

## Consolidated Appropriations Act (CAA) Webinar Q&A

Revised 4.1.21

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 2½ 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 age 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 are actual questions asked and answered during our live CAA webinar and represent our current understanding of the CAA provisions as of April 1, 2021.

### HEALTH FLEXIBLE SPENDING ACCOUNTS

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**Q1. Is the Health FSA carryover \$550?**

A1. The FSA carryover is up to the entire amount remaining, as determined by the employer.

**Q2. Is there an FSA template letter that can be accessed and used to communicate to all staff?**

A2. Please contact your service team for this request.

**Q3. What happens when an employee elects \$2,000, contributes only \$500, and then requests to stop participating in the Health FSA? Since the account is front-loaded, how is the \$2,000 treated if already used?**

A3. The employer is permitted to amend the plan to design the plan in certain ways, including preventing an employee from making an election change to an amount less than the reimbursements received. The plan document would have to be reviewed for more specific choices.

**Q4. Can someone without a current Health or Dependent FSA elect one, or is this just for existing participants?**

A4. Plans will be permitted to add a Health or Dependent FSA for their participants.

**Q5. Does the extended grace period apply to both Health and Dependent FSAs?**

A5. Yes, that is correct.

#### ***DEPENDENT CARE FLEXIBLE SPENDING ACCOUNTS***

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**Q6. Can employees contribute up to \$10,050 into their Dependent FSA for 2021? Are they allowed to make midyear changes?**

A6. An employer may permit midyear election changes by amending the plan. A retroactive amendment is permitted only if the employer adopts the amendment no later than the last day of the first calendar year beginning after the end for the plan year in which the amendment is effective.

**Q7. What are the guidelines regarding the new limit of \$10,500?**

A7. We are awaiting guidance from the IRS regarding the new limit, which should be available in the next several weeks.

**Q8. If we originally failed nondiscrimination testing due to low participation in Dependent FSA among non-highly compensated employees, can the new limit be offered to participants?**

A8. The amounts carried over or available during an extended claims period are disregarded for nondiscrimination purposes.

**Q9. Dependent FSA did not allow for carryover. Does it now allow carryover for both 2020 to 2021 and 2021 to 2022? Is it correct that the Dependent FSA can only carry over into 2021 and not 2022?**

A9. The carryover is now permitted for the plan year ending in 2020 *and* 2021 into the subsequent plan year. So a Dependent FSA carryover is now allowed for 2020 to 2021 and 2021 to 2022.

**Q10. Can Dependent FSA contributions that have not been used be saved?**

A10. Yes, Dependent FSA contributions may be carried over for 2020 and 2021 plan years.

**Q11. Is Dependent FSA reimbursement for children up to age 13 applicable only for the 2020 plan year? How does this work since the plan year has ended?**

A11. Yes, it is for the 2020 plan year. You can retroactively amend the plan and reprocess claims for those that meet the requirements. Also, the employer is permitted to carry over funds remaining for those that aged out for use in the subsequent plan year (2021).

**Q12. Has guidance been made available regarding new elections?**

A12. We are awaiting additional guidance on how this will function.

#### ***CARRYOVER***

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**Q13. Can we accumulate the full amount of carryover for 2 years?**

A13. For 2 plan years, yes.

**Q14. What is meant by not having a carryover *and* a grace period.**

A14. IRS guidance allows plans to use only one of the two features for the plan year. A plan could, however, use a carryover feature for 2020 and a grace period feature for 2021. This limited exception is only available due to the COVID-19 pandemic.

**Q15. Regarding the carryover or grace period, what happens to the funds in an account if you lose your job?**

A15. If the plan has a grace period, the plan may adopt an amendment to permit terminated employees to use the funds for a specific period of time (up to the end of the plan year). The employer may also specify the funds that may be available. For example, the employer could make available only those amounts already contributed or the balance available at the time of the election.

**Q16. Can an employer offer Dependent FSA funds to carry over in the next plan year if a claim is filed after the deadline for the current plan year?**

A16. The employee would have until the runout to file a request for reimbursement. The employer may permit a carryover for the plan years ending in 2020 or 2021 only.

**Q17. If the plan year is from 7/1/2019 – 6/30/2020, and someone filed a claim after the deadline, can an employer offer the Dependent FSA funds to carry over in the next plan year?**

A17. The employee would have until the runout to file a request for reimbursement. The employer may permit a carryover for the plan years ending in 2020 or 2021 only.

#### ***GRACE PERIODS***

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**Q18. With the grace period, do the expenses need to be incurred in the previous year?**

A18. Expenses incurred during the grace period also qualify for reimbursement from the funds contributed in the previous year.

**Q19. The new extended grace period allows for 12 months to be added. Because the normal 2020 grace period ends March 15, would the additional 12-month grace period begin on March 16?**

A19. No. An employer can amend the grace period to a full 12 months in place of 2½ months. It is *not* a total of 14½ months.

**Q20. Is it true that allowing the full amount of remaining funds for carryover versus extending the grace period for 12 months accomplishes the same thing? (Employers can choose one or other but not both.) Besides managing claims, are there any other employer considerations?**

A20. Yes, both options accomplish substantially the same goal. Administrative fees may apply to a plan that maintains a grace period because the plan operation spans two separate plan years.

#### ***MIDYEAR CHANGES***

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**Q21. Are employers required to allow employees to make midyear plan changes?**

A21. All provisions of the CAA are discretionary if implemented based on the nondiscrimination rules.

**Q22. Can plan participants decrease their FSA amount during the year even after they have used their entire full elected FSA amount?**

A22. Your plan document must be reviewed for specific options. But the change in election amounts is 1) discretionary, and 2) may be designed to prevent an employee from reducing the election amount to less than the amount already received as a reimbursement.

**Q23. Could someone who used the full elected FSA amount drop the coverage midyear, even though they did not contribute the amount they already used?**

A23. Yes, but an employer may prevent this by amending the plan accordingly.

**Q24. Can an employee who did not elect a Health FSA for the 2021 benefit plan, but who incurred \$1,000 of medical expenses (for example, in March 2021), participate and get reimbursed for the expenses incurred, or will the employee be reimbursed only for expenses incurred after the new election?**

A24. The election change is prospective, but the employer may amend the plan to permit a retroactive reimbursement to the beginning of the plan year or 1/1/2021.

**Q25. What are employers doing, if anything, to ensure that someone does not decrease their FSA contribution amount below what they were already reimbursed from their FSA account?**

A25. Employers are permitted to amend to include specific design choices. For example, they could permit election changes only during a specified period or once a year and could limit the amount available for reimbursement or limit the options available. So, for example, you could permit a change to the contribution amount only if it is not below the amount already received as a reimbursement.

**Q26. Does ceasing participation, but still being allowed to access previously contributed funds, only apply to the Health FSA?**

A26. The CAA provision addresses Health FSA for a participant who ceases participation. This is already permitted for Dependent FSA for plans who have allowed for this in the benefit design.

**Q27. Can participants who have received reimbursement from their health FSA for more than their current contributions stop their contribution or reduce it?**

A27. Yes, but the employer may prevent this by amending the plan document accordingly.

#### ***EMPLOYER-SPECIFIC CONSIDERATIONS***

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**Q28. Is the termination rule a mandatory rule or an option?**

A28. All provisions of the CAA are discretionary for the employer.

#### ***MISCELLANEOUS***

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**Q29. When filing COBRA paperwork, we do not supply the FSA total because it is stopped upon termination. Will we now have to supply this information for COBRA purposes, if offered?**

A29. The CAA relief is separate from COBRA continuation coverage. Whatever is done for COBRA would continue as usual. But if you amend the plan to permit a post-termination reimbursement, this change will have to be communicated to participants.