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Compliance Advisor

## What every HR leader should know about compliance



### Consolidated Appropriations Act, 2021

#### Part 3

### Temporary Health FSA and DCAP Relief

#### 2-Minute Read

The Consolidated Appropriations Act, 2021 (Appropriations Act), enacted on December 27, 2020, contains temporary rules to provide relief for participants in health flexible spending arrangements (FSAs) and dependent care flexible spending arrangements (DCAPs) in light of the COVID-19 pandemic. The Appropriations Act builds on previously issued Internal Revenue Service (IRS) guidance (IRS Notice 2020-29 and 2020-33), by expanding the opportunities for plan sponsors to amend their plans to give employees additional opportunities to use their currently unused FSA and DCAP balances through 2022.

#### **Carry Over of Unused Amounts**

The Appropriations Act provides that FSAs and DCAPs may permit participants to carry over any unused contributions remaining from the 2020 plan year to the plan year ending in 2021. Additionally, FSAs and DCAPs may permit participants to carry over any unused contributions remaining in the FSA or DCAP from the 2021 plan year to the plan year ending in 2022.

#### **Extended Grace Period**

The grace period for using FSA and DCAP balances has also been extended. The Appropriations Act permits FSAs and DCAPs to extend the grace period for participants to use remaining balances for a plan year ending in 2020 or 2021, until 12-months after the end of the plan year. Additionally, FSAs may permit participants who cease to participate during calendar year 2020 or 2021 to continue to use the remaining contributions for reimbursements through the end of the plan year (including any grace period) in which the participation ceased.



### **DCAP Carry Forward**

The current DCAP rules limit reimbursement of qualifying dependent care expenses to children under age 13. The Appropriations Act provides that DCAPs may extend the maximum age for dependents from 12 to 13 for eligible dependents who turned 13 (i.e., aged out of eligibility) during the last plan year with an open enrollment period ending on or before January 31, 2020. Participants are therefore permitted to use unused balances for qualifying reimbursements for expenses incurred on behalf dependents 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.

### **Midyear Election Changes**

In recognition of the continued impact that COVID-19 has had on the ability of participants to maximize the use of their FSA and DCAP benefits, the Appropriations Act affords participants the opportunity to prospectively change existing FSA and DCAP elections for 2021 at any time during the 2021 plan year without a change in status. The availability of 2021 midyear election changes in the absence of a change in status is consistent with IRS Notice-29, which permitted such midyear elections during 2020. The FSA and DCAP rules continue to prohibit the refund of previously contributed amounts.

### **Amendment Deadline**

Employers may amend their FSAs and DCAPs, to take advantage of the flexibility offered by the Appropriations Act, no later than the last day of the first calendar year beginning after the end of the plan year in which the change took effect. Accordingly, if the change takes effect January 1, 2021, the plan will need to be amended no later than December 31, 2022. Further, the plan must be operated in accordance with the amendment retroactive to the effective date.

12/30/2020

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