



Benefits Administration Letter

Number: 21-802

Date: May 20, 2021

Subject: Flexibilities Allowed for the Federal Flexible Spending Account Program (FSAFEDS) During Plan Year 2020 and 2021

Purpose

The purpose of this Benefits Administration Letter (BAL) is to provide guidance on the Office of Personnel Management's (OPM) implementation of flexibilities offered under the Consolidated Appropriations Act (CAA), 2021, Internal Revenue Service (IRS) Notices 2021-15 and 2021-26 and the American Rescue Plan Act (ARPA or Act) of 2021. These flexibilities relate to the Federal Flexible Spending Account Program (FSAFEDS). This BAL applies to all agencies that have adopted the Federal Flexible Benefits Plan ("FedFlex"), a cafeteria plan established under Section 125 of the Internal Revenue Code of 1986. Agencies with their own Section 125 cafeteria plan may allow different flexibilities for their employees with flexible spending accounts, with the exception of new FEHB and FEDVIP enrollments that OPM has decided not to permit.

Background

In 2020, IRS guidance provided certain flexibilities with respect to cafeteria plans to be implemented by the end of calendar year 2020, including the ability to newly enroll or make an increase or decrease to existing FSA contributions. OPM adopted many of those flexibilities.¹

Beginning in December 2020, additional legislation and guidance have further expanded available flexibilities as follows:

1. On December 27, 2020, Section 214 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Division EE of the CAA)² was signed into law which allowed for additional flexibilities for cafeteria plans in 2020 and 2021.

¹ These flexibilities were described in BAL 20-803 (<https://www.opm.gov/retirement-services/publications-forms/benefits-administration-letters/2020/20-803.pdf>)

² <https://www.congress.gov/116/bills/hr133/BILLS-116hr133enr.pdf#page=1887>

2. On February 18, 2021, the IRS issued [Notice 2021-15](https://www.irs.gov/pub/irs-drop/n-21-15)³ which provided guidance related to the CAA flexibilities and additional relief with respect to mid-year health coverage elections.
3. On March 11, 2021, the ARPA was signed into law⁴ which raised the limit on maximum contributions for pre-tax earnings to a dependent care flexible spending account (DCFSA) from \$5,000 to \$10,500 (for single or married filing jointly) and from \$2,500 to \$5,250 (for married filing separately).
4. On May 10, 2021, the IRS issued [Notice 2021-26](https://www.irs.gov/pub/irs-drop/n-21-26)⁵ which clarified tax rules for DCFSA funds during tax years 2021 and 2022.

As the Plan Administrator of FedFlex, OPM is implementing the flexibilities described below for Plan Years (PY) 2020 and 2021.

Although the COVID-19 pandemic continues to be a main reason for these additional flexibilities, participants **do not need to be directly affected by COVID-19** and do not need to experience a Qualifying Life Event (QLE) to make changes as described in this BAL.

Description of FSAFEDS Permitted Changes

- 1. Current Healthcare Flexible Spending Account (HCFSA) and Limited Expense Healthcare Flexible Spending Account (LEX HCFSA) participants who are eligible may carry over unused contributions from PY2020 to PY2021, and then again from PY2021 to PY2022.**

HCFSA and LEX HCFSA participants will be permitted to carryover unused funds remaining in their accounts as of the end of PY2020 for use in PY2021 (i.e., the carryover amount will not be subject to the current \$550 cap). Current participants may use the full PY2020 carryover amount in addition to the maximum PY2021 account contribution (currently, \$2,750) for reimbursement for expenses incurred at any time from January 1, 2021 forward. Employees who enrolled in a HCFSA or LEX HCFSA in PY2020 and had funds remaining in their accounts but did not re-enroll in PY2021 may newly enroll during the Special Enrollment Period (SEP) as outlined in Section 4 of this BAL. Those newly enrolled participants may only utilize unused PY2020 carryover funds prospectively (that is, only for expenses incurred following the date of their PY2021 new enrollment).

All HCFSA and LEX HCFSA participants (both currently enrolled and who newly enroll during the Special Enrollment Period) will be permitted to carry over unused funds remaining in their account at the end of PY2021 for use in PY2022. Participants must re-enroll in PY2022 to use PY2021 carryover funds, as required by FedFlex. Participants who re-enroll in PY2022 may elect and use up to the maximum contribution amount (\$2,750), in addition to any funds carried over. Participants should be aware that these flexibilities will end at the conclusion of PY2022 and, based on otherwise applicable plan rules and IRS guidance, carryover from

³ <https://www.irs.gov/pub/irs-drop/n-21-15.pdf>

⁴ <https://www.congress.gov/117/bills/hr1319/BILLS-117hr1319enr.pdf>

⁵ <https://www.irs.gov/pub/irs-drop/n-21-26.pdf>

PY2022 to PY2023 will again be limited to \$550.

Participants do not have to take any action to be permitted these flexibilities. All unused PY2020 funds remaining in accounts will be carried over to accounts automatically by FSAFEDS (for current participants and, once they are enrolled, for participants who newly enroll during the Special Enrollment Period). Participants will notice these changes upon logging into their account on the FSAFEDS website.

2. Grace period to incur DCFSA eligible expenses extended to December 31 for PY2020 and PY2021.

Participants who made an election to have a DCFSA for PY2020 normally would have until March 15, 2021 (the “grace period”) to incur eligible DCFSA expenses. Any funds not used during the grace period are normally forfeited.

Under the new flexibilities announced in this BAL, an extension of this grace period is being allowed in PY2020 and PY2021. Specifically, participants who made an election to a DCFSA in PY2020 and who had funds remaining at the end of 2020 will now be allowed to use the remaining PY2020 funds to be reimbursed for eligible expenses incurred through December 31, 2021. Participants who have DCFSA funds remaining at the end of 2021 will now be allowed to use the remaining funds to be reimbursed for eligible expenses incurred through December 31, 2022.⁶

Participants do not have to take any action to be permitted these flexibilities; the extended grace period for incurring expenses through the end of 2020 has been applied to their account automatically by FSAFEDS and will also be automatically applied for 2021. Participants will notice these changes upon logging into their account on the FSAFEDS website.

3. During a 30-day Special Enrollment Period (SEP) from June 1, 2021-June 30, 2021 participants who elected an HCFSA or DCFSA for PY2021 will be allowed a one-time opportunity to make a change to their annual election amount.

During the 30-day SEP , from June 1, 2021 to June 30, 2021, all participants who have enrolled in a 2021 HCFSA, LEX HCFSA, or DCFSA will be allowed to make a one-time change (increase or decrease) in the amount of their annual election in each FSA account in which they are enrolled.

Participants may not increase the amount of their election(s) in excess of the annual contribution limit (for HCFsAs and LEX FSAs the annual contribution limit is \$2,750; for DCFsAs, the annual contribution limit in **2021** only is \$10,500 (for single or married filing jointly) and \$5,250 (for married filing separately)). In accordance with IRS guidance, salary withholding of the allotments will be prospective beginning on the first pay period after

⁶ The grace period for funds remaining at the end of 2021 will be extended to December 31, 2022. The flexibilities allowed here will then end, but the usual grace period allowed by the plan will extend from PY2022 to 2023. Hence, any funds remaining at the end of 2022 can be used to be reimbursed for eligible expenses incurred through March 15, 2023.

processing by FSAFEDS. The effective date of the election change for qualified expenses will be retroactive to the most recent effective date of your FSA.

Participants who decrease their election cannot receive a refund of allotments from pay they have already made to their FSA account(s) year-to-date. In addition, participants cannot decrease their election below the amount already allotted to the FSA account OR the amount already reimbursed for eligible expenses, whichever is greater. Finally, regardless of the effective date of the election change, participants in all account types will be permitted to use the newly elected amount for claims incurred from their most recent 2021 effective date.

Current participants can increase or decrease elections during this period by visiting www.FSAFEDS.com and choosing “2021 Special Enrollment Period” from the “Enroll in a Plan” menu located at the top of the home page and following the instructions. They will need to choose the “2021 Special Enrollment Period Increase/Decrease” event type. It is important to note that once the participant hits the “I ACCEPT” button, they will be directed to the QLE module on the website to complete the request, however, a QLE is not needed during this period. The new election will be effective retroactively to the most recent effective date for 2021.

Existing DCFSA participants may wish to accelerate their allotments now if they intend to increase their election. Current participants can do this by logging in to their online account and adjusting the number of pay periods.

Example Scenarios:

Example 1: During the 2020 Open Season, Luciana Hernández elected \$1,500 for her 2021 HCFSA, to be taken in equal allotments for the 26 pay dates in 2021. She would like to reduce her annual election. At the time her newly reduced election becomes effective, \$750 has been allotted and \$500 has been reimbursed to her for eligible expenses. Luciana can reduce her election as low as \$750, the amount already allotted, as the amount reimbursed (\$500) is not a greater amount.

Example 2: Trevon Johnson elected the maximum of \$2,750 for his 2021 LEX HCFSA. In early January, he had laser eye surgery, and used his entire election amount to help cover the cost of \$3,300, which exceeded his \$2,750 election amount. Trevon cannot reduce his election since he has already been reimbursed the entire amount he elected for 2021.

Example 3: Sally Williams elected \$4,000 to her DCFSA. She would like to reduce her election. At the time her newly reduced election becomes effective, \$2,200 has been allotted and \$2,200 has been reimbursed to her (participants in a DCFSA may only be reimbursed up to funds available). She can reduce her election as low as \$2,200, the amount already allotted.

For participants who make a change in their election, FSA allotments will be adjusted prospectively and prorated over the remaining pay periods. Therefore, the new allotment amount each pay period will depend on the number of remaining pay periods at the time the change becomes effective.

Example 4: Vihaan Reddy elected \$1,300 to his 2021 HCFSA, to be taken in equal allotments for the 26 pay dates in 2021. Vihaan decides to increase his annual election to \$2,000 due to increased medical care costs for himself and his family. There are 10 pay periods remaining in the year. The amount of his remaining allotments will be calculated as follows:

Current election amount: \$1,300
Current allotment amount: $\$1,300/26$ pay periods = \$50/pay period
New election amount: \$2,000

Amount already allotted year-to-date: \$800
Difference: \$1,200 ($\$2,000 - \800)
New allotment amount: $\$1,200/10$ pay periods = \$120/pay period

Example 5: Sam Lee has elected \$2,600 to his HCFSA. At the time he submits the change to his election, he has allotted \$1,800 and has been reimbursed \$1,200. Sam decides to reduce his annual election to \$2,000. There are 8 pay periods remaining in the year. The amount of his remaining allotments will be calculated as follows:

Current election amount: \$2,600
Current allotment amount: $\$2,600/26$ pay periods = \$100/pay period
New election amount: \$2,000
Amount already allotted year-to-date: \$1,800
Difference: \$200 ($\$2,000 - \$1,800$)
New allotment amount: $\$200/8$ pay periods = \$25/pay period

Tax clarification for DCFSA participants planning to increase their election

The IRS issued Notice 2021-26 to provide guidance on the taxability of DCFSA funds for tax years 2021 and 2022. Since the amount of unused funds remaining at the end of PY2020 and PY 2021 can be used to reimburse eligible expenses through 12/31/21 and 12/31/22 respectively, the total amount available to a participant for reimbursement (DCFSA contribution + unused funds from prior year available through the extended grace period) could exceed the \$10,500 limit in 2021 and/or the \$5,000 limit in 2022. Notice 2021-26 clarifies that funds available in 2021 and 2022 as a result of an extended period for incurring claims are generally not taxable when used for eligible dependent care expenses. Funds that would have been excluded from income if used during tax years 2020 and 2021 remain excluded from gross income and are not considered wages when their use is permitted during an extended grace period in 2021 and 2022.

Example 1: LeShawn Smith has \$3,500 remaining in his PY2020 DCFSA account, which can now be used for reimbursement through the extended grace period in PY2021. LeShawn also has a PY2021 account and decides to increase his contribution to \$10,500. Of the total amount now available ($\$3,500 + \$10,500$ or \$14,000), LaShawn is reimbursed \$14,000 for qualified expenses.

2020 funds available in 2021 due to extended grace period (and excluded as income): \$3,500

Increased 2021 election: \$10,500
Total amount available in 2021 account: \$14,000
Reimbursements paid in 2021: \$14,000
Funds considered gross income/wages: \$0 (\$10,500 excluded as 2021 benefits, additional \$3,500 qualifies as excluded income from 2020 and use permitted in 2021 due to extended grace period).

Note: Participants should consider their DCFSA allotment amount when increasing their election to the new maximum. Depending on the elected increase, the allotment could be higher than expected.

Example: Joe Hill elected \$5,000 to his 2021 DCFSA, to be taken in equal allotments for the 26 pay dates in 2021. Joe decides to increase his annual election to \$10,500 to take advantage of the new DCFSA maximum. There are 14 pay periods remaining in the year. The amount of his remaining allotments will be calculated as follows:

Current election amount: \$5,000
Current allotment amount: $\$5,000/26$ pay periods = **\$192.31/pay period**
New election amount: \$10,500

Amount already allotted year-to-date: \$4,500
Difference: \$6,000 ($\$10,500 - \$4,500$)
New allotment amount: $\$6,000/14$ pay periods = **\$428.57/pay period**

4. Prospective-only new enrollments in HCFSA and DCFSA accounts.

Also, during the Special Enrollment Period (SEP) June 1 – June 30, 2021, eligible employees will have a one-time opportunity to make an irrevocable election to enroll in HCFSA, LEX HCFSA, and DCFSA accounts. The election is effective prospectively, on the first day of the following pay period after acceptance by FSAFEDS. Allotments will occur on a prospective basis, divided evenly among the pay periods remaining in the year following the effective date of enrollment.

Additionally, claims eligible for reimbursement may only be incurred on a prospective basis from the effective date of enrollment.

Participants who want to enroll for the first time in 2021 must go to www.FSAFEDS.com, select “2021 Special Enrollment Period” under the “Enroll in a Plan” menu at the top of the home page and follow the instructions. They will need to choose the “2021 Special Enrollment Period - New Account” event type. It is important to note that once the participant hits the “I ACCEPT” button, they will be directed to the Qualifying Life Event module on the website to complete the request, however, a QLE is not needed during this period. The election will be effective the first day of the following pay period (as determined by their agency’s payroll schedule) after acceptance by FSAFEDS.

New HCFSA and DCFSA participants are permitted to take advantage of the expanded HCFSA carryover, the extended DCFSA grace period, and the new increased 2021 DCFSA

contribution limits that could not have been known to participants when making 2021 enrollment decisions during Open Season. Moreover, dependent/childcare and medical/healthcare related costs remain difficult to estimate and predict due to the ongoing impacts of the COVID-19 pandemic.

5. Increase in maximum age for eligible dependents from those under age 13 to those under age 14 for PY2020 and, if unused funds at the end of 2020, for PY2021.

Under the new flexibilities, the maximum age for eligible dependent children under a DCFSA is increased from those under age 13 to those under age 14 for PY2020. All unused funds that were available at the end of 2020 can also be used for an “aged out” dependent child until that dependent turns 14 and for dependents who turn 13 during 2021. To be eligible to take advantage of this flexibility, a participant must have enrolled in a DCFSA in PY2020 and have a dependent who turned 13 during 2020. A participant who meets these requirements may seek reimbursement for eligible expenses incurred during PY2020 for dependent care expenses associated with an “aged out” dependent. If unused funds remain in the DCFSA at the end of 2020, the participant may use those unused funds (but not new PY2021 contributions) for eligible expenses incurred for the “aged out” dependent (until that dependent turns 14) and for any dependents who turn 13 in PY2021.

This flexibility has already been implemented by FSAFEDS. DCFSA participants who are eligible to take advantage of this flexibility may now submit requests for reimbursement for “aged out” dependents as outlined above.

Changes still allowed in FSAs due to a Qualifying Life Event (QLE)

The one-time opportunity to increase or decrease the FSAFEDS election should not be confused with the existing opportunity to increase DCFSA or HCFSA elections through September 30 based on a QLE such as cost or coverage changes in dependent care or elder care, more fully described in [BAL 20-802](#).⁷ Decreases are accepted after September 30 until the beginning of open season. The one-time opportunity described in this BAL does not require the participant to establish a QLE. Further, it does not preclude a participant from submitting a QLE change before or after submitting a change during the one-time opportunity, provided that the QLE is submitted no later than September 30, 2021.

How to submit election changes and for further information

FSAFEDS will communicate the changes outlined in this BAL to current 2021 participants and those who were enrolled in 2020 but did not re-enroll for 2021. We ask Agency Benefits Officers to reach out to all of their employees to let them know about these flexibilities, especially the opportunity to newly enroll during the SEP.

On www.FSAFEDS.com, the employee can select “2021 Special Enrollment Period” under the “Enroll in a Plan” menu at the top of the home page and follow the instructions. Current

⁷ <https://www.opm.gov/retirement-services/publications-forms/benefits-administration-letters/2020/20-802.pdf>

participants must choose the “2021 Special Enrollment Period - Increase/Decrease” event type. New participants must choose the “2021 Special Enrollment Period - New Account” event type. It is important to note that once the participant hits the “I ACCEPT” button, they will be directed to the Qualifying Life Event module on the website to complete the request.

Agency Benefits Officers should direct participants to contact FSAFEDS by visiting www.FSAFEDS.com or by calling 1-877-FSAFEDS (372-3337).

For questions concerning this Benefits Administration Letter, please contact your Agency’s Headquarters Benefits Officer. If you do not know who this person is, please go to <https://apps.opm.gov/abo/> where you will find a list of agencies and their Headquarters Benefits Officers.

Sincerely,

Laurie Bodenheimer
Associate Director
Healthcare and Insurance