



## Consolidated Appropriations Act 2021 – FAQ

**Q.1.** Our Section 125 Health FSA plan currently provides for the original \$500 “carryover” provision (with the updated index linked increases), additionally, for employees to qualify for the “carryover” our plan requires employees to make an election in a minimum dollar amount for the new plan year. If we choose to adopt the optional extension to the carryover would employees who did *not* make an election for the new plan year be eligible for the temporary unlimited carryover to the new plan year?

**A.1.** Yes. The way ABG will administer this option would be to recognize the mid-year election as an election which qualifies them to have the carryover funds.

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**Q.2.** Our Section 125 Health FSA plan currently provides for the original \$500 “Carryover” provision (with the updated index linked increases), additionally, for employees to qualify for the carryover our plan requires employees to make an election in a minimum dollar amount for the new plan year. Our employees have a qualifying high deductible health plan that allows them to make contributions to a Health Savings Account (HSA). If we choose to adopt the optional extension to the carryover would my employees who contribute to an HSA be negatively impacted by adopting this provision?

**A.2.** In this situation because you require your employees to make an active election to qualify to receive the carryover, your employees should not have elected to participate in the general purpose health FSA if they were planning on make contributions to their Health Savings Account. If you offer a limited purpose FSA, which is compatible with Health Savings Accounts, and your employees wanted to contribute to a Health Savings Account in 2021, they could have chosen to elect a limited purpose FSA, in which case, by choosing to adopt this provision, it would just increase the amount that can be carried over.

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**Q.3.** Our Section 125 Health FSA plan currently provides for the original \$500 “Carryover” provision (with the updated index linked increases) and we do not require employees to make an election in a specific dollar amount for the subsequent plan year to qualify for the “Carryover”. If we choose to adopt the optional temporary extended “Carryover” provision and an employee who did not make an active election in the following plan year but carries over a balance, and subsequently terminates during the extended “Carryover” period, would the terminated employee be able to continue to spend their carryover balances after the date of termination?

**A.3.** Yes. If an employee terminates employment or loses eligibility, they would be able to spend down their “Carryover” balance as long as they make a COBRA election. Please note, there would be no COBRA premium charged for them to access the “Carryover”.

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**Q.4.** Our Health FSA currently offers the 2.5 month “Grace Period” that allows employees to continue to access their entire prior plan year balance for an additional 2.5 months after the end of the Plan Year, can we adopt the new unlimited “Carryover” provision?

**A.4.** No, because your Section 125 plan that ended in 2020 has adopted the 2.5 month “Grace Period” you will need to use the extended grace period option if you want to allow your employees to have the extended time to access balances remaining in the plan year that ended in 2020 (the same rule will apply for plan years ending in 2021).

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**Q.5.** Our Health FSA currently offers the 2.5 month “Grace Period” that allows employees to continue to access their prior plan year balance for an additional 2.5 months after the end of the plan year, and our employees have a qualifying high deductible health plan that allows them to make contributions to a Health Savings Account (HSA). If we choose to adopt the optional extension to the 2.5 month “grace period” would my employees who contribute to an HSA be negatively impacted by adopting this provision?

**A.5.** Employees who wish to contribute to a Health Savings Account cannot do so if they have any first dollar coverage available to them prior to meeting the minimum federal deductible for HSA qualifying medical plans. The availability of any balances in a General-Purpose Health FSA constitutes first dollar coverage, therefore if an employee has a balance remaining in their Health FSA on the last day of the plan year then they cannot contribute until the first day of the month following the last day of the “Grace Period” on that plan. If you choose to extend the Grace Period on your General-Purpose Health FSA then any employee who had a balance remaining in this account on the last day of your plan year that ended in 2020, will be precluded from contributing to a Health Savings Account, or from receiving contributions to their Health Savings Account, until the first day of the month following the end of the “Grace Period.” If you offer a Limited Purpose FSA which is compatible with HSAs, employees who were enrolled in the Limited Purpose FSA in the plan year that ended in 2020 will be able to make contributions to a Health Savings Account. Per US Treasury regulations individual employees are not permitted to convert General Purpose FSA balances to Limited Purpose FSA balances.

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**Q.6.** If we decide to adopt the optional temporary 12-month Grace Period extension, what happens to employees who terminate employment or lose eligibility for these plans after the last day of the Plan Year but during the extended “Grace Period”?

**A.6.** Section 125 Cafeteria plan rules require that any employee who was active on the last day of the plan year must be provided the same access to the grace period as any active employee. This means that if you adopt this option, balances must remain available to employees who terminate employment or lose eligibility, through the entire extended “grace” and “run-out” period.

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**Q.7.** Our Health FSA does not currently offer either the “carryover” provision or the “2.5 grace period” but we want to allow employees the temporary optional extension. Which options should we choose?

**A.7.** Both options provide employees access to their prior plan year balances through the end of the following plan year. The “grace” period provides a seamless extension and allows employees to continue to easily submit their run-out claims (expenses incurred during the plan year that ended in 2020) against that plan year while also using balances for expenses incurred in 2021. With the Carryover provision any

balances remaining in employees accounts in the plan year that ended in 2020 will be “carried over” into the plan year that ends in 2021 *after* the run-out period on the plan year that ended in 2020 is complete.

If you have employees on an HSA compatible high deductible health plan who are currently contributing to or want to contribute to an HSA or to receive an employer contribution to their HSA, then be aware that by choosing to adopt this temporary optional extension you may preclude employees from contributing to or receiving contributions to their HSA.

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**Q.8.** What factors should we consider when deciding whether to adopt the temporary optional extension to our Dependent Care account?

**A.8.** One important factor to consider when making the decision on whether to adopt the temporary optional extension to your dependent care benefit is that the IRS has not changed or amended the statutory maximum of \$5,000 of non-taxable benefits that can be received in a tax year under Section 129 of the Code. This means that these temporary optional extensions could result in employees being taxed on any amounts received exceeding the statutory limit. That said, the taxation of amounts exceeding the statutory limits could be preferable to employees’ forfeitures.

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**Q.9.** Our Dependent Care FSA does not currently offer the “2.5 grace period” but we want to allow employees the temporary optional extension option. Should we choose the temporary “Carryover” provision or the 12-month extended grace period provision?

**A.9.** Internal Revenue Code does not provide for a “Carryover” on the Dependent Care benefit, but the Code allows for a 2.5 month “Grace Period,” however, the CAA of 2021 provides for the adoption of a temporary Carryover to the following Plan Year of the entire balance remaining in a Dependent Care account with a Plan Year ending in 2020 or a temporary extended 12-month Grace Period through the last day of the Plan year ending in 2021. Consequently, you can choose either option. The adoption of the temporary “12 month Grace Period” extension option seems more in line with the rules that currently apply to the Dependent Care benefit. The “grace” period provides a seamless extension and allows employees to continue to easily submit their run-out claims (expenses incurred during the plan year that ended in 2020) against that plan year while also using balances for expenses incurred in the plan year ending in 2021. With the Carryover provision any balances remaining in employees accounts in the plan year that ended in 2020 will be “carried over” into the plan year that ends in 2021 *after* the run-out period on the plan year that ended in 2020 is complete.

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**Q.10.** As a plan sponsor why would I want to adopt the optional temporary amendment that would allow plan participants to make a one-time change to their Health FSA election?

**A.10.** These amendments are optional. There is no requirement to adopt this temporary provision. The intentions may have been to address Plan Sponsors who choose to offer one of the temporary extensions, since plan participants would not have known that there would be relief with respect to forfeitures at the time they made their annual elections for plans ending in 2021. Plan participants made elections not knowing that they were going to be permitted to have extended access to their Health FSA balances from their plan that ended in 2020. It’s important to note, since plan sponsors also have the option to offer the extension on plans ending in 2021, employees will be able to take this into account

when making elections during the next open enrollment period, thus, this change is only allowed for plans ending in 2021.

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**Q.11.** Are there any advantages to offering the terminated employee spend-down on the Health FSA or Limited Purpose FSA benefits?

**A.11.** The adoption of this option would provide that a terminated employee be permitted to spend-down the balances in their Health FSA (the sum of their contributions to the plan less reimbursements received, without regard to their annual election). However, the advantage of adopting this option to the employee would be they would not have to elect COBRA to continue their FSA coverage, nor would they be responsible for any COBRA premiums. Additionally, if you choose this option and you are communicating employee terminations using a file feed, the terminations fed over on an on-going eligibility file feed would continuously over-ride the benefits availability and therefore, cannot be supported for this new option. Therefore, you would need to suspend your eligibility file and communicate terminations manually. Because the spend-down only permits the terminated employee to access their balance without regard to their annual election, a separate account must be established, to restrict access to the remaining balance.

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**Q.12.** What factors should I take into consideration when deciding whether to amend our Plan to allow plan participants to be reimbursed for dependent care expenses for dependents after they turned age 13 but before they turn age 14.

**A.12.** Because the availability of this temporary option does not amend Section 129 of the code that provides the age restriction the reimbursement of any amount for a child that is 13 may have to be treated as a taxable benefit.

The thought behind this option appears to have been to provide relief to plan participants who were unable to use childcare during COVID-19 and whose dependent child subsequently reached their 13<sup>th</sup> birthday and no longer qualified for the benefit.

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**Q.13.** We sponsor a section 125 cafeteria plan and under IRS Notice 2020-29 that provided temporary relief in response to the COVID-19 outbreak we elected to adopt the extended claims period to the last day of December 2021 for our Dependent Care and Health FSA plans that ended in 2020. Are we able to further amend our Cafeteria Plan to expand this extension period through the last day of the plan year that ends in 2021? By means of an example the last day of our Health FSA and Dependent care FSA Plans fall on June 30<sup>th</sup>, by adopting the extension provided under Notice 2020-29 our plan participants were able to use any balances in these accounts through the end of December 2020. With the CAA 2021 can we now further extend our plans that ended on 6/30/2020 through the end of June 2021?

**A.13.** Yes. If your plan *offered the index linked \$500 carryover* ABG will have already carried over the up to \$500 from your Health FSA accounts into your plans that end on June 30<sup>th</sup>, 2021. You can now choose the extension option to temporarily amend your section 125 cafeteria plan to expand the amount that was carried over to the entire balance remaining in your plan that ended on June 30, 2020. You may want to review what the remaining balances are and base your decision on this.

If your plan that ended on June 30<sup>th</sup>, 2020 *did not offer the carryover provision*, then any balances remaining in your plan participant's accounts after claims incurred through December 31<sup>st</sup>, 2020 have been processed, would be forfeited. In making your decisions to adopt the additional extension we recommend that you review your reports for these plans and make your decision accordingly. By adopting either of the additional extension options, plan participants would have access to remaining balances until June 30<sup>th</sup> 2021.