



## BENEFITS LUNCH BREAK WEBINAR SERIES

March 17, 2021

## Health and Welfare Benefit Update under CAA, Agency Guidance and ARPA

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## 2021 Upcoming Lunch Breaks

Topics TBA, but save these dates:  
*Third Wednesday of Month @12pm*

Apr 21	May 19	Jul 21	Sept 15	Nov 17
	Jun 16	Aug 18	Oct 20	Dec 15

**Register here:**

<https://bit.ly/BenefitLunchBreaks>

## Upcoming Topic Ideas

Let us know what you'd like to hear about in the **Q&A feature**  
and/or in the **post-webinar survey**.



## Today's Topics

- Flexible spending account changes allowed by the CAA, IRS Notice 2021-15 and ARPA
- Benefit plan deadline extension update under EBSA Disaster Relief Notice 2021-01
- COBRA premium subsidies under ARPA

## Flexible Spending Accounts

## Carryovers and Grace Periods

- FSA changes allowed by the Consolidated Appropriations Act, 2021 (CAA) as clarified by IRS Notice 2021-15:
  - More flexibility to avoid forfeitures under the use-it-or-lose-it rule:
    - Allow **unlimited carryovers** under both medical and dependent care FSAs from 2020 to 2021, and 2021 to 2022
    - **Extend grace periods** under both medical and dependent care FSAs for 12 months after the end of the plan year ending in 2020 and 2021
  - Allows the addition of a carryover or grace period for the 2020 plan year, even after the end of the 2020 plan year
  - Allows the temporary suspension of a carryover to offer an extended grace period (or vice versa), but can't offer both at the same time

## Spend Down of Medical FSAs

- Spend down balance in a medical FSA for the remainder of the plan year after termination in 2020 and 2021
  - Currently allowable for dependent care FSAs
  - Employer must still offer COBRA to participants who terminate due to a qualifying event with a positive medical FSA account balance
    - Participants who elect **COBRA** will have access to their full contribution to the medical FSA for the plan year, but must pay COBRA premiums
    - **Spend down** of a participant's medical FSA:
      - Access does not require termination of participation due to a COBRA qualifying event
      - Participant will only have access to the medical FSA account balance as of the date of termination (not full contribution)

## Dependent Care FSAs for Older Children

- A dependent care FSA can only be used to pay for dependent care expenses for children **before** the child's 13<sup>th</sup> birthday
- CAA allows:
  - A dependent care FSA to reimburse expenses incurred on behalf of a child who turned 13 in the plan year for which the annual open enrollment period ended on or before January 31, 2020 (i.e., first plan year on or after February 1, 2020)
  - If the dependent care FSA provides a **grace period or carryover**, amounts from this plan year can reimburse dependent care expenses for children who turn 13 in the plan year or the **next plan year**, but only from amounts available under the grace period or carryover

## Increase in Dependent Care FSA Benefit

- Under the American Rescue Plan Act of 2021, a participant is eligible to receive \$10,500 of dependent care assistance under a dependent care FSA in the 2021 tax year
  - This amount is limited to \$5,250 for employees who are married filing separately
  - This will allow an increase in contributions (either employer or employee) to the dependent care FSA in 2021
  - Additional guidance from the IRS on how this will work with carryovers and extended grace periods would be helpful
  - Retroactive amendment permissible if adopted by the last day of the 2021 plan year

## Mid-Year Changes under Section 125 Plans

- Allow the following mid-year changes to pre-tax elections for any reason in plan years that end in 2021:
  - Mid-year changes under medical or dependent care FSAs
    - Includes conversions between a general- and limited-purpose medical FSA
  - Mid-year changes to employer-provided group health plan coverage including medical/Rx, dental or vision
    - Employees (not spouses or dependent children) who request to drop medical/Rx coverage must provide a written attestation that the employee has (or will immediately enroll) in other comprehensive health coverage
- Employer can set “guardrails” on when and what mid-year election changes can be made

## Amendments

- Provides additional time to amend FSAs for any changes allowed by the CAA or Notice 2021-15
  - Amendments must be signed by the last day of the calendar year that begins after the plan year for which the amendment is effective
  - Ex. For a Section 125 plan with a calendar year plan year, an amendment that is first effective during the 2020 plan year must be signed by December 31, 2021
  - Does not apply to increase in dependent care FSA amount under ARPA
- Allow retroactive amendments to medical FSAs and HRAs to cover OTC drugs without a prescription and menstrual care products as of January 1, 2021

## Benefit Plan Deadline Extensions

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- The following deadlines were extended during the outbreak period under EBSA Disaster Relief Notice 2020-01:
  - COBRA elections, premium payments, provision of election notice
  - Enrollment requests due to HIPAA special enrollment events
  - Claim and appeal submissions
- The outbreak period is March 1, 2020 through 60 days after the Presidentially-declared national emergency declaration for COVID-19 expires
  - DOL/IRS only has statutory authority to extend deadlines for a period of 1 year

## Benefit Plan Deadline Extensions

- EBSA Disaster Relief Notice 2021-01 clarifies that the relief applies on an individual-by-individual basis
  - Ex: COBRA election deadline of April 1, 2020 is extended to April 1, 2021
- Employers should act reasonably and in the interest of employees and their families who rely on benefit plans for health and economic well-being
- Employers should consider sending affected participants a notice regarding the end of the extension

## COBRA Premium Subsidies Under ARPA

## Eligibility

- “Assistance eligible individuals” are eligible for the COBRA premium subsidies:
  - Employees (including their spouses and dependent children) who become eligible for COBRA due to an **involuntary** termination of employment or reduction in hours
  - The involuntary termination of employment or reduction in hours does not need to occur during the period in which COBRA premium subsidies are available
  - Individuals who become eligible for COBRA for other reasons (e.g., divorce or legal separation, dependents “aging out”) are not eligible for COBRA premium subsidies

## Duration

- COBRA premium subsidies are available beginning April 1, 2021 through September 30, 2021, unless terminated earlier:
  - **Eligibility** for coverage under another group health plan
    - Doesn't include excepted benefits (e.g., dental- or vision-only benefits) medical FSAs, or QSEHRAs
    - Could include coverage under a new employer's plan or the plan of a spouse's employer
  - **Eligibility** for Medicare
  - Exhaustion of the normal COBRA period

## Amount

- 100% of the applicable COBRA premium
- The entity that advances the COBRA premium is eligible for a refundable tax credit against the entity's Medicare tax
  - Based on the IRS's previous guidance under the American Recovery and Reinvestment Act of 2009, this appears to include the 2% administrative fee
  - Does not include employer subsidies towards COBRA (e.g., under a severance agreement)
    - This will not impact what the QB must pay
    - It will impact the amount that the entity can claim as a tax credit against the entity's Medicare tax

## Other Changes

- If permitted by the employer, assistance eligible individuals may be allowed to switch to a lower-cost coverage option under COBRA (does not include excepted benefits, medical FSAs, or QSEHRAs)
- The following individuals are entitled to another opportunity to elect COBRA effective April 1, 2021
  - Assistance eligible individuals who have not elected COBRA as of April 1, 2021
  - Any qualified beneficiary who previously elected COBRA but discontinued COBRA before April 1, 2021
  - Interaction with EBSA Disaster Relief Notices 2020-01 and 2021-01

## Revised COBRA Election Notice

- Between April 1, 2021 and September 30, 2021, the COBRA election notice must include the following information
  - The availability of the COBRA premium subsidy
  - If permitted by the employer, the opportunity to switch coverage options
  - The election notice with this information must be distributed to the following individuals by May 31, 2021
    - Assistance eligible individuals who became entitled to COBRA before April 1, 2021
    - Individuals who have another opportunity to elect COBRA effective April 1, 2021 under ARPA

## Additional Content For COBRA Election Notice

- Forms necessary for establishing eligibility for premium assistance
- Name, address, telephone number necessary to contact plan administrator or other person about the premium assistance
- A description of the additional opportunity to elect COBRA
- A description of the QB's obligation to notify the GHP providing COBRA of eligibility under another GHP or Medicare
- Prominent description of a QB's right to premium assistance (including any conditions on assistance)
- If allowed, a description of the ability to switch coverage options

## Subsidy Termination Notice

- Notice that the COBRA subsidy will end soon and “prominent identification” of the date that it will end, and that the individual may be eligible for coverage without premium assistance through:
  1. COBRA; or
  2. Another group health plan
- Not required if COBRA subsidy is terminated due to eligibility for another group health plan or Medicare
- Must be provided no more than 45 days and no less than 15 days from the date the premium assistance will end

## Tax Credit

- The following entities are eligible for the tax credit against the entities Medicare tax
  - A multiemployer (union) plan
  - The plan sponsor of a self-funded group health plan, or a fully insured plan that is subject to federal COBRA
  - The insurer of all other fully insured plans (i.e., fully insured plans not subject to federal COBRA)

## Questions



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