



# TaxNewsFlash

United States



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## Notice 2021-15: Relief for health FSAs and dependent care assistance programs under “cafeteria plans” (COVID-19)

The IRS today released an advance version of Notice 2021-15 to clarify application of provisions of the “Taxpayer Certainty and Disaster Tax Relief Act of 2020” (enacted as part of the “Consolidated Appropriations Act, 2021” (Pub. L. No. 116-260)) which provides temporary special rules for health flexible spending arrangements (health FSAs) and dependent care assistance programs under section 125 cafeteria plans.

The relief provided by [Notice 2021-15](#) [PDF 245 KB] is in response to the coronavirus (COVID-19) pandemic.

The legislation:

- Provides flexibility with respect to carryovers of unused amounts from the 2020 and 2021 plan years
- Extends the permissible period for incurring claims for plan years ending in 2020 and 2021
- Provides a special rule regarding post-termination reimbursements from health FSAs during plan years 2020 and 2021
- Provides a special claims period and carryover rule for dependent care assistance programs when a dependent “ages out” during the COVID-19 public health emergency
- Allows certain mid-year election changes for health FSAs and dependent care assistance programs for plan years ending in 2021

Notice 2021-15 explains that while the legislation refers to “dependent care flexible spending arrangements,” today’s IRS notice uses the term “dependent care assistance programs.”

Today’s notice also provides additional relief with respect to mid-year elections for plan years ending in 2021. Specifically, with respect to employer-sponsored health coverage, a section 125 cafeteria plan

may permit employees who are eligible to make salary reduction contributions under the plan to take any of the following actions for plan years ending in 2021:

- 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 different health coverage sponsored by the same employer on a prospective basis
- Revoke an existing election on a prospective basis, provided that the employee attests in writing that the employee is enrolled, or immediately will enroll, in other health coverage not sponsored by the employer

Notice 2021-15 also provides relief with respect to the effective date of amendments to section 125 cafeteria plans and health reimbursement arrangements (HRAs) to implement the expansion of allowed expenses for health FSAs and HRAs by the "Coronavirus Aid, Relief, and Economic Security Act" (CARES Act) (Pub. L. No. 116-136) to include over-the-counter drugs without prescriptions and menstrual care products.

The notice includes examples and sample language for use regarding the elections.

Read a related IRS release—[IR-2021-40](#) (February 18, 2021)

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