

# CLIENT ALERT

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## RELIEF FOR FLEXIBLE SPENDING ACCOUNTS

On December 27, 2020, The Consolidated Appropriations Act 2021 was signed into law. Contained in the \$2.3 trillion spending bill spanning 5,593 pages is FSA relief/flexibility for employers and employees during the COVID-19 public health emergency.

The act allows employers to opt to expand deadlines to the Health FSA and DCAP. These extensions are voluntary and require plan amendment. The Act expands the prior voluntary relief that was offered in 2020. The ACT provisions, if elected by the employer, benefits employees with left over FSA funds at the end of the year.

FSA's include the "use it or lose it" rule and while many employers either offer a grace period or a rollover, many employees found themselves with excess funds due to daycare closures and delays of medical care due to the pandemic. The 2021 Act lets employers allow employees to make prospective FSA changes during the 2021 plan year without a corresponding status change, and/or to carry over unused FSA funds or extend existing grace periods for up to 12 months for plan years ending in 2020 and/or 2021.

Prior to the CAA 2020, FSA's could be set up to include either the grace period or rollover for Health Care Accounts and the grace period for Dependent Care Accounts. The grace period allows a period of two and a half months to incur charges and three months to submit them after the end of the plan year, while the rollover allows a rollover of up to \$550 of unused funds.

The new, temporary rules allow for greater flexibility and timeframe expansion if adopted by the employer.

### Health Care FSA

- Ability to carryover unused amounts from 2020 to 2021 and again from 2021 to 2022, or
- Extend the Grace Period from two and half months to 12 months for plans ending in 2020 and 2021.
- Allow prospective mid-year election changes without a corresponding qualifying change in status for plan years ending in 2021. Employers making this change should clearly communicate the terms under which the plan will allow these changes to be made.
- Allow participants who terminate coverage during the 2020 or 2021 to receive reimbursements through the end of the plan year and grace period if applicable in which termination occurred without making a COBRA election.

## Dependent Care FSA

- Ability to carryover unused amounts from 2020 to 2021 and again from 2021 to 2022, or
- Extend the Grace Period from two and half months to 12 months for plans ending in 2020 and 2021.
- Allow prospective mid-year election changes without a corresponding qualifying change in status for plan years ending in 2021. Employers this change should clearly communicate the terms under which the plan will allow these changes to be made.
- Extend additional time to use unused amounts 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. This change will automatically apply if the FSA SPD refers to the relevant IRC code, (Section 21(b)(1)(A) ) but will need the employer to adopt the change if the SPD refers to the age out age of 13.

## Making Plan Changes

These changes are optional, and amendments are not required until the last day of the first plan year following the plan year in which any change is effective. However, keep in mind that if you are going to adopt any or all of these changes, your FSA Accounts must be administered and communicated according to the terms of the amendment beginning on the amendment date. Any changes should be communicated through a summary of material modifications or updated summary plan description, because of this, time is of the essence for sponsors of calendar year FSAs looking to make any of these changes for the 2021 plan year. Any adopted changes must be communicated to participants.

Please contact your account manager if you are interested in making any changes as soon as possible.

### **Disclaimer:**

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