

Regarding IRS Notice 2021-15

On February 18, 2021, the IRS released [IRS Notice 2021-15](#) guidance that clarifies items in the recently passed Consolidated Appropriations Act of 2021 (CAA) permitting flexibility for health flexible spending arrangements (FSAs), dependent care account plans (DCAPs) and cafeteria plan election change rules. None of these changes are required. Employers have the option to implement some or all of the changes, or employers could choose not to change their plans at all. For employers who are willing to allow some additional flexibility, IRS Notice 2021-15 provides further details on exactly what is permitted and how it may impact things such as annual contribution limits, HSA eligibility, Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) continuation, and nondiscrimination rules. The notice also added some additional election change flexibility around health coverage similar to what was available in 2020 under Notice 2020-29.

Some highlights to allowable changes by Amending your IRC Section 125, Cafeteria Plan:

§ 214 of the Act:

- Provides flexibility with respect to carryovers of unused amounts from the 2020 and 2021 plan years; **Section 214 of the Act will allow “all” left over funds to be able to be rolled over into the next plan year for both Unreimbursed Medical Expense Reimbursement as well as for Dependent Care. We will “automatically roll over all employees funds to 2021” beginning April 2021 for calendar year employers. Please let all your employees know this action.**
- Extends the permissible period for incurring claims for plan years ending in 2020 and 2021; **An Employer may amend their current Cafeteria Plan to allow for one or the other but not both**
- Provides a special rule regarding post-termination reimbursements from health FSAs during plan years 2020 and 2021; **In regards to COBA election to continue**

to “incur” expenses until the end of the plan year as well as extending into a “new” plan year inclusive of years 2020 and 2021,

- Provides a special claims period and carryover rule for dependent care assistance programs when a dependent “ages out” during the COVID-19 public health emergency; **This will allow for coverage to age 14**; and
- Allows certain mid-year election changes for health FSAs and dependent care assistance programs for plan years ending in 2021. **Allows employees who may not have elected to participate in 2020 or 2021 to elect to participate as a result of the Pandemic.**

Amendment to IRC Section 125

Notice 2021-15

We the employer, _____ elect to amend our Cafeteria Plan (FSA), in accordance of Notice 2021-15, released on February 18, 2021.

We elect the following:

1. Allow our employees to roll over 100% of the remaining funds from our 2020 plan year into the 2021 plan year.
2. We elect: (select one or the other, but not both)
 - a. ____ to allow all 2020 claims to be paid with 2021 funds;
 - b. ____ to allow all 2021 claims to be paid with 2020 funds rolled over from 2020;
3. We elect to allow all employees subject to COBRA rules to continue to incur expenses, while not contributing (after tax) as no longer employed by this employer, until the end of this plan year.
4. We elect to allow all employees participating in Dependent Care contributions, to allow coverage of dependents up to the age of 14, for this plan year.
5. We elect to allow all eligible employees who may not have enrolled during open enrollment to enroll at any time during this plan year as well as all existing participants to increase or decrease contributions to both Unreimbursed Medical expenses and Dependent Care **once** during this plan year. ____ Yes ____ No

Signed on this ____ day of 2021, as the authorized person of the above mentioned employer:

Title: _____