

Insights

IRS Guidance Increases FSA Carryover Limit, Clarifies Reimbursement of Individual Health Coverage Premiums

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Overview

On May 12, 2020, the IRS issued **Notice 2020-33**, which (i) increases the carryover limit for flexible spending arrangements (“FSAs”) to \$550, and (ii) clarifies the timing for reimbursement of individual health coverage premiums under certain tax-favored arrangements. This guidance was published in coordination with Notice 2020-29, providing temporary relief to Section 125 cafeteria plans by permitting mid-year election changes and extending claims periods for FSAs and dependent care assistance programs (see our article on that guidance, [here](#)).

Increasing the FSA Carryover Limit

Notice 2020-33 increases the current health FSA carryover limit from \$500 to \$550. This is a modification of the limit under **Notice 2013-71**, which allows plan sponsors to amend their Section 125 cafeteria plans to provide that unused health FSA amounts of up to \$500 remaining at the end of a plan year may be used for qualified medical expenses incurred during the following plan year (the “carryover limit”), if the plan does not already incorporate a grace period rule (*i.e.*, an alternative mechanism that extends the coverage period up to two months and fifteen days after the plan year’s end).

Thus, the carryover limit provides some relief to FSA plan participants from the traditional “use it or lose it” rule, but the limit has never been increased since 2013. Now, under Notice 2020-33, the maximum carryover amount will be equal to 20 percent of the maximum salary reduction contribution under § 125(i), which *is* indexed for inflation. For 2020, the maximum salary reduction is \$2,750, and the new carryover limit of \$550 is 20 percent of that amount.

A plan sponsor wanting to implement the increased FSA carryover limit must adopt an amendment to its cafeteria plan. The amendment must generally be adopted on or before the last day of the plan year from which unused amounts may be carried over and may be effective retroactively to the first day of that plan year, so long as the plan is administered accordingly in the interim and proper notice of the carryover provision is provided to plan participants.

Timing of Reimbursements for Individual Coverage Premiums

Notice 2020-33 also clarifies that an individual coverage health reimbursement arrangement ("ICHRA") or a premium-reimbursement plan included under a Section 125 cafeteria plan may retain its tax-favored status, even though it reimburses individual health insurance premiums that were paid by the participant before the first day of the plan year.

The Notice explains that a plan (e.g. an ICHRA) is permitted to treat an expense for health insurance coverage premiums as incurred on (1) the first day of each month of coverage on a pro rata basis, (2) the first day of the period of coverage, or (3) the date the premium is paid. So, a calendar-year plan can reimburse a premium for health insurance coverage that begins on January 1, even if the individual participant paid the premium in the prior year.

Conclusion

In conjunction with the temporary relief provided by Notice 2020-29, an increase of the carryover limit may be advantageous for FSA participants who are unable to have medical services rendered due to the COVID-19 national emergency. We anticipate further guidance in the coming weeks and months, so stayed tuned for more. If you would like more information about Notice 2020-33 or need assistance drafting a notice for plan participants, please contact **Bryan J. Gross, Fenton D. Strickland** or another member of the Krieg DeVault **Employee Benefits & Executive Compensation Practice Group**. Also, please look to Krieg DeVault's **COVID-19 Resource Center** for posts and links addressing a number of legal and other issues related to COVID-19, including the CARES Act.