



Consolidated Appropriations Act (CAA), 2021

Health & Dependent Care FSA FAQs

Revised 3.22.21

On December 27, 2020, the Consolidated Appropriations Act (CAA) was signed into law, providing additional coronavirus pandemic relief.

The CAA affects Health and Dependent Care Flexible Spending Accounts (FSAs), permitting employers to amend their FSA plans to 1) allow employees to carry over unused benefits for plan years ending in 2020 and 2021 or 2) extend the grace period from a maximum of two-and-a-half months to a maximum of 12 months for plan years ending in 2020 and 2021. In addition, the CAA permits prospective modification of elections, allows terminated employees to receive reimbursements, and increases the maximum age of an eligible dependent care beneficiary to 13.

The IRS issued Notice 2021-15 on February 18, 2021, providing guidance on Section 214 of CAA, which applies to FSAs and cafeteria plans.

The following FAQs represent our current understanding of the CAA provisions as of March 22, 2021.

GENERAL

Q1. Are CAA extensions to an FSA's grace period and increases to amounts that can be carried over optional?

A1. Yes. An extension of the grace period or an expansion of the carryover feature is optional. Any employer that adopts an FSA extension or expansion must amend the FSA plan document.

Q2. If an employer chooses to amend its FSA plan, will the changes apply retroactively?

A2. Yes. The amendments apply retroactively for the 2020 and 2021 plan year. The amendment may be retroactive if 1) the amendment is adopted by the last day of the first calendar year beginning after the end of the plan year in which the amendment is effective, and 2) the plan or arrangement is consistently operated with the terms of the amendment during the period beginning on the amendment's effective date and ending on the date the amendment is adopted.

CARRYOVER

Q3. Does the CAA allow an employer to add a retroactive carryover feature to an FSA plan?

A3. Yes. The CAA permits an employer to add a carryover feature to a plan that currently has a grace period or provides for a carryover. Employers can also add a carryover feature to a plan that currently does *not* have a grace period or provide for a carryover.

Q4. Can employers amend an FSA plan to have a carryover feature *and* a grace period?

A4. No. An FSA plan can have either a carryover feature or a grace period, not both. It is not expected that the IRS will modify this rule.

Q5. Can an FSA plan have a carryover feature for the new plan year *and* take advantage of the grace period extension?

A5. For any plan year, an FSA plan cannot have both a carryover feature and a grace period. An employer could, however, amend an FSA plan with current carryover feature to replace the carryover provision with a grace period for a subsequent year.

Q6. Can an employer set a minimum or maximum carryover amount?

A6. Yes. An employer may amend the plan to carry over an amount up to the entire unused amount remaining in the employee's FSA as of the end of the plan year.

Q7. Can an employer that currently offers a \$550 carryover balance amend the FSA plan document to allow a carryover of *any* unused benefits or contributions remaining?

A7. Yes. An employer may amend the FSA plan document before the end of the calendar year following the plan year for which the carryover amount was increased. The amendment must be in writing and employees must be notified of the change as soon as administratively feasible.

For FSAs that are subject to ERISA, the plan administrator must provide a Summary of Material Modification (SMM) within 210 days following the close of the plan year in which the amendment was effective.

Q8. Does the legislation allow an employer to refund money?

A8. No. The legislation permits additional flexibility for an employee who is enrolled in an FSA plan to submit a claim for proper expense reimbursement only. The employee is not permitted to receive a cash out of any kind. This response will not differ if an employee has a carryover versus a grace period or vice versa.

INTERACTION WITH OTHER COVERAGE

Q9. What if an employer wants to extend the FSA grace period for the 2020 plan year but the open enrollment period for 2021 is closed?

A9. The employer may amend the plan to permit its employees to make a prospective election change including revoking an election, making one or more elections, or increasing or decreasing an existing election. Moreover, an employer may amend the plan to permit the use

of employee contributions for medical care or dependent care expenses incurred during the first plan year that begins on or after January 1, 2021, through the end of the 2021 plan year.

Q10. Are otherwise HSA-eligible employees still eligible for an HSA if healthcare FSA amounts are carried over or if the employer extends the healthcare FSA grace period?

A10. Existing guidance will apply to the new carryover and grace period extensions. Employees who carry over unused healthcare FSA amounts or who take advantage of the extended healthcare FSA grace period will not be eligible to contribute to an HSA. An employee must still forfeit any funds in a healthcare FSA or carry over the funds to a limited FSA in order to be eligible to contribute to an HSA. An employer may amend its plan to permit forfeiture on an employee-by-employee basis or to automatically enroll an employee that elects an HDHP in an HSA-compatible healthcare FSA.

TERMINATED PARTICIPANTS

Q11. How can terminated participants get reimbursed from their healthcare FSAs?

A11. An employer, in its discretion, may amend its plan to permit employees to apply any unused amounts remaining in a healthcare FSA as of the end of the plan year ending in 2020 or 2021 to reimburse expenses incurred for the same qualified benefit up to 12 months after the end of the plan year. This option is available for an employee who ceases to be a participant as the result of termination of employment, change in employment status, or a new election during calendar year 2020 or 2021. Moreover, if an employee would otherwise be a qualified beneficiary with respect to coverage by a healthcare FSA, a limited extension of coverage will not prevent the individual from having a loss of coverage resulting in a qualifying event. The employer is required to offer COBRA continuation coverage and any applicable notices.

DEPENDENT CARE

Q12. Is the DCA participant eligible through the age of 13, or is eligibility based on employer choice?

A12. The provision is discretionary.