

Appropriations Act Permits Midyear FSA Elections, Unlimited Carry-Over Amounts Through 2021

Options give employees flexibility regarding FSA contributions

January 5, 2021

The Consolidated Appropriations Act, 2021 (<https://rules.house.gov/sites/democrats.rules.house.gov/files/BILLS-116HR133SA-RCP-116-68.pdf>) (CAA), signed into law near the end of 2020, gives employers the option to allow participants to roll over all unused amounts in their health and dependent care flexible spending accounts (FSAs) from 2020 to 2021 and from 2021 to 2022.

Employers can also allow employees to change their health FSA or dependent care FSA contribution rate during 2021 without requiring an election-change event such as the birth or adoption of a child, or a change in marital status.

Employers wishing to offer any of these FSA relief options must amend their Section 125 cafeteria plan to incorporate the changes. The amendment may be retroactive as long as it is adopted no later than the last day of the calendar year following the year in which the amendment is effective.

The legislative relief "may have a limited impact on taxpayers for 2020, as many will have already used their FSA benefits to avoid losing them. However, for 2021, taxpayers anticipating substantial future medical expenses may benefit from a rollover of FSA funds to 2022 (<https://cbiz.com/insights/articles/article-details/a-look-at-the-tax-and-ppp-loan-provisions-in-the-consolidated-appropriations-act>)," according to an analysis by CBIZ, a benefits and insurance services firm.

"The FSA relief is optional, and employers need to be intentional about if and how they do it and focus on employee communication (<https://www.mzqconsulting.com/blog/what-employee-benefits-professionals-need-to-deal-with-now-and-whats-coming-under-the-consolidated-appropriations-act-of-2021>)," advised MZQ Consulting, a benefits advisory firm. "If the employer allows prospective changes, they have to do so by a class of employees or across the board, not just when someone asks. As for plan documents, if an employer allows any of these changes in 2021, then by the end of 2022, they will need to approve a plan amendment."

Additional Consolidated Appropriations Act, 2021, Resources

Fiscal 2021 Omnibus and COVID-19 Relief

(<https://advocacy.shrm.org/issue/fiscal-2021-omnibus-and-covid-19-relief/>)

Legislation Extends Student Loan Repayment Benefits for 5 Years

(www.shrm.org/ResourcesAndTools/hr-topics/benefits/Pages/legislation-extends-student-loan-repayment-benefits-for-5-years.aspx)

Appropriations Act Eases Retirement Plans Rules

(www.shrm.org/ResourcesAndTools/hr-topics/benefits/Pages/appropriations-act-eases-retirement-plan-rules.aspx)

Legislation Increases Employee Health Plan Transparency

(www.shrm.org/ResourcesAndTools/hr-topics/benefits/Pages/legislation-increases-employee-health-plan-transparency.aspx)

Consolidated Appropriations Act, 2021, FAQs (www.shrm.org/hr-today/news/hr-news/Pages/coronavirus-faqs.aspx#ffcra)

Pandemic Relief

The Society for Human Resource Management (SHRM), in an April 2020 letter to Congress (<https://shrm.org/hr-today/public-policy/hr-public-policy-issues/Documents/FINAL%20SHRM%20COV4%20Priorities%204-20-2020.pdf>), advocated for FSA relief. "Congress should ensure maximum flexibility for FSAs as health care providers are limiting access to routine treatments and childcare services have been suspended, leaving FSA funds unused," wrote SHRM President and CEO Johnny C. Taylor, Jr., SHRM-SCP, and Emily M. Dickens, SHRM chief of staff, head of government affairs and corporate secretary, in the letter to Congress. "Therefore, a temporary extension of the grace period for eligible expenses and an increase in the FSA rollover amount are warranted."

The bipartisan COVID-19 relief package "will benefit work, workers and the workplace (<https://advocacy.shrm.org/issue/fiscal-2021-omnibus-and-covid-19-relief/>)," Dickens said following its passage. "We are pleased to see SHRM priorities included in the final bill such as flexibility for health and dependent care spending arrangements."

What's Changing

According to an employee benefits alert by law firm Bradley, the CAA permits plan sponsors to implement the following voluntary changes (<https://www.bradley.com/insights/publications/2020/12/new-temporary-special-rules-for-flexible-spending-accounts>) for health and dependent care FSAs:

Feedback

- **UNLIMITED CARRY-OVERS**

All unused amounts in a health or dependent care FSA may be carried over from the 2020 plan year to the 2021 plan year, and from the 2021 plan year to the 2022 plan year. This rule applies to dependent care FSAs even though carry-overs are otherwise not permitted for these accounts.

- **EXTENDED GRACE PERIOD**

The grace period for a health FSA or dependent care FSA for a plan year ending in 2020 or 2021 may be extended from two-and-a-half months to 12 months.

- **ELECTION CHANGES**

For plan years ending in 2021, participants may prospectively modify their health FSA or dependent care FSA contributions for any reason. A similar rule is already in place for plan years ending in 2020. Plan sponsors may, however, decide to limit permitted election changes for health FSAs to avoid overspending in these accounts.

- **POST-TERMINATION REIMBURSEMENTS FROM HEALTH FSAS**

An employee who stops participating in a health FSA during 2021 may continue to receive reimbursements from unused amounts through the end of the plan year, including any grace period. Unlike reimbursements available to participants who have elected COBRA coverage following their termination, this rule does not require that the participants make further contributions to access their unspent funds.

- **CARRY FORWARD FOR AGED-OUT DEPENDENTS IN DEPENDENT CARE FSAS**

Although current rules limit reimbursement of qualifying dependent care expenses to children under age 13, the CAA provides an extra year for children who "aged out" during the pandemic. Employers can allow unused dependent care FSA amounts for children until they turn age 14, at least through the end of the 2021 plan year.

According to the Leavitt Group, an insurance and risk management firm, "Employers are not mandated to make these changes (<https://news.leavitt.com/covid-19/emergency-covid-19-relief-act-of-2020/>); rather, they are options to provide employees additional FSA and [dependent care assistance plan] flexibility."

Earlier Relief

In May 2020, the IRS released two notices (www.shrm.org/ResourcesAndTools/hr-topics/benefits/pages/irs-allows-mid-year-enrollment-and-election-changes-for-health-plans-and-fsas-coronavirus.aspx) allowing employees during 2020 to adjust pretax contributions to health and dependent care FSAs. For health FSAs with a carry-over option, the guidance increased the carry-over limit for 2020 from \$500 to \$550. For health FSAs offering a two-and-one-half-month grace period post-year-end for spending funds remaining in the account, the guidance extended the grace period to the end of 2020.

According to Brian Gilmore, lead benefits counsel at ABD Insurance and Financial Services, a benefit brokerage firm based in San Mateo, Calif., many employees had their anticipated dependent care expenses reduced or eliminated entirely in the face of the pandemic, and many also had anticipated health care expenses that were not incurred because of the pandemic. "Absent further legislative or IRS action, many employees would therefore have forfeited contributions to their dependent care FSA or health FSA at the end of the 2020-2021 plan years (<https://www.theabdteam.com/blog/covid-bill-includes-major-fsa-relief/>) and their associated grace period and/or run-out period," Gilmore noted.

The CAA, he added, "fully addresses these concerns by providing sweeping FSA relief for 2020 and 2021 that is likely to satisfy most employers and employees."

Related SHRM Articles:

Top Considerations for Adopting FSA Funding Relief (www.shrm.org/ResourcesAndTools/hr-topics/benefits/Pages/top-considerations-for-adopting-fsa-funding-relief.aspx), *SHRM Online*, January 2021

2021 FSA Contribution Cap Stays at \$2,750, Other Limits Tick Up (www.shrm.org/ResourcesAndTools/hr-topics/benefits/pages/2021-fsa-contribution-cap-and-other-colas.aspx), *SHRM Online*, October 2020

IRS Allows Midyear Enrollment and Election Changes for Health Plans and FSAs (www.shrm.org/ResourcesAndTools/hr-topics/benefits/Pages/irs-allows-mid-year-enrollment-and-election-changes-for-health-plans-and-fsas-coronavirus.aspx), *SHRM Online*, May 2020

Related SHRM Resource:

CAA 2021: FSA Rules Relaxed (www.shrm.org/ResourcesAndTools/tools-and-samples/exreq/Pages/Details.aspx?Erid=1660), *SHRM Express Requests*

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Feedback