

TEMPORARY FSA RELIEF CLARIFIED AND EXPANDED BY IRS GUIDANCE

Hodgson Russ Employee Benefits Newsletter
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The IRS issued Notice 2021-15, providing additional guidance on the temporary relief offered under the Consolidated Appropriations Act (CAA). Consistent with the CAA, this Notice allows plan sponsors to amend their cafeteria plans to allow participants greater flexibility regarding the use of health and dependent care flexible spending accounts. This temporary relief includes allowing health and dependent care FSAs unlimited carryovers, grace period extensions, and prospective election changes. Here is a [link to our CAA client alert](#).

This new IRS guidance provides clarity on the administration of this relief, including:

- Interaction of post-termination Health FSA relief and COBRA. Plan sponsors that adopt the relief allowing terminated employees to spend down the remaining balances in their health FSAs must still offer the qualified beneficiaries the option of electing COBRA. Employees foregoing COBRA may spend down their remaining Health FSA balances without paying a premium. Whereas employees electing to continue coverage under COBRA must pay a premium, but will have coverage up to their full FSA election amount.
- Interaction of Carryover and Extended Grace Period Relief. Employers may adopt either the carryover relief or the extended grace period relief, but not both for the same plan. In most cases, the flexibility provided by the carryover and grace period relief is the same. That is, they both allow all unused benefits remaining for plan years ending in 2020 and 2021 to be made available incurred in the immediately subsequent plan year. However, because these two forms of relief interact differently with the post-termination health FSA relief, employers must be clear as to whether the carryover or extended grace period relief is being adopted.
- Dependent Care Tax Reporting. On IRS Form W-2, employers must report amounts contributed to a dependent care assistance program in Box 10. Employers are not required to adjust the amount reported in Box 10 to take into account amounts that remain available during a grace period.

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- Expanded Relief. The IRS Notice also expands the available relief by allowing plan sponsors to make mid-year election changes with respect to employer-sponsored health coverage. This expanded relief is consistent with relief offered last year in IRS Notice 2020-29. Specifically, employees may be permitted to:
 1. make a new election on a prospective basis, if the employee initially declined to elect employer-sponsored health coverage;
 2. revoke an existing election and make a new election to enroll in different health coverage sponsored by the same employer on a prospective basis; and
 3. revoke an existing election on a prospective basis, provided that the employee attests in writing that the employee is enrolled, or immediately will enroll, in other health coverage not sponsored by the employer.
- Plan Amendment. Consistent with the CAA, this IRS guidance notes that plan amendments for employers adopting any of these optional relief provisions must be adopted 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, and the plan must be operated consistent with those provisions during the relevant period.