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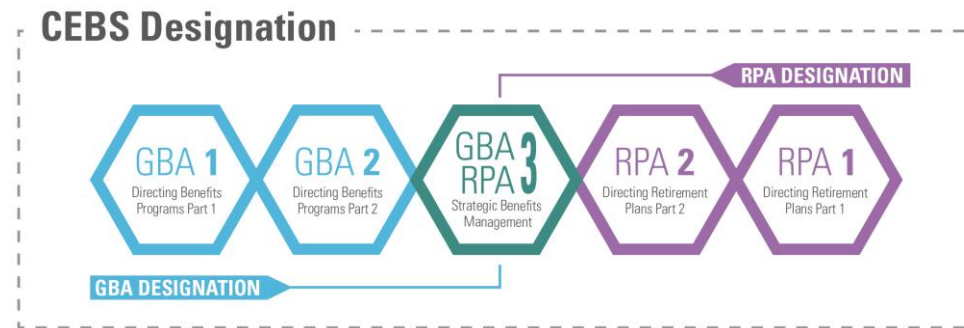
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## Success in 2021 What's Holding You Back?



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# Today's Speaker & Topic

Sarah Borders, CEBS

Principal & Founder, Benefits Compliance Solutions

Recent Legislative Changes to Health & Dependent Care FSAs

# Recent Legislative Changes to Health & Dependent Care FSAs

PRESENTED BY:

SARAH BORDERS, CEBS

MARCH 11, 2021



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# Today's Agenda

1. **Legislative & Regulatory Background**
2. **Health FSAs**
3. **Dependent Care FSAs**
4. **Section 125 Mid-Year Election Changes**
5. **Other changes (HSAs, OTC drugs, etc.)**
6. **Q&A**

# Regulatory & Legislative Background

IRS Notice 2020-29 &  
2020-33  
(issued May 2020)



Consolidated  
Appropriations Act, 2021  
(passed & signed into law  
Dec 2020)



IRS Notice 2021-15  
(issued Feb 2021)



# CAA Changes to Health & Dep Care FSAs

- ▶ Rollover unused amounts in health and dependent care FSAs from plan years ending in 2020 to 2021 and from plan years ending in 2021 to 2022.
- ▶ Grace periods for plan years ending in 2020 or 2021 may be extended for up to 12 months after the end of the corresponding plan year.
- ▶ Employees can make a 2021 mid-year prospective change in FSAs contribution amounts without a qualifying life event.
- ▶ If employees cease participation mid plan year, may still receive unused reimbursements for qualified medical expenses through the end of the 2020 or 2021 plan years (the plan year in which participation stopped).
- ▶ For dependent care FSAs, the age of a qualifying child has temporarily increased from age 13 to age 14 to allow for situations where the dependent aged out during the pandemic.



# IRS Notice 2021-15 Health & Dep Care FSAs

- ▶ Carryover or grace period clarification for health and dependent care FSAs from plan years ending in 2020 to 2021 and from plan years ending in 2021 to 2022.
- ▶ Carryover and grace period relief are available to plans that currently have a grace period or allow carryovers and to those that don't.
- ▶ Employees can make a 2021 mid-year prospective change in FSAs contribution amounts without a qualifying life event according to plan's terms (must apply uniformly to all participants)
- ▶ Plans may allow prospective election changes for health, dental, or vision coverage for plan years ending in 2021, similar to prior relief for calendar year 2020.
- ▶ Carryover or grace period amounts are disqualifying coverage for HSA-eligibility unless moved to HSA-compatible plan FSA or waived.
- ▶ Regular rules will apply for plans ending in 2022 and transition back to normal.

**OPTIONAL**

# Health FSAs

Carryover **OR** Grace Period,  
not both  
(Amounts do not apply to  
max FSA contribution for  
plan year)

Carryover or Grace Period  
can be adopted, even if  
not previously offered

Grace Period may be up to  
12 months, but may be  
shorter

Carryover may apply for full  
next plan year, or shorter  
time period

Carryover may be limited to  
less than unused amounts  
or full amount



BCS

# Health FSAs

- ▶ Election Changes (for plan years ending in 2021):
  - ▶ Participants may prospectively (not retro-actively) revoke, increase, decrease or make a new FSA election midyear, regardless of qualifying life event.
  - ▶ Participants who waived initially can make new FSA election mid-year without qualifying life event.
  - ▶ Amounts contributed to an FSA after a revised election can be used for eligible expenses incurred prior to the election change (even if the employee didn't enroll as of Jan 1, 2021).
  - ▶ Plans can decide how unused contributions following revocation are used—i.e., plan can reimburse expenses incurred during the rest of the plan year or only before the revocation, or say amounts are forfeited
  - ▶ Plans can limit post-termination participation in a health FSA to employee contribution amounts made during the plan year before termination
  - ▶ Employers may also limit unused amounts to employee's salary reductions through the date participation ceased in the health FSA because of employment terminations, change in employment status (i.e., furlough), or a new election during calendar year 2020 or 2021 (but still have COBRA rights for FSA).



# Dependent Care FSAs



Carryover **OR** Grace Period,  
not both

(Amounts do not apply to max  
DC FSA contribution for plan  
year, but are likely taxable  
over \$5K)

Carryover or Grace Period  
can be adopted, even if not  
previously offered

Grace Period may be up to 12  
months, but may be shorter

Carryover may apply for full  
next plan year, or shorter time  
period

Carryover may be limited to  
less than unused amounts or  
full amount

# Dependent Care FSAs

- ▶ Election Changes (for plan years ending in 2021):
  - ▶ Participants may prospectively (not retro-actively) revoke, increase, decrease or make a new DCFSA election midyear, regardless of qualifying life event.
  - ▶ Participants who waived initially can make new DCFSA election mid-year without qualifying life event.
  - ▶ Amounts contributed to an FSA after a revised election can be used for eligible expenses incurred prior to the election change (even if the employee didn't enroll as of Jan 1, 2021).
  - ▶ Plans can extend maximum age from 12 to 13 when reimbursing dependent care expenses during the last plan year with a regular enrollment period ending on or before Jan. 31, 2020.
  - ▶ May allow employees with unused balances for that plan year to apply age rule to claims for reimbursement of the unused balance in the following plan year.

# Sect 125 Mid-Year Election Changes

For plan years ending in 2021:

Make new election if previously declined (medical, dental, vision, etc.)

Change plans (e.g., HDHP to Copay)

Drop or add dependents w/ no qualifying event

Drop coverage (with attestation of enrollment in other coverage – see model attestation in 21-15)

Prospective changes only, NOT retro-active



# Sect 125 Mid-Year Election Changes

- ▶ Participant can drop election and make a new election to enroll in another group health plan sponsored by the same employer or other health coverage not sponsored by the employer (employee must give written attestation to confirm that they are or will be enrolled in other coverage).
- ▶ Special enrollments: 30 or 60-day deadlines extended (birth, marriage, adoption, loss of other coverage, CHIP)
- ▶ Must be applied consistently and must not be discriminatory
- ▶ Insurance carrier has to approve these changes

# Other Changes

- ▶ Any general purpose FSA carryovers, grace periods and spend-down provisions are extensions of disqualifying coverage for HSA-eligibility
- ▶ Plans can allow employees to waive a carryover or grace period for incurring claims in plan years ending in 2021 and 2022 to preserve HSA eligibility.
- ▶ Plans can allow midyear election changes to switch between HSA-compatible and general-purpose health FSAs (or vice versa).
- ▶ Health FSAs and HRAs may reimburse OTC drugs without prescriptions and menstrual care products incurred on or after January 1, 2020.

# Employer Actions

Contact your FSA, Dependent Care FSA vendors

Communicate to employees what they will be allowed to do and specify a prospective timeframe (may trigger ERISA disclosure requirements)

Amend plan documents (can be retroactive if completed by the last day of the calendar year following the end of the plan year for which the change is effective. I.e, amendments to plan years ending in 2020 would have to be completed by December 31, 2021.

Don't allow one-offs; OPTIONAL for employer.

Keep records to demonstrate compliance



# Legislation & Regulatory Guidance

- ▶ IRS Notice 20-33: <https://www.irs.gov/pub/irs-drop/n-20-33.pdf>
- ▶ IRS Notice 20-29: <https://www.irs.gov/pub/irs-drop/n-20-29.pdf>
- ▶ Consolidated Appropriations Act, 2021: <https://www.congress.gov/bill/116th-congress/house-bill/133/text>
- ▶ IRS Notice 21-15: <https://www.irs.gov/pub/irs-drop/n-21-15.pdf>

# Q & A



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## Contact

[info@benefitscompliancesolutions.com](mailto:info@benefitscompliancesolutions.com)

• 512 571 2464 •

[www.benefitscompliancesolutions.com](http://www.benefitscompliancesolutions.com)

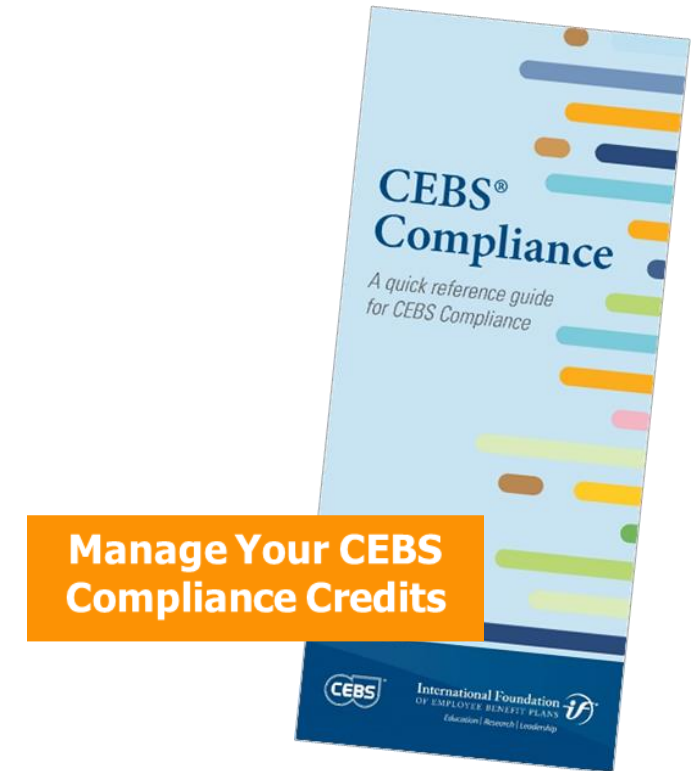
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Be recognized for the professional education you complete  
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30 credits over two calendar years to be compliant

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# Reminders

- Next meeting, April 8 – Dr. Eric Bricker, AHealthcareZ  
Non-Fee-for-Service Primary Care  
*An Examination of Primary Care without Generating Claims and  
How Individuals, Employers and Doctors Use It to Break Old Habits*
- Become a member! It's easy to join! [www.ifebp.org/membership](http://www.ifebp.org/membership)
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