

# LEGAL UPDATE

## IRS Provides More Options for Unused Funds in Health FSAs and DCAPs

On May 12, 2020, the IRS announced more options with respect to unused amounts in health flexible spending accounts (FSAs) and dependent care assistance programs (DCAPs). These options allow employers to permit:

- ☑ An **extended period** for incurring health FSA or DCAP expenses; and
- ☑ Health FSA carryovers of up to **\$550**.

In addition, the IRS [relaxed](#) the **mid-year election change rules** for health FSAs and DCAPs for 2020 to allow participants to revoke their elections, make new elections or increase or decrease existing elections.

### Extended Period

Due to the COVID-19 outbreak, employees may be more likely to have unused amounts in their health FSAs or DCAPs. [IRS Notice 2020-29](#) allows employers to permit employees to apply unused amounts remaining in a health FSA or a DCAP at the end of a plan year ending in 2020 (or a grace period ending in 2020) to **pay or reimburse expenses incurred through Dec. 31, 2020**. This relief applies to all health FSAs, including health FSAs that allow carryovers.

### Carryover Limit

[IRS Notice 2020-33](#) increases the health FSA carryover limit for unused funds remaining at the end of a plan year from \$500 to \$550 to reflect indexing for inflation. This change is effective for **plan years beginning in 2020** (and reflects the maximum amount that may be carried over to the immediately following plan year beginning in 2021).

### Section 125 Plan Amendments

Employers that implement these changes must adopt an amendment for their Section 125 cafeteria plans by Dec. 31, 2021. Employees must also be notified of the changes.

### Key Points

- Health FSAs and DCAPs may allow employees to apply unused amounts for plan years (or grace periods) ending in 2020 to expenses incurred through Dec. 31, 2020.
- For plan years beginning in 2020, the health FSA carryover limit increases to \$550.
- Employers that make these changes must amend their plan documents and communicate the changes to employees.

*Employers with health FSAs and DCAPs may provide employees with additional time to use their funds in these accounts.*

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