The Consolidated Appropriations Act, 2021

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The following is a Frequently Asked Question (FAQ) to assist employers and plan sponsors with understanding the potential impacts of recent government actions on Health Care and Dependent Care Flexible Spending Arrangements. This is not legal advice, and the relief actions are complex, making it likely that the Internal Revenue Service (IRS) will, at some point, issue interpretive guidance. We assume no liability whatsoever in connection with its use, nor are these comments directed to specific situations. As always, we strongly encourage employers and plan sponsors to consult their legal or benefits counsel for conclusive guidance on how the actions apply in their circumstances.

General

Q: What does the Consolidated Appropriations Act, 2021, providing COVID-related relief, mean for Healthcare Flexible Spending Accounts (Health FSAs) and Dependent Care Flexible Spending Accounts (DCFSAs)?	**A:** The Consolidated Appropriations Act, 2021 ("CAA") includes temporary relief for Health FSAs and DCFSAs. The optional provisions allow implementation of plan design changes that provide greater assistance for your team. These provisions allow for: • **Carryover from 2020 and 2021 plan years -** All unused Health FSA and DCFSA funds from the current plan year can roll over into the subsequent plan year. This applies for plan years ending in 2020 (allowing carryover into 2021) and plan years ending in 2021 (allowing carryover into 2022). • **Extended grace periods for 12 months* -** Extends the grace period of Health FSAs and DCFSAs with plan years ending in 2020 or 2021 for up to 12 months after the end of the plan year. This period allows enrolled members to use their remaining benefits or contributions. For example, an organization with a 2020 calendar year plan with a grace period ending March 15, 2021 could extend its grace period to December 31, 2021. • **Spend-down of unused Health FSA funds -** Allows spend-down of a Health FSA (similar to a DCFSA) for employees who cease participation for calendar year 2020 or 2021 (taking into account any extension of the grace period). • **Prospective changes in elections (without a change in status) -** Allows a plan's eligible and/or enrolled members to make election changes for both Health FSA and DCFSA contribution amounts for plan years ending in 2021, regardless of existing change in status rules. ***A *Health FSA or a DCFSA may not have both a grace period and a carryover with respect to the same plan design.***
Q: How would these changes help my team?	**A:** Many Americans were not able to spend funds allocated to Health FSAs and DCFSAs this past year due to COVID-19 restrictions. They may have deferred medical, dental and other care, or gone without childcare. HealthEquity client data shows that more than $500 million is at risk of going unused – a far higher amount than in a typical year. Without these changes, your team's risk either losing access to those funds through the end-of-the-year use-it-or-lose-it rule or spending down their accounts frivolously to avoid it.

	Others may have made Health FSA and DCFSA elections that no longer reflect their current circumstances or wishes. Implementing these changes can help in both circumstances. By either allowing carryover of funds or extending your grace period, your organization gives your teams more time to use their funds responsibly and get the care they need. Allowing election changes also gives them the flexibility to make updates to their benefits that better suit their needs.
Q: What considerations should an employer consider when deciding whether to implement these changes?	**A:** When deciding whether to implement changes to your Health FSAs and DCFSAs, you should first review your team's account balances. If they have significant amounts left in their respective Health FSAs and DCFSAs, you may want to consider moving forward with the updates. You should also consider how the changes will impact Health Savings Accounts (HSAs). To ensure your teams can still contribute to an HSA, consider allowing them to carry over their unused Health FSA funds into an HSA-compatible plan (i.e., limited purpose or post-deductible FSA). An HSA-compatible plan allows for the most flexibility, since it covers dental, vision and health expenses after the minimum deductible has been met. Finally, you should be aware that your organization's Health FSA cannot adopt both the carryover provision and the extended grace period. If your current plan has a grace period, you should consider amending it to allow for carryover, which gives your teams more time to fully utilize funds that may otherwise have been forfeited.
Q: What steps need to be taken in order to implement these changes?	**A:** If you decide to implement any of these provisions, follow the steps below: 1. Decide which of these provisions your organization chooses to adopt for your Health FSA and/or DCFSA. 2. Register your plan changes by completing the FSA and DCFSA Plan Change Registration. This will typically be 10-15 questions and should take you 5 minutes to complete. We'll capture your submissions and make the requested changes as soon as possible. 3. Connect with your HealthEquity contact for assistance completing the amendment process, if necessary. Though HealthEquity advises adopting the plan provisions for all plan years covered in the relief, you can adopt certain provisions for one plan year and not the subsequent plan year if you wish. Notify your teams of the changes to your plan well before their deadline. This will allow your teams to start planning for the future immediately. We have developed a Member Email Template for your use which you can access here.
Q: What are the chances these changes will be implemented permanently?	**A:** Unless Congress acts, the provisions of the Consolidated Appropriations Act applies to plan years ending in 2020 and 2021.

Implementation

Q: These provisions look "too good to be true." Aside from the administrative work in adopting these in amendments, are there any negative impacts (administrative or otherwise) an employer could face if they adopt the carryover provision or spend-down provision?	**A:** You're correct. All the provisions are great news for your team. In allowing any of the relief provisions, you can limit election changes, for example, to year-to-date ("YTD") claims paid so as to protect the financial integrity of the plan. In addition, the spend-down post-termination for the Health FSA is limited to YTD contributions minus YTD claims paid.
Q: Is there any provision to use DCFSA dollars for health care expenses or vice versa?	**A:** No. Neither the regulations nor the CAA legislation currently permits a DCFSA to reimburse expenses other than those related to eligible dependent care expenses; or for a Health FSA to reimburse for expenses other than those for eligible medical expenses.
Q: What decisions are employers making when it comes to the provisions in the CAA?	**A:** We recommend you consider adopting the unlimited carryover provision to help your employees maximize all dollars versus forfeiting their contributions.
Q: Does the grace period extension provided for in the CAA run through December 2021?	**A:** A plan that includes a Health FSA or DCFSA may extend the grace period for a plan year ending in 2020 or 2021 for up to 12 months after the end of such plan year with respect to unused benefits or contributions remaining in either plan. For example, a calendar year plan that ended on December 31, 2020 can have a grace period that could be extended up to December 31, 2021.
Q: For Health FSA spend-down, are members limited to money in their accounts versus the rest of their elections (which might not be fully funded)?	**A:** For a Health FSA, it would be based on contributions minus payments; for a DCFSA, it would be based on payroll deductions minus payments.
Q: What happens to the funds if an employer changes companies and leave HealthEquity?	**A:** Generally, funds would be returned to the employer once claims activities cease.

Election Changes

Q: If an employer decides to adopt the flexible change rule, can employees change their elections mid-year?	**A:** For plan years ending in 2021, a plan that includes a Health FSA or DCFSA may allow an employee to make an election to prospectively modify the amount (but not in excess of any applicable dollar limitation) of such employee's contributions to any Health FSA or DCFSA (without regard to any change in status).
Q: For the election change allowance, can an employer limit a change to no lower than the YTD contribution or no greater than total amounts already reimbursed?	**A:** Yes. An employer has the option to limit election changes to an amount no less than YTD contributions and/or reimbursements. You will want to ensure this is addressed in your plan documents.
Q: Do the CAA election change provisions for both Health and Dependent Care FSAs permit an employee that originally decided not to enroll for 2021 a new opportunity to enroll?	**A:** Yes. If you choose to adopt the flexible election change provisions outlined in the CAA, employees who did not elect to participate would now have the opportunity to enroll.

Q: Does an employer need to offer an open enrollment to our employees if they had not enrolled for 2021 but now would like to?	**A:** While adopting the flexible election change provisions outlined in the CAA allows employees who did not elect an opportunity to now enroll, you do not need to conduct a new open enrollment initiative. You can, however, as plan sponsor restrict the time-period in which new enrollments are allowed.

Carryover

Q: Can an employer switch to a carryover provision if it does not offer an HSA?	**A:** Yes. Your plan does not have to offer an HSA component to select the carryover option of all unused funds provision.
Q: Can an employer place a minimum on the carryover provision of all unused funds?	**A:** Yes. Remember, this will be a fantastic time to review your objectives for your compensation and benefits strategy as well as the current state of your plans. The intention of the carryover flexibility is to mitigate harm to employees who have set aside funds that they have been unable to use because of the pandemic.
Q: Does an employee need to exhaust all FSA funds before they can make contributions to an HSA if the carryover provision is adopted?	**A:** Generally, an FSA would have to be fully exhausted by the last day of the plan year to contribute to an HSA the first day of the new plan year (unless the plan design does not include a carryover or grace period). However, a consideration should be made to allow participants to carryover unused amounts into a Limited Purpose FSA, which is an HSA-compatible plan. Alternatively, the member could elect to forfeit any remaining carried-over funds to preserve HSA eligibility if decided by the end of the applicable plan year.
Q: How does the carryover provision impact an employee's desire to establish an HSA?	**A:** Clients who are considering adopting the carryover provision should consider HSA impact. Employees with funds remaining in a general-purpose FSA at the end of a plan year are ineligible to contribute to an HSA at the beginning of the new plan year. An option for an employer could be to allow employees to carryover unused amounts into a Post-deductible or Limited Purpose FSA (which is an HSA-compatible plan). Post deductible or Limited Purpose FSAs allow for the most flexibility as it covers dental and vision as well as health expenses after the minimum deductible has been met.
Q: Does the unlimited carryover end in 2022?	**A:** Unless Congress acts, the optional provisions under the Act allows unlimited carryover for 2020 plans to carry over into 2021 and 2021 plans to carry over into 2022.
Q: Can an employer shorten the time frame in the subsequent plan year to allow a member to access carryover funds from the previous year?	**A:** No. The carryover funds will be available for the member to use anytime during the subsequent plan year.

Grace Period

Q: Can an employer have both a grace period and a carryover?	**A:** An employer cannot adopt both a carryover provision and grace period with respect to the same plan.
Q: Does the grace period extend the timeframe in which members can incur eligible expenses and not just the period in which to submit receipts?	**A:** Correct. The FSA grace period is an extended period of coverage at the end of every plan year in which an employee is allowed extra time to incur eligible expenses to use remaining FSA funds at after the close of the plan year.

Q: If an employer adopts the extended grace period, how would forfeitures work?	**A:** Final reporting to determine forfeitures would not occur until the plan year ended. If grace period was extended to December 31, forfeitures and final plan reconciliation would occur after the last run-out claims were paid.

Other products

Q: Do the provisions of the CAA also apply to Limited Purpose FSAs?	**A:** Yes.
Q: Do the provisions of the CAA apply to Commuter benefits?	**A:** Unfortunately, the Act did not include any COVID relied for Commuter benefits. We will continue to monitor any changes in this area.
Q: Does an employee need to elect DCFSA through COBRA?	**A:** No. A DCFSAs is not a group health plan eligible for COBRA.
Q: Do the provisions of the CAA apply to Health Reimbursement Arrangements (HRAs)?	**A:** No. An HRA can currently be designed to allow for a carryover of funds or to allow a spend-down provision as part of the plan design.

Spend Down

Q: Are Health FSAs subject to COBRA and how does this interact with the provisions of the CAA? Wouldn't COBRA coverage essentially allow spend-down of a Health FSA?	**A:** Yes. A Health FSA is a group health plan generally subject to COBRA, albeit with a potentially limited COBRA obligation. Under the COBRA regulations, an excepted benefit Health FSA is not obligated to make COBRA coverage available for the plan year in which a qualifying event occurs unless, as of the date of the qualifying event, the amount the qualified beneficiary may become entitled to receive during the remainder of the plan year as a benefit exceeds the amount the Health FSA may require to be paid for COBRA continuation coverage for the remainder of the plan year. The provisions of the Act notwithstanding, an election of COBRA coverage would allow an individual to continue to access both unused Health FSA funds from prior to the termination and continue to contribute funds through post-tax COBRA premium payments for the remainder of the year in which the qualifying event occurred. The Act now permits a Health FSA to allow an employee who ceases participation in the plan during 2020 or 2021 (for example, due to termination of employment) to continue to receive reimbursements from unused balances through the end of the plan year in which such participation ceased (including any grace period) without specific reference to an election of COBRA for that Health FSA. The text of the Act allows this "...under rules similar to the rules applicable to dependent care flexible spending arrangements," which suggests reimbursement of expenses based on year-to-date contributions prior to termination under the plan (without, it would seem, COBRA' s opportunity to continue to make contributions post-tax through COBRA premium payments for the remainder of the year). It is unclear, based on current guidance, what - if any - COBRA premium calculation would be for a qualified beneficiary wishing to receive reimbursements beyond the date participation in the plan ceases. We will keep you informed if additional clarification from the Treasury and IRS regarding the FSA provisions contained in the Act are published.
Q: Can a DCFSA allow the adoption of the CAA's spend-down provisions?	**A:** DCFSAs are currently permitted to allow spend-down prior to the enactment of the CAA.

Other

Q: What impact do these changes have on nondiscrimination testing?	**A:** The CAA does not allow any relief from the annual nondiscrimination testing requirement. We encourage employers to test as early in the plan year as possible. If you adopt the flexible election change rules, we encourage you to test your plan prior to the end of the plan year as well to take in to account any changes to elections that have occurred throughout the plan year.

HealthEquity and WageWorks

Q: We are using WageWorks. Does an employer submit their forms on the HealthEquity website?	**A:** Yes. HealthEquity acquired WageWorks in August 2019 to create a new health savings and consumer-directed benefits partner for employers, benefits consultants, and health and retirement plan providers seeking to help working families connect health and wealth. As such, HealthEquity maintains all existing relationships previously in place with WageWorks. Please visit https://healthequity.com/covid-relief-provisions, select *Register plan changes now*, complete a few simple questions and we'll update your plan and member accounts as soon as possible.

Fees

Q: If an employer chooses to extend grace period to December 31, 2021, what is the cost for a plan amendment?	**A:** The fee to provide an amendment package will be $100 (if applicable). If you select this option, you will be sent an amendment authorization form.

Resources/Communication

Q: Are you able to issue an employer a summary which can be shared with Board of Directors or Executives for amendment approval?	**A:** If you select this option, you will be sent an amendment authorization form. HealthEquity will provide an amendment package, which will include an Amendment Summary for your Summary Plan Description (SPD), a Summary of Modification Materials (SMM) and Adopting Resolution. Please note: The fee for an amendment package is $100 (if applicable). If you select this option, you will be sent an amendment authorization form.
Q: Where can the link to the web form be located?	**A:** You can locate the web form by visiting https://healthequity.com/covid-relief-provisions and selecting *Register your plan changes*.
Q: Which reports can be used to determine which employees still have a balance in their Health FSA accounts?	**A:** Reporting for each platform is different. Please connect with your HealthEquity representative to determine which reports can be used to determine member balances.