

IRS Clarifies Optional Flexible Spending Account and Cafeteria Plan Enhancements

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In 2020, the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (the **Act**) was enacted. The Act is part of the Consolidated Appropriations Act of 2021. The Act provides employer sponsors of cafeteria plans, including health flexible spending accounts (**HFSAs**) and dependent care flexible spending accounts (**DCFSAs**) (collectively, **FSAs**), with helpful new options for easing the normal FSA use-it-or-lose-it and mid-year election change rules.

Generally, the Act provides for (i) flexibility with respect to carryovers of unused FSA amounts from the 2020 and 2021 plan years (**Enhanced Carryover**); (ii) extension of the permissible period for incurring FSA claims for plan years ending in 2020 and 2021 (**Enhanced Grace Period**); (iii) a special rule regarding post-termination reimbursements from HFSAs during plan years 2020 and 2021 (**HFSA Post-Termination Option**); (iv) a special claims period and carryover rule for DCFSAs when a dependent ages out during the COVID-19 public health emergency; and (v) mid-year election changes for cafeteria plan coverage for plan years ending in 2021 (**Enhanced Election Option**). See our prior blog post regarding the Act [here](#).

The IRS recently issued Notice 2021-15 (the **Notice**) to provide clarification regarding certain aspects of the new options described above, including the following:

- The plan sponsor has the discretion to limit the amount of unused funds remaining in an HFSA or DCFSA as of the end of a plan year that are subject to the Enhanced Carryover.
- The Enhanced Carryover may be adopted under FSAs that currently have a grace period, and vice versa, with respect to the Enhanced Grace Period.
- Plan sponsors may amend their FSAs to allow employees to opt out of the Enhanced Carryover in order to preserve eligibility to participate in a health savings account.
- A plan sponsor is permitted to limit the unused amounts subject to the HFSA Post-Termination Option to the amount of salary reduction contributions made by the employee through the date he or she ceased to be a participant.

The Notice also provides other helpful guidance. For example, the Notice sets out a sample attestation form plan sponsors may use to meet the Enhanced Election Option requirement for written attestation regarding other comprehensive health coverage. This form can be used when an employee revokes an existing election, and does not make a new one, under a group health plan.

To adopt any of the new options under the Act and the Notice, a plan sponsor must amend its cafeteria plan no later than the last day of the first calendar year beginning after the end of the plan year in which the amendment is effective. The plan (including the FSAs) must be operated consistently with the terms of the amendment during the period beginning on the effective date of the amendment and ending on the date the amendment is actually adopted. Also, the plan sponsor must inform all employees eligible to participate in the cafeteria plan of the changes to the plan.

The Notice is available [here](#).