Consolidated Appropriations Act of 2021

On Monday, December 21, 2020, Congress passed the Consolidated Appropriations Act, 2021. Included in the volume of text were several items related to Flexible Spending Account (FSA) relief. Here is an overview of the key FSA provisions:

Full FSA Carryovers from 2020-2021 and 2021-2022 Plan Years. For both the Health FSA and the Dependent Care FSA, a plan may allow carryovers of the full unused balance from plan years ending in 2020 and 2021 into the subsequent plan years ending in 2021 and 2022, respectively. This is welcome relief as many FSA participants had fewer opportunities to spend down their FSA funds in 2020. While adopting such relief may result in a decrease in your plan forfeiture, Sentinel feels that this is relief that employees have been asking for and is timely in order for employees to not have to forfeit their FSA balances.

Extension of Grace Periods for 2020 and 2021 Plan Years. For both the Health FSA and the Dependent Care FSA, the plan may have a 12-month grace period after the plan years ending in 2020 or 2021. A plan may not adopt this option when the plan also offers a carryover provision, so if the provision above is adopted then a plan would not be able to opt-in to the Grace Period Extension option. If, however, your plan offers the Grace Period for the Health and/or Dependent Care FSA, then that Grace Period (typically 2 ½ months) can be extended to 12 months following the end of the plan year, allowing participants to incur claims through that point in time.

Post-Termination Health FSA Spend Down. A plan may permit employees who are enrolled in a Health FSA and who terminate participation mid-year during calendar year 2020 or 2021 to continue to incur reimbursable claims for the remainder of the plan year in which participation ceased. Sentinel does not recommend the adoption of this provision simply because the option to elect the Health FSA through COBRA is already available to individuals and the adoption of this provision may encourage adverse selection. Additionally, adopting this provision could lead to overspending of the account, with your organization having to cover the amount reimbursed over what had been contributed.

Special Carry Forward Rule for Dependent Care FSA Arrangements Where Dependent Aged Out During Pandemic. Employees whose children reached age 13 during the last Dependent Care FSA plan year for which the enrollment period was on or before January 31, 2020 may continue to treat the child as eligible up to age 14 for such plan year. The adoption of this provision would give employees who had a child turn 13 during the pandemic an opportunity to spend their Dependent Care funds on that dependent. In order for a participant to be eligible for this provision (in addition to your organization adopting this provision), he or she would have to have been enrolled in the Dependent Care FSA on or before January 31, 2020 and have an unused Dependent Care balance at the end of the 2020 plan year. If an individual is in that situation then he or she can use those unused Dependent Care funds for the 2020 or 2021 plan years on that child up until the child turns 14 years old.

Change in Election Amount. As a follow up to the mid-year changes provision offered in IRS Notice 2020-29 issued earlier this year, the bill provides that the cafeteria plan may permit employees to change their Health FSA or Dependent Care FSA election during plan years ending in 2021 without experiencing a permitted election change event. If this provision is elected, it can allow employees to increase an annual election, decrease an annual election, stop contributing altogether, or start contributing/enroll for any reason and without the need for a qualifying event. It's important to note that if your organization adopted the mid-year changes provision for 2020, that provision expired on 12/31/2020. This new provision allows a plan to adopt the mid-year changes provision for any plan year that ends in 2021.

One additional note about this provision is that all mid-year changes are prospective in nature. This means that the election change is effective as of the date that it is made, meaning that contributions made up until that point in the year cannot be refunded or returned. Additionally, election increases will be effective as-of the date the election change was made, meaning that only expenses incurred after that date will be eligible for reimbursement of the higher amount.

The link to an electronic form allowing you to opt-in to these provisions can be found here: https://lfforms.sentinelgroup.com/Forms/CovidReliefBill. Once submitted, your Sentinel FSA Account Manager will reach out to you to address any questions and to confirm receipt.

Once your submission is received and the details are confirmed, Sentinel will make the appropriate updates in our system. Additionally, we will complete a Section 125 Plan Document Amendment later in 2021, as formal amendments are not required until December 31, 2021. With that said, your plan can apply the changes immediately (before the Plan Amendment is formally signed) and the changes should be communicated to employees. The cost of the Amendment will be $175 (or as otherwise stated in your Services Agreement) for adoption of any of these changes and the subsequent plan document work.

If you have questions regarding this legislation, or would like to discuss how adopting any of these provisions might impact your plan, please contact your Sentinel FSA Account Manager.