



IMPORTANT NOTICE REGARDING HEALTHCARE REFORM Update #108 May 2020

IRS Increases Health FSA Carryover Limit; Clarifies Reimbursement of Health Insurance Premiums

The IRS has issued guidance ([IRS Notice 2020-33](#), May 12, 2020) increasing the health FSA carryover limit and clarifying the ability of a health plan to reimburse insurance premiums incurred prior to the beginning of a plan year. Here are highlights:

Carryover Limit: Responding to a 2019 executive order calling for an increase in the allowable health FSA carryover amount this notice increases the maximum \$500 carryover amount for a plan year to an amount equal to 20 percent of the maximum health FSA salary reduction contribution under Code § 125(i) for that plan year. Thus, the maximum amount that health FSA participants may carry over from the plan year beginning in 2020 to the plan year beginning in 2021 is \$550 (20 percent of \$2,750, the indexed 2020 contribution limit).

Deadline for Plan Amendments: Generally, a cafeteria plan amendment to increase the carryover limit must be adopted on or before the last day of the plan year from which amounts may be carried over. The amendment may be effective retroactively to the first day of the plan year, provided the plan operates in accordance with the guidance and informs all eligible employees of the increase. However, IRS Notice 2020-29 (see our HCR Update #107) allows amendments for the 2020 plan year to be adopted on or before December 31, 2021, and to be effective retroactively to January 1, 2020.

Election Changes: The ability to amend a plan to increase the carryover limit does not include the ability to allow employees to make new elections on or after the first day of a plan year. During 2020, however, IRS Notice 2020-29 allows plans to permit all health FSA participants (not just those affected by COVID-19) to start or increase their health FSA contributions midyear for any reason, including to take advantage of the increased carryover limit.

Insurance Premiums: Expenses for health insurance premiums may be treated 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. Thus, a calendar-year individual coverage HRA (ICHRA) may immediately reimburse a substantiated premium for health insurance coverage that begins on January 1 of that plan year, even if the covered individual paid the premium before the first day of the plan year.

Treasury and the IRS intend to revise the proposed cafeteria plan regulations to reflect this guidance; until then, taxpayers may rely on the information in the notice.

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