

FAQs

Peeling Back the Layers: Consolidated Appropriations Act



FREQUENTLY ASKED QUESTIONS

1

In light of recent guidance, if an employer wants to make any changes to their DCAP/FSA/cafeteria plans, when do these changes need to be made by?

If you are adopting a carryover for a dependent care FSA that has a plan year ending in 2020, you must adopt the related plan amendment by December 31, 2021. If you're making any changes to the plan that ends in 2021, those adoptions must be made by December 31, 2022. However, the short answer is you should consider amending the plan documents shortly after you make the decision to make those amendments and decide on your effective date.

2

When do amendments to plans need to be formalized?

As soon as your organization decides to make changes and decides on an effective date. However, you have until the end of the following calendar year to adopt those plan changes.

3

Does an employer have to allow the full EE balance to be carried over, or can the employer limit balances to a certain amount?

The employer does not have to allow the full balance to carry over. The employer has the option to limit the amount that can be carried over.

4

Does an employer have to adopt all these changes, or can it adopt some or none?

Yes, to all the above. You can decide which changes you wish to permit or not. It's up to each organization to decide if making the changes is in the best interest of the organization and if it's in the best interest of your employees. Whatever you decide, it's important to have a conversation with your broker and FSA vendor to make sure all three of you are on the same page.

5

Can an employer adopt a grace period for its DCAP and a carryover provision for its HFSA if the ER originally had a carryover for both?

That's one of the nice things about these CAA amendments. It offers the plan sponsor a lot of flexibility. If a plan had an extended grace period, those amounts could be changed remaining in the FSA or DCAP for plan year ending in 2020 or 2021. They can roll over to the next plan year. And, like the carryover relief, the extended grace period relief is available to cafeteria plans that currently have a grace period or provide for a carryover, as well as plans that do not have a grace period or provide for a carryover. If an FSA adopts a grace period, they cannot have a carryover and vice versa. It cannot have both.

6

In terms of mid-year election changes, can the employer limit the period for these changes to be made (e.g., 2 weeks from May 1 – May 15)?

Yes. Employers can limit the period of time a mid-year change can be made without there having to be a change of status event.

7

What options are there for an employer to make the permitted changes to the health FSA this year and still preserve HSA eligibility?

An Employer can permit an employee to forfeit his/her balance in a General-Purpose FSA. The employer can also give the employee the option of converting his/her balance in a General-Purpose FSA to a Limited-Purpose FSA or a Post-Deductible FSA. If an employer wants to adopt a carryover provision or extend the grace period, they can always permit the employee to opt out of that option.

8

What are the pros and cons of permitting employees to make election changes to their group health plans without a qualifying event?

Generally speaking, the whole purpose of this is to preserve flexibility. When you're talking about group health plans, medical plans, vision and dental benefits, there really aren't many pros to doing so from the employer's perspective. They can make elections to revoke or change healthcare, dependent care FSA elections. You create additional burdens to administer the election changes. There's a potential for negative impact in non-discrimination testing results if you limit these changes to specific classes of employees or individuals and, most importantly, you should also consider the potential for adverse selection of healthcare coverage by employees - specifically with respect to permitting your medical and other healthcare coverage type changes.

9

If the plan extended the grace period from one year into the next and there are still funds remaining at the end of the subsequent plan year, may those funds be carried forward into the third plan year?

Unfortunately, under the rules that were released by the IRS, any unused funds from the prior plan year have to be used within the 12 next months of the subsequent plan year. If there are still funds remaining at the end of that subsequent plan year that were carried forward, they have to be forfeited and cannot be carried forward into the third year.

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