



New law provides additional flexibility for health FSAs and dependent care assistance programs

Employers may allow participants to carry over unused amounts

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WASHINGTON — The Internal Revenue Service today provided greater flexibility, due to the pandemic, to employee benefit plans offering health flexible spending arrangements (FSAs) or dependent care assistance programs. Under the COVID-related Taxpayer Certainty and Disaster Tax Relief Act of 2020, these plans now have additional discretion in 2021 and 2022 to adjust their programs to help employees better meet the unanticipated consequences of the public health emergency.

Notice 2021-15 responds to unanticipated changes in the availability of certain medical care and dependent care. As a result of COVID-19, participating employees are more likely to have unused health FSA amounts or dependent care assistance program amounts at the end of 2020 and 2021. Generally, under these plans, an employer allows its employees to set aside a certain amount of pre-tax wages to pay for medical care and dependent care expenses. Amounts spent by the employee are then reimbursed from their designated health FSAs or dependent care assistance programs.

Notice 2021-15 provides flexibility for employers in the following areas related to health FSAs and dependent care assistance programs:

- Provides flexibility for the carryover of unused amounts from the 2020 and 2021 plan years;
- Provides flexibility to extend the permissible period for incurring claims for plan years ending in 2020 and 2021;
- Provides flexibility to adopt a special rule regarding post-termination reimbursements from health FSAs;
- Provides flexibility for a special claims period and carryover rule for dependent care assistance programs when a dependent “ages out” during the COVID-19 public health emergency; and
- Allows certain mid-year election changes for health FSAs and dependent care assistance programs for plan years ending in 2021.

Prior guidance provided flexibility to employers with cafeteria plans through the end of calendar year 2020, during which employers could permit employees to apply unused health FSA amounts and dependent care assistance program amounts to pay for or reimburse medical care or dependent care expenses. The Taxpayer Certainty and Disaster Tax Relief Act of 2020, signed into law on Dec. 27, 2020, provides similar flexibility for these arrangements in 2021 and 2022.

Millions of employees have access to health FSAs and dependent care assistance programs, sponsored by employers under “cafeteria plans.” The decision to adjust these employee benefit programs is at the discretion of the employer that sponsors the plan.

The amounts properly spent are not subject to federal income tax. Typically, account funds that are not spent by the employee within the plan year, subject to limited grace periods or certain carryover amounts, are forfeited. In accordance with the Taxpayer Certainty and Disaster Tax Relief Act of 2020, [Notice 2021-15](#) gives employers the option to amend their plans to provide greater flexibility for employees to elect and use these programs during the pandemic without risking the forfeiture of the amounts they have set aside.

The IRS has more [COVID-19-related information](#) for plan participants, employers and others who administer plans at IRS.gov.