

# Survive and Advance

**FINALLY!**

## **New IRS Guidance on Cafeteria Plans, Health FSAs, and DCAP FSAs Mid-year Election, Rollover and Grace Period COVID-19 Changes**

5.13.2020

Under much pressure from the Employer community, on May 12, 2020, the Internal Revenue Service released Notice 2020-29 dealing with cafeteria plan elections, grace periods for health flexible spending arrangements (FSAs), Dependent Care (FSAs) and the impact of COVID-19 testing and treatment and telehealth services on HSA-eligible high deductible health plans (HDHPs). The IRS also released Notice 2020-33 which increased the carryover amount for health FSAs

### **Notice 2020-29 - Cafeteria Plan Midyear Election Changes**

A cafeteria plan sponsor may amend its cafeteria plan to permit employees to make the following prospective mid-year changes to their salary reduction elections:

- Make a new election to participate in employer-sponsored health coverage if the employee initially declined to elect such coverage;
- Revoke a previous election for employer-sponsored health insurance coverage and make a new election to enroll in a different employer-sponsored plan option;
- Revoke a previous election for employer-sponsored health coverage provided that the employee attests in writing that the employee will be covered by other health coverage not provided by the employer [the notice provides a sample employee attestation];
- Revoke an election, make a new election, or increase or decrease an election to a health FSA; and
- Revoke an election, make a new election, or increase or decrease an election to a dependent care flexible spending arrangement.

These mid-year election changes would apply to “health coverage” under the section 125 plan, which may/typically include(s) medical, Rx, dental and vision. Employers should also check with their health carriers or administrators to confirm they will honor such mid-year election changes. Employers are not required to provide these election changes and can determine which changes they will permit. The relief provided by this notice will apply retroactively to mid-year changes made after January 1, 2020 if they are consistent with the requirements of this notice.

**Extended Grace Period** - Health FSAs may provide a grace period whereby unused amounts at the end of the year can be used to reimburse health expenses incurred in the 2 ½ month period following the end of the year. Employers may amend their plans to allow employees to use the unused amounts in their health HSA as of December 31, 2019 to pay for health expenses incurred before December 31, 2020 – thereby extending the grace period for a full year. The extension of time for incurring claims is available both to cafeteria plans that have a grace period and plans that provide for a carryover, notwithstanding Notice

2013-71, which otherwise continues in effect and provides that health FSAs can either adopt a grace period or provide for a carryover amount but cannot have both. This extension may be problematic to employees making contributions to an HSA in 2020, since the extension of the grace period will mean that those with a balance as of the date the grace period is extended are considered to have health coverage below the HSA-compatible HDHP amount because unused 2019 FSA amounts can be used to pay for health care expenses below the deductible in 2020, thus making them ineligible to make HSA contributions.

A similar grace period extension can be made available for dependent care assistance FSAs.

**Plan Amendments** - Plan amendments that allow for these mid-year cafeteria plan election changes and the extension of the grace period must be adopted before December 31, 2021, provided that the employer operates the plan in accordance with the rules of the Notice and plan participants must be informed of the changes.

**COVID-19 Testing and Treatment for HSA Compatible HDHPs** - The IRS previously issued Notice 2020-15 which provided that a health plan that otherwise satisfies the requirements to be a HDHP will not fail to be an HDHP merely because the health plan provides health benefits associated with testing for and treatment of COVID-19 without a deductible, or with a deductible below the minimum deductible (self only or family) for an HDHP. The Notice clarifies that the relief provided under Notice 2020-15 applies for expenses incurred after January 1, 2020 and clarifies what expenses are to be treated as COVID-19 testing and treatment.

**Telemedicine and HSA Compatible HDHPs** - The Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) provides that payments for telehealth and other remote care services below the deductible will be permitted in an HSA compatible HDHP, and therefore that individual will be able to contribute to an HSA. This provision is effective immediately and will last until December 31, 2021. The Notice provides that these services provided after January 1, 2020 will also be permitted in an HSA compatible HDHP.

### **Notice 2020-33 - Health FSA Carryover**

Under prior guidance, a health FSA could provide that unused amounts at the end of the year could be carried over to the following plan year. The limit on the carryover amount was \$500. Last year, President Trump signed an executive order that directed the Treasury Department and IRS to issue guidance that would increase the amount that could be carried over in a health FSA. This notice provides that the \$500 carryover amount is to be indexed for inflation, meaning that the carryover amount in 2020 will be \$550. A plan amendment to effectuate this change must be adopted by December 31, 2021 and can be retroactive to the 2020 plan year.

We continue to monitor Government communications and all SBI's compliance resources for Employee Benefit Plan updates. Should you have any questions please do not hesitate to reach out to any member of the SBI Benefits team.

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The foregoing has been prepared as a general overview of the subject matter covered. It is not meant to provide legal advice with respect to any specific matter and it should not be taken as legal or compliance advice. Do not take, or refrain from taking, any action on legal or compliance issues related to any employee benefit plan(s) based upon this information. Readers of this alert are encouraged to consult with their own professional counsel. Smith Brothers Insurance is not obligated to provide updates on the information presented herein.

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