



COMPLIANCE | February 22, 2021

Legislation Offers Flexibility for FSAs

An IRS notice clarifies rules regarding elections without a qualifying event, an extended grace period for unused amounts and other provisions included in the Consolidated Appropriations Act, 2021.

Reported by [PLANSPONSOR STAFF](#)

The IRS has issued [Notice 2021-15](#) clarifying the application of certain provisions of the COVID-19-related Taxpayer Certainty and Disaster Tax Relief Act of 2020, included in the Consolidated Appropriations Act, 2021, related to health flexible spending accounts (FSAs) and dependent care assistance programs.

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.

An [alert from The Wagner Law Group](#) says the act provides several forms of relief for health and dependent care FSAs:

- An FSA, for its plan year ending in 2021, may allow employees to make elections without a qualifying change event as is required under existing regulations;
- A health or dependent care FSA, for its plan year ending either in 2020 or 2021, may extend the current 2.5-month permitted grace period to 12 months;
- Unused funds in either type of FSA in 2020 can be carried over to 2021, and unused funds in either type of FSA can be carried over from 2021 to 2022;
- Terminated participants in a health FSA in 2020 and 2021 can continue to receive reimbursements from their unused funds through the end of the plan year (including a grace period, if applicable) during which the termination of employment occurred; and
- In most instances, eligibility for dependent care assistance ends when a dependent attains age 13. Under the act, if, prior to January 31, 2020, an employee enrolled a child who either will soon turn 13 or has turned 13, they have two options: (i) reimbursement for dependent care expenses incurred for the remainder of the plan year after the child attains age 13, or (ii) if there are unused funds at the end of a plan year, those specific leftover funds could be used in the following year on a child who will attain or has attained age 13, but not after the child's 14th birthday.

"As a general rule, amendments to an FSA must be done on a prospective basis, but the act permits a plan to be amended retroactively so long as the plan is amended by the last day of the first plan year beginning after the end of the plan year in which the amendment is effective," The Wagner Law Group says.

Tags

[employer health benefit regulations](#), [health flexible spending accounts](#)

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Please contact the PLANSPONSOR Reprint Manager, [Michelle Judkins](#).

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