to adopt the Enhanced Carryover and/or the Enhanced Grace Period under a Plan for the permitted plan years (i.e., 2020 and/or 2021), the Plan must be amended no later than the last day of the first calendar year beginning after the end of the plan year in which the amendment became effective. For a calendar year Plan that first implemented the Enhanced Carryover or the Enhanced Grace Period for the 2021 plan year, the amendment deadline is December 31, 2022. Plan sponsors may want to consult their legal counsel for assistance with preparation of a standalone Plan amendment or amendment provisions for incorporation into an omnibus year-end Plan amendment.