



Key *Takeaways* for Benefits Administrators: Consolidated Appropriations Act of 2021

What is the Consolidated Appropriations Act of 2021?



An act signed by the president on December 27, 2020 that **provides nearly \$1 trillion in COVID-related relief**



Provides **welcome relief** for employees with flexible spending accounts (FSAs)



Allows employers to review their plan designs and **decide which provisions are valuable** to implement for their employees

Carryover and carryforward

- Carryover of unused funds for FSAs and dependent care FSAs (DCA) for plans ending in 2020 and 2021 allows consumers to utilize the remaining unused funds in their account after the plan year has expired.
- Extended carryover may be allocated to all participants, but this is not required.
- All unused amounts at the end of a plan year are eligible to be carried over, even if the funds were already carried over in the previous year.
- Plans may impose a direct dollar or durational limit, carryover minimum, or carryover maximum dollar amount.
- These provisions will reset to normal for plan years ending in 2022, absent further guidance or legislation.

Grace periods

- Grace periods were extended for 12 months for health FSAs and DCAs for a plan year ending in 2020 or 2021. Enhanced grace periods of less than 12 months are also available under the CAA.
- There is no limit on the dollar amount of unused funds that may be available during an extended grace period.
- Employers are permitted to adopt extended carryover and grace periods for some participants, but not all, subject to satisfying nondiscrimination requirements.

Other changes

- Allows employees enrolled in a health FSA or DCA ending in 2021 to make an election to prospectively modify the contribution amount.
- Employees who terminate mid-year resulting in a loss of participation, may be eligible to access unused health FSA contributions through the end of the year.

- Allows for plan amendments if the amendment is adopted no later than the last day of the first calendar year beginning after the end of the plan year in which the amendment is effective.
- The carryover or grace period amounts are in addition to any new money that may be contributed and do not count against any other statutory limits.



To hear an informed discussion on the CAA of 2021, watch the replay of the Alegeus webinar “Consolidated Appropriations Act of 2021: Key Takeaways for Benefit Administrators” hosted by Brian Colburn and Jason Lacey.

Access the recording at alegues.com/CAA

Frequently Asked Questions

Jason Lacey weighed in on frequently asked questions from the Consolidated Appropriations Act of 2021: Key Takeaways for Benefit Administrators webinar, his answers below.

When should we expect the IRS to release some final guidance on these new regulations?

Good news! The IRS just recently provided its guidance related to the implementation of this relief. The guidance is [IRS Notice 2021-15](#), released on February 18, 2021.

Can a plan add a carryover or grace period if it does not have such a provision in place already?

Yes, the CAA permits retroactive plan amendments to implement the newly available provisions. An amendment to add a carryover or grace period can be adopted retroactively for a plan that does not already have such a provision. Notice 2021-15 confirms that an enhanced carryover or grace period is available to plans that do not currently have a carryover or grace period provision.

Can a plan that currently has carryover be amended to switch to an enhanced grace period or vice versa?

Yes, the CAA permits retroactive plan amendments to implement the newly available provisions. An amendment to remove a carryover and substitute an extended grace period (or vice versa) can be adopted retroactively. Notice 2021-15 confirms that an enhanced carryover is available to plans that currently have a grace period (and vice versa).

Do these CAA options apply to ALL FSAs, including Limited Purpose FSAs (LPFSAs)?

Yes, the relief is available to both health FSAs (general purpose and limited purpose) and dependent care FSAs. Recent IRS guidance specifically confirms that all relief available to health FSAs is available to HSA-compatible health FSAs, such as limited purpose health FSAs. The CAA relief allowing for “spend down” of unused amounts following termination of participation only applies to health FSAs, but that is because dependent care FSAs already have that option. Adoption assistance FSAs and transit account plans are not covered by the CAA relief.

May a plan choose to adopt a period that ends before the end of the plan year during which employees who have ceased participation in the plan may continue to receive reimbursements?

Yes, Notice 2021-15 confirms that a health FSA is not required to offer the spend-down option for the entirety of the remainder of the plan year following termination of participation but instead may provide for a shorter period. For example, a health FSA could be amended to allow an employee who terminates participation to have spend-down access to unused amounts for a period of 3 months following termination of participation or, if shorter, for the remainder of the plan year.

May a plan limit the amount available for spend-down following termination of participation to the unspent contributions that remain at the time participation ceases?

Yes, Notice 2021-15 confirms that a health FSA offering spend-down coverage may limit the unused amounts available for spend-down to the amount of unspent contributions made from the beginning of the plan year in which participation ceased up to the date participation ceased, regardless of the reason the individual ceased participation in the health FSA (e.g., whether due to termination of employment, change in employment status, or making a mid-year election during 2020 or 2021 to cease continued active participation). The uniform coverage rule does not require that the unspent amount of the full annual election continue to be available following cessation of participation unless the participant makes a COBRA election and continues to pay the required COBRA premium.

Does the health FSA spend-down option interact differently with a plan that provides for enhanced carryover than with a plan that provides for an extended grace period?

Yes. If a health FSA provides for a grace period (including an extended grace period under the CAA's temporary rules), an individual who has spend-down coverage by reason of a cessation of participation in the plan occurring during the 2020 or 2021 calendar year may be allowed to continue to access spend-down amounts during the grace period following the end of the year in which the cessation of participation occurs. However, if a health FSA provides for carryover of unused amounts (including an enhanced carryover under the CAA's temporary rules), an individual who has spend-down coverage by reason of a cessation of participation in the plan occurring during the 2020 or 2021 calendar year is not allowed to carryover any unused spend-down amounts that remain at the end of the year in which the cessation of participation occurs. Notice 2021-15 confirms this distinction.

Can multiple mid-year election changes be allowed during the 2021 plan year without regard to a change in status or other qualifying election change event?

Yes, Notice 2021-15 clarifies that employees may be allowed to make "one or more elections" and does not limit employees to making a single election change. However, an employer adopting this relief may limit the period during which election changes may be made and may, in its discretion, determine the extent to which election changes are permitted. An employer is not required to provide unlimited election changes.

When is an amendment to add an enhanced carryover or extended grace period "effective" for purposes of amendment timing?

Notice 2021-15 confirms that an amendment adding an enhanced carryover or extended grace period is effective for the year in which it will prevent a forfeiture of unused amounts and allow for continued access to the funds.

For example, if a calendar year plan is amended to allow for enhanced carryover from the plan year ending December 31, 2020 to the plan year beginning January 1, 2021, the amendment is "effective" for the 2020 plan year, and the amendment deadline is December 31, 2021, not December 31, 2022.

By comparison, if a non-calendar year plan is amended to allow for enhanced carryover from the 2020-2021 plan year to the 2021-2022 plan year, the amendment is "effective" as of the last day of the 2020-2021 plan year, and the amendment deadline is December 31, 2022.

Want to learn more?

For more industry resources, updates and best practices, visit alegeus.com/insights.