

COMPLIANCE BULLETIN



COVID-19 Guidance for Section 125 Mid-year Election Change Rules and Unused Funds

On May 12, 2020, the IRS released [Notice 2020-29](#), which 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).

A plan may permit any of the election changes described in the notice and below, regardless of whether they satisfy existing mid-year election change rules.

In addition, 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**.

Action Steps

Employers that choose to implement any of these changes must adopt a plan amendment by Dec. 31, 2021, and inform employees of the change. The amendment may be retroactive to Jan. 1, 2020.

Highlights

Affected Plans

The new IRS relief applies to:

- ✓ Employer-sponsored health care coverage
- ✓ Health FSAs
- ✓ DCAPs

Temporary mid-year election change flexibility.

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.

Important Dates

Jan. 1, 2020

The relief may be applied retroactively, to periods on or after Jan. 1, 2020.

Dec. 31, 2021

Employers that wish to allow any of these changes must adopt a plan

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Permitted Mid-Year 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 make a new election to enroll in different health coverage sponsored by the employer (including changing enrollment from self-only coverage to family coverage); or
- Revoke an existing election, if the employee attests in writing that he or she is, or immediately will be, enrolled in other health coverage.

For **health FSAs and DCAPs**, employees may be permitted to prospectively:

- Revoke an election;
- Make a new election; or
- Decrease or increase an existing election.

The relief applies to all types of health FSAs, including limited-purpose health FSAs. In addition, employers are permitted to limit mid-year elections for health FSAs and DCAPs to amounts no less than amounts already reimbursed.

Written Attestation

To accept an employee's revocation of an existing election, employers may rely on an employee's written attestation that he or she is enrolled, or immediately will enroll, in other health coverage—unless the employer has actual knowledge otherwise.

The following is an example of an acceptable written attestation:

Name: _____ (and other identifying information requested by the employer for administrative purposes).

I attest that I am enrolled in, or immediately will enroll in, one of the following types of coverage:

- (1) Employer-sponsored health coverage through the employer of my spouse or parent;
- (2) Individual health insurance coverage enrolled in through the Health Insurance Marketplace (also known as the Health Insurance Exchange);
- (3) Medicaid;
- (4) Medicare;
- (5) TRICARE;
- (6) Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA); or
- (7) Other coverage that provides comprehensive health benefits (for example, health insurance purchased directly from an insurance company or health insurance provided through a student health plan).

Signature: _____



Additional Options for Unused Funds in Health FSAs and DCAPs

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).

Employer Requirements

Employers using this relief are not required to provide unlimited mid-year election changes nor extended claim periods or carryovers but may, in their discretion, 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 all employees that are eligible to participate in the plan.

The amendment may be retroactive to Jan. 1, 2020, provided the plan operates in accordance with the notice. Any amendment must apply only to mid-year elections and changes made during calendar year 2020. Changes to the plan may also implicate other applicable laws, such as participant notification requirements under ERISA.