COMPLIANCE ALERT

EPIC Insurance Brokers & Consultants

Consolidated Appropriations Act, 2021 Expands Cafeteria Plan Flexibility

December 28, 2020

QUICK FACTS

- Congress passed a bill December 21 to provide certain relief to American businesses and workers who continue to struggle with the financial fallout from the ongoing COVID-19 pandemic; the President signed the bill into law December 27.
- The Consolidated Appropriations Act, 2021 (CAA), which contains the COVID-Related Tax Relief Act of 2020 (COVIDTRA) and the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (TCDTR), will, among other things, temporarily modify applicable cafeteria plan rules to allow for extended carryovers, extended grace periods, and enhanced election options.
- The bill does not extend the Emergency Paid Sick Leave or Extended Family and Medical Leave provisions of the FFCRA. But employers who continue to voluntarily provide paid sick leave under the FFCRA framework through March 31, 2021, will continue to be able to claim a tax credit.
- The President continues to press for larger individual and family stimulus checks and has sent a red-lined version of the bill back to Congress for a vote in the House expected on December 28 and in the Senate December 29. However, the red-lined version and subsequent votes should not impact the CAA's cafeteria plan provisions.

As the United States continues to grapple with the COVID-19 pandemic, federal lawmakers and the President have agreed to another massive stimulus package to help American families cope with the crippling economic effects of the virus.

The COVID-Related Tax Relief Act of 2020 (COVIDTRA) and the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (TCDTR), which are included in the Continuing Appropriations Act, 2021 (CAA), include continued funding under the Paycheck Protection Program and Health Care Enhancement Act, further enhanced unemployment benefits, more loans to small businesses and another round of stimulus checks to be issued to most individuals earning under $87,000. In addition, the bill contains provisions that will impact employers who sponsor cafeteria plans that include health flexible spending arrangements (HFSA) and dependent care flexible spending arrangements (DCAP).

CAFETERIA PLAN PROVISIONS

Generally HFSAs and DCAPs must operate under strict IRS rules that dictate that funds not used during a year must be forfeited – the so-called “use-or-lose” rule. The IRS several years ago did begin to permit HFSAs to allow up to $500 (recently increased to $550) to be carried over to the subsequent plan year. No similar carryovers have been permitted under DCAPs.

Congress recognized that many individuals are facing vastly different health care and dependent care circumstances due to the COVID-19 pandemic. For example, many individuals have foregone planned medical treatment and have significant unspent HFSA funds by the end of 2020. Also, many parents have not had a need for, or have been prevented from relying on, daycare for their children. Under the standard cafeteria plan rules, these individuals would stand to lose hundreds of dollars or more since they will not have incurred reimbursable expenses by December 31, 2020 (or by the end of any applicable grace period).

The CAA’s COVID relief provisions will allow the following changes to the standard cafeteria plan rules:

- For plan years ending in 2020, a plan that includes an HFSA or DCAP may be amended to allow participants to carry over any unused amounts to the plan year ending in 2021.

- Similarly, for plan years ending in 2021, a plan that includes an HFSA or DCAP may be amended to allow participants to carry over any unused amounts to the plan year ending in 2022.

- A cafeteria plan that includes an HFSA or DCAP with a grace period (plans may not have a carryover and a grace period) may be amended to extend the grace period for a plan year ending in 2020 or 2021 to 12 months after the end of such plan year.

- A plan that includes an HFSA may be amended to allow a participant who ceases participating (e.g., because of termination of employment) during calendar year 2020 or 2021 to continue to receive reimbursements from unused amounts through the end of the plan year in which such participation ceased, including any grace period (including the new 12-month grace period described above).

- For plan years ending in 2021, a plan that includes an HFSA or DCAP may be amended to allow participants to make a prospective election to modify their elective contribution amount whether or not they have had a qualifying change in status, which is generally required under the Internal Revenue Code (Code).

Increased age limit for childcare

The CAA's COVID relief provisions also amend the Code to temporarily raise the maximum age of a child for whom qualifying childcare expenses may be reimbursed under a DCAP to age 14 during the plan year for which the end of the regular enrollment period was on or before January 31, 2020. This change will apply where a participant has at least one tax dependent who turns 13 during that plan year. Also, if the participant has an unused balance in his or her DCAP for that plan year, expenses can be reimbursed in the subsequent plan year, but only as to amounts paid for dependent care assistance that do not exceed the unused balance.

Plan amendment deadline

Plan sponsors are not required to adopt the cafeteria plan relief provisions allowed under the CAA. However, to incorporate the relief provisions, cafeteria plans must be amended in writing. A plan may be amended retroactively if a written 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 (e.g., for 2021 effective date, an amendment must be executed by December 31, 2022). A retroactive amendment will comply as long as the plan operates consistent with the terms of the amendment during the period beginning on the effective date of the amendment and ending on the date the amendment is adopted.

CONCLUSION

These are extraordinary times, and the ramifications of COVID-19 will continue to evolve. We will continue to monitor developments and will provide the latest updates as they become available.

We express to all of our clients and friends our deep appreciation for our ongoing relationships, and we look forward to strengthening those ties as we all work through this shared adversity. Stay safe and be well.

EPIC Employee Benefits Compliance Services

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