



## Consolidated Appropriations Act, 2021 (“CAA 2021”) & FSA Options

### **AGENDA:**

- **CAA 2021 Overview**
- **Options under the CAA 2021**
- **Discussion of Options**
- **The Non-plan Extension Options**
- **The Plan Extension Options**
- **Timeline**
- **Communications**

## What is the CAA 2021?

- The CAA of 2021 offers Plan Sponsors (5) temporary optional amendments to their health FSAs, Limited Purpose FSAs and/or Dependent Care FSAs under the Section 125 cafeteria plans to help their participating employees who may have been impacted by the unintended consequences of COVID 19.
- These optional regulations, if chosen to be adopted, require plans to be amended on or before the last day of the first calendar year beginning after the end of the plan year in which the amendment was effective. For Plan years ending in 2020 the adoptions must be done no later than December 31st, 2021
- Prior to the adoption of the amendment, plan changes must be communicated and administered in accordance with the plan amendment that is ultimately adopted
- Employers are not required to adopt any of these (5) options and can choose between one or a combination of the available options.
- There may however certain limitations on which extension options can be adopted. Upon submitting the ABG election form to adopt these options, ABG will amend your Plan Documents. These amendments are scheduled to be sent out in early May. There is a \$295 fee for these amendments
- Keep in mind that these options are temporary.

## Options Available under the CAA 2021

### **The CAA 2021 special rules for Flexible Spending Accounts allow for the following options:**

- Allow Health FSA, Limited Purpose FSA (LPF) and/or Dependent Care FSA (DCA) plans ending in 2020 to carry over any unused benefits or contributions remaining in any such flexible spending arrangement from such plan to the plan year ending in 2021
- Allow Health FSA, LPF and/or DCA plans ending in 2021 to carry over any unused benefits or contributions remaining in any such flexible spending arrangement from such plan to the plan year ending in 2022
- Extend grace periods for a plan year ending in 2020 or 2021 to 12 months after the end of such plan year with respect to unused benefits or contributions remaining in the Health FSA, Limited Purpose FSA or Dependent Care account
- Amend Health FSAs and LPFs to permit a one-time prospective election change for plan years ending in 2021, without a corresponding change in status event.
- Permit post-termination reimbursements from Health FSAs and LPFs (Spend-down option).
- Allow dependent care expenses incurred after a dependent child turns 13 during a plan year, to be reimbursable through the end of the plan year in which the child turns 13. This applies to plan participants who is enrolled in a Dependent Care FSA for the last plan year with respect to which the end of the regular enrollment period for such plan year was on or before January 31<sup>st</sup>, 2020. Additionally the Act allows for those remaining balances to be available for reimbursement of expenses incurred for that child in the following plan year prior to the child turning 14.

## Discussion of Options

### **We have separated the options into two sections**

- 1) The Non-plan extension options.
- 2) Plan Extension options.

## The Non-plan Extension Options

### **The non-plan extension options consist of the following:**

- Amend Health FSAs, Limited Purpose FSAs to permit a one-time prospective election change for plan years ending in 2021, without a corresponding change in status event.
- Permit post-termination reimbursements from Health FSAs and Limited Purpose FSAs (Spend-down option).
- Allow dependent care expenses incurred after a dependent child turns 13 during a plan year to be reimbursable through the end of the plan year in which the child turns 13. This applies to plan participants who is enrolled in a Dependent Care FSA for the last plan year with respect to which the end of the regular enrollment period for such plan year was on or before January 31st 2020. Additionally the Act allows those remaining balances to still be available for reimbursement of expenses incurred for that child in the next plan year prior to the child turning 14.

## The Non-plan Extension Options

### **Amend Health FSAs, Limited Purpose FSAs to permit a one-time prospective election change for plan years ending in 2021, without a corresponding change in status event.**

Since the regulations governing Dependent Care FSA changes are less rigid there is no requirement to adopt this provision for your dependent care benefit.

- All changes must be prospective
- An election increase cannot exceed the applicable maximum
- A decrease cannot be below the reimbursements the participant has received as of the date of the change

If you elect this option you should establish a period during which plan participants are permitted to make a change.

Communicate this change period to all employees eligible to make a change.

Update: Employees who did not make an election can now make an election and receive carryover funds (where applicable).

After the close of your designated election change period communicate these changes to ABG through your existing EDI file, if in place. If you do not have an EDI file, compile all changes in the ABG spreadsheet template supplied for this purpose and send to [processing@amben.com](mailto:processing@amben.com).

Make sure to update your payroll accordingly.

## The Non-plan Extension Options

### **Permit post-termination reimbursements from Health FSAs and Limited Purpose FSAs (Spend-down option).**

- The adoption of this option would provide that a terminated employee be permitted to spend-down the balances in their Health FSA or Limited Purpose FSA without the requirement to make a COBRA election or to make COBRA premium payments.
- Normally the Uniform Coverage Rule applies to Health FSAs which means that an employee should have access to their entire election regardless of their contributions, with this rule the terminated employee would be able to spend-down the balance on their account—their total payroll contributions as the time of termination less any reimbursements received.
- This option is not compatible with ongoing eligibility files, terminations communicated on these files would override the spend-down feature, while in place all terminations would have to be communicated manually to ABG.
- Because the Uniform Coverage Rule is not being applied a separate “balance” account will have to be set-up for each terminated employee.
- Due to the manual nature of administering this provision there will be an additional administration fee associated with this offering.

Please contact ABG if you wish to adopt this option.

## The Non-plan Extension Options

### Temporary Age Increase for Dependent Care FSA

- This temporary relief applies to plan participant who were enrolled in a dependent care FSA benefit and with a child who turned 13 during the plan year. The relief would allow the employee to receive reimbursement for expenses after their dependent turned 13 but prior to the end of the plan year.
- There is also an option to allow any unspent balances remaining that plan year to be used to reimburse for expenses for that same dependent in the following plan year prior to the dependent turning age 14. ABG does not see a way to reliably administer this second part of the provision.
- The Act does not amend Section 129 of the code, it is this section that provides the age restriction. To receive pre-tax reimbursement for expenses of a child that is 13 (beyond the statutory age maximum) additional guidance is needed. Absent such guidance the adoption of this option would cause reimbursement amounts received for a child who is age 13 (and not yet turned 14) to be treated as a taxable benefit.

Please contact ABG if you wish to adopt this option.



## The Plan Extension Options

### Plan Extension Options

The intent of the temporary relief offered through the CAA 2021 allows a Health FSA with a grace period to reach the same place as a Health FSA with a carryover by allowing a plan sponsor to provide relief regardless of whether the Health FSA has a grace period or a carryover provision in place. Since the Internal Revenue Code does not provide for a carryover on the dependent care benefit even though the CAA temporary regulations permit a carryover to be offered, ABG recommends the adoption of the 12-month grace period option when choosing to extend the dependent care benefit. This mechanism should achieve the same goal.

- Allow Health FSA, Limited Purpose FSA and/or Dependent Care FSA plans ending in 2020 to carry over any unused benefits or contributions remaining in any such flexible spending arrangement from such plan to the plan year ending in 2021
- Allow Health FSA, Limited Purpose FSA and/or Dependent Care FSA plans ending in 2021 to carry over any unused benefits or contributions remaining in any such flexible spending arrangement from such plan to the plan year ending in 2022
- Extend grace periods for a plan year ending in 2020 or 2021 to 12 months after the end of such plan year with respect to unused benefits or contributions remaining in the Health FSA, Limited Purpose FSA or Dependent Care FSA

## The Plan Extension Options

### **How do I choose between the different extension options (carryover v. 12-month grace period)?**

- If your existing plan currently has the carryover provision since IRS regulation do not allow retroactive plan amendments, you must adopt that carryover provision to provide your plan participants the extension option.
- If your existing plan currently has the 2.5 month grace period since IRS regulation do not allow retroactive plan amendments, you must adopt that 12 month grace period to provide your plan participants the extension option.
- If your existing plan currently offers neither the carryover provision or the 2.5 month grace period you can choose either of the options to provide your plan participants this extension option.

## The Plan Extension Options

### **What are the most important items to take into consideration when making the decision to adopt an extension option for your Health FSA plans?**

- The Act provides no special relief regarding the interplay of the Health FSA with the Health Savings Account (HSA). By adopting the temporary extension on the Health FSA, employees who are enrolled in an HSA qualifying HDHP and who are contributing to an HSA or receiving an employer contribution to their HSA could lose their eligibility for this. Under existing rules participation in a general purpose Health FSA prevents an employee from being eligible to receive or make HSA contributions for the entire grace period even if the Health FSA is exhausted prior to the end of the extended grace period. Likewise, automatically carrying over general purpose Health FSA balances to the following plan year could prevent an employee from being eligible to receive or make HSA contributions.
- Ongoing file feeds would not capture employees who terminate after the end of the plan year.
- When the grace period is adopted the plan that is extended for an additional 12 months will show in the ABG system as “current”.
- When the Carryover option is adopted the funds will not be carried over until two weeks after end or the run-out period on the plan from which the balances are to be carried.

## The Plan Extension Options

### **What are the most important items to take into consideration when making the decision to adopt an extension option for your Dependent Care FSA plans?**

- The IRS has not changed the statutory maximum of \$5,000 of non-taxable benefits that can be received in a tax year under Section 129 of the IRC (Code Section 12(a)).
- Absent additional guidance amounts exceeding the statutory maximum under Section 129 of the code may have to be treated as taxable income. However, for those groups, a taxable benefit may still be better than a forfeiture.
- Potential nondiscrimination testing issues.

## The Plan Extension Options

**Can the CAA 2021 extension options be offered in addition to the adoption of the previous Cares Act special grace extension that allowed claims to be incurred on plans that ended in 2020 through December 31st 2020?**

**(Using as an example a plan year that ended on June 30th 2020)**

- Yes. If your plan offered the index linked \$500 carryover ABG will have already carried over the up to \$500 from your Health FSA and Dependent Care FSA accounts into your plans that end on June 30th, 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 factor.
- If your plan that ended on June 30th, 2020 did not offer the carryover provision, then any balances remaining in your plan participant's accounts after claims incurred through December 31st, 2020 have been processed, would otherwise be forfeited. By adopting either of the additional extension options, plan participants would have access to remaining balances until June 30th, 2021. In making your decisions to adopt the additional extension we recommend that you review your reports for these plans and make your decision accordingly.

## Timeline

### Plan Amendment Form Due

This form can be submitted immediately and should be submitted no later than 3/31/2021. These new temporary plan options cannot be formally adopted without submitting the completed, signed form to ABG, an email requesting the adoption of these options will not suffice. Remember that the actual plan amendment does not have to be adopted until December 31st of 2021.

### Plan Option Adoption

Once ABG receives your completed signed Plan Amendment Form, you may begin communicating plan changes to your participants.

### WealthCare System Plan Adjustments

- ABG will start employing the applicable functionality in the WealthCare system based on the temporary options you choose.
- **Extended Carryover** – ABG will adjust plans within 30 Days after current run out period ends For plans where the run-out period has expired ABG will change plans within two weeks of the submission of the change request form
- **Extended Grace Period** – ABG will adjust plans prior to the end of the existing grace period or within 2 weeks of receipt of the submission change request form.

### Plan Document Amendments Available

Plan Amendments and SMMS are currently scheduled to be sent out by mid-May.

## Communications

ABG has several communications which are affected by changes to the carryover and grace. With the overwhelming interest in adding or changing carryover and grace options, ABG has temporarily turned off these communications to cut down on any confusion they may cause.

### **The communications include:**

*Year-End Communication*

*Grace Period Reminder*

*Run Out Deadline*