

IRS Issues Further Relief for Section 125 Plans, FSAs and HSAs

In [Notice 2020-29](#), the IRS has issued further relief for Section 125 Plans, FSAs and HSAs. The Notice provides flexibility for mid-year elections under a Section 125 cafeteria plan during calendar year 2020 related to employer-sponsored health coverage, health Flexible Spending Arrangements (FSAs), and dependent care assistance programs (DCAPs). The Notice also provides flexibility with respect to grace periods to apply unused amounts in FSAs and DCAPs for expenses incurred through December 31, 2020.

Mid-Year Election Changes Under a Section 125 Plan

For mid-year elections made during calendar year 2020, a Section 125 Plan may allow employees to:

- make a new election on a prospective basis, if the employee initially declined to elect employer-sponsored health coverage;
- revoke an existing election and make a new election to enroll in a different health coverage sponsored by the same employer on a prospective basis;
- revoke an election on a prospective basis, provided that the employee attests in writing that the employee is enrolled, or will immediately enroll, in other health coverage not sponsored by the employer;
- revoke an election, make a new election, or decrease or increase an existing election applicable to a health FSA on a prospective basis; and
- revoke an election, make a new election, or decrease or increase an existing election regarding a dependent care assistance program on a prospective basis.

Section 125 does not require the plan to allow for mid-year election changes, so these provisions will be allowable at each employer's discretion, but will require a plan amendment. An employer utilizing this relief is not required to provide unlimited election changes but may determine the extent to which such election changes are permitted, provided the elections do not result in failure to comply with the plan's nondiscrimination rules.

Unused Amounts in a FSA or DCAP

A Section 125 Plan may permit employees to apply unused amounts in their FSAs and DCAPs to pay or reimburse medical care expenses or dependent care expenses, respectively, incurred through December 31, 2020.

- Under the carryover rule, participants can carryover unused amounts in their FSA to pay for or reimburse medical expenses incurred during the following plan year. [Notice 2020-33](#) increases the allowable carryover amount to \$550 (20% of the annual maximum allowed FSA election).
- Under the grace period rule, participants can apply unused amounts at the end of a plan year to pay for expenses incurred during the period of up to two months and 15 days immediately following the end of a plan year. Participants who are allowed an extended period to incur expenses in accordance with this notice will not be eligible to contribute to a HSA during the extended period (except in the case of a limited purpose, HSA-compatible, FSA).

Due to the nature of the public health emergency, and changes in the availability of medical care and dependent care, participants are likely to have unused funds as of the end of plan years, or grace periods,

ending in 2020 and may wish to have an extended period to apply those funds. A plan amendment will be required to allow for the additional carryover amount as well as the extended grace period.