

LEGAL UPDATE

New COVID-19 Guidance for Section 125 Rules

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).

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.

Relief for FSAs and HSAs

The notice also allows plans to permit participants to apply unused amounts in health FSAs to medical care expenses incurred through Dec. 31, 2020, and unused amounts in dependent care assistance programs to dependent care expenses incurred through Dec. 31, 2020. Further, the notice provides that previous relief provided regarding high-deductible health plans and expenses related to COVID-19 regarding a temporary exemption for telehealth services may be applied retroactively to Jan. 1, 2020.

Highlights

Affected Plans

The new IRS mid-year election change guidance applies to:

- Employer-sponsored health care coverage
- Health FSAs
- Limited Purpose FSAs
- DCAPS

Required Plan Amendments

Employers that wish to make any of these changes must adopt a plan amendment by Dec. 31, 2021.

In general, the relief may be applied retroactively, to periods on or after Jan. 1, 2020.

Employee Owned



Benefit Services



LEGAL UPDATE

Increase to FSA Carryover Maximum

In addition to the above, the IRS released [Notice 2020-33](#), which increases the \$500 limit for unused amounts remaining in a health or limited purpose FSA that may be carried over into the following year by making the carryover amount 20 percent of the maximum salary reduction amount under Section 125(i), which is indexed for inflation. Simply stated, for 2020, the carryover amount will increase to \$550.

Employer Requirements

An employer using this relief may determine the extent to which such changes are applied. If these changes are applied, 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.

Important Dates

Provided to you by [Scott Benefit Services](#)

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