

New IRS Guidance for Cafeteria Plans

May 14, 2020

Business
Bulletin

On May 12, 2020, the IRS released Notices 2020-29 and 2020-33, which provide temporary flexibility for mid-year election changes under a Section 125 cafeteria plan and more options with respect to unused amounts in health flexible spending accounts (FSAs) and dependent care assistance programs (DCAPs).

MID-YEAR ELECTION CHANGE RULES

[IRS Notice 2020-29](#) provides temporary flexibility for mid-year election changes under a Section 125 cafeteria plan during calendar year 2020. The changes are designed to allow employers to respond to changes in employee needs as a result of the COVID-19 pandemic.

This guidance relates to mid-year elections for self-insured and fully insured employer-sponsored health coverage, health flexible spending arrangements (health FSAs) and dependent care assistance programs (DCAPs).

PERMITTED ELECTION CHANGES

For employer-sponsored health coverage, a Section 125 cafeteria plan may permit an employee to prospectively:

- Make a new election if the employee previously declined coverage;
- Revoke an existing election and enroll in different health coverage sponsored by the employer; or
- Revoke an existing election, if the employee is or will be enrolled in other health coverage.

Employees may also prospectively revoke an election, make a new election or decrease or increase an existing election for a health FSA or DCAP. A plan may permit any of the election changes described in the notice, regardless of whether they satisfy existing mid-year election change rules.

EMPLOYER REQUIREMENTS

An employer using this relief may determine the extent to which such changes are permitted and

applied. If these changes are permitted, the employer must adopt a plan amendment by Dec. 31, 2021, and inform employees of the change. The amendment may be retroactive to Jan. 1, 2020. Changes to the plan may also implicate other applicable laws, such as participant notification requirements under ERISA.

UNUSED FUNDS IN HEALTH FSAs AND DCAPs

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**.

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.

Contact Simkiss & Block for a consultation or to learn more about this topic.