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UBA  
Compliance Advisor

## What every HR leader should know about compliance



### Compliance Recap

May 2020

May was a busy month in the employee benefits world.

The Internal Revenue Service (IRS) issued IRS Notice 2020-29 that provides increased flexibility for making mid-year elections or changes under a Section 125 cafeteria plan during calendar year 2020 and provides increased flexibility to apply unused amounts in health flexible spending accounts (FSAs) to medical care expenses. The IRS also issued IRS Notice 2020-33 that increases the limit for unused health FSA carryover amounts and clarifies the ability of a health plan to reimburse individual insurance policy premium expenses incurred prior to the beginning of the plan year for coverage provided during the plan year.

The Department of Labor (DOL) released updated Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) model notices and frequently asked questions (FAQs) providing general information on the updated model notices. The Centers for Medicare and Medicaid Services (CMS) issued a bulletin noting it will adopt a temporary policy of relaxed enforcement to extend timeframes otherwise applicable to non-federal governmental group health plans and health insurance issuers offering group health plans, and their participants and beneficiaries.

The IRS updated its FAQs on qualified health plan expenses under the employee retention tax credit (ERTC). CMS released a final rule for benefit payment and parameters for 2021. The IRS released health savings account (HSA) annual contribution limits and high deductible health plan (HDHP) minimum annual deductibles and annual out-of-pocket maximums for 2021.

The IRS issued Notice 2020-35, extending the deadline for providing HSA contribution information to the account beneficiary and filing Form 5498-SA with the IRS. This deadline extension also applies to Archer Medical Savings Accounts (MSAs) and Medicare Advantage MSAs. The Congressional Research Service issued an updated ACA Resources for Frequently Asked Questions report that highlights various resources that are available to help answer ACA related health plan questions.

## UBA Updates

UBA released new advisors:

- [Updated Department of Labor Model COBRA Notices](#)
- [Final 2021 Benefit Payment and Parameters Rule](#)
- [Employee Retention Tax Credit: Qualified Health Plan Expenses FAQ Update](#)
- [Internal Revenue Service Notice 2020-29](#)
- [Internal Revenue Service Notice 2020-33](#)
- [The Centers for Medicare and Medicaid Services Bulletin on Extension of Timeframes Due to COVID-19](#)
- [Internal Revenue Service Notice 2020-35](#)

UBA updated, refreshed, or revised existing guidance:

- [Sample Open Enrollment Notices Packet](#)
- [Families First Coronavirus Response Act Leave Department of Labor Temporary Regulations – Part II](#)
- [Health Savings Accounts: What You Need to Know](#)
- [Families First Coronavirus Response Act Leave Department of Labor Temporary Regulations – Part III](#)
- [What You Need to Know about Health Flexible Spending Accounts](#)
- [IRS Extension of Tax Filing and Payment Deadlines](#)

## IRS Issues Notice 2020-29

The IRS issued [IRS Notice 2020-29](#) (Notice) that provides increased flexibility for making mid-year elections or changes under a Section 125 cafeteria plan during calendar year 2020 related to employer-sponsored health coverage, health flexible spending arrangements (health FSAs), and dependent care assistance programs (DCAPs). This notice also provides increased flexibility to apply unused amounts in health FSAs to medical care expenses incurred through December 31, 2020, and unused amounts in dependent care assistance programs to dependent care expenses incurred through December 31, 2020.

[Read more about the Notice.](#)

## IRS Issues Notice 2020-33

The IRS issued [IRS Notice 2020-33](#) (Notice) that increases the limit for unused health FSA carryover amounts from \$500 to a maximum of \$550 (carried over from a 2020 plan year to a 2021 plan year), as adjusted annually for inflation. Notice 2020-33 also clarifies the ability of a health plan to reimburse individual insurance policy premium expenses incurred prior to the beginning of the plan year for coverage provided during the plan year. According to Notice 2020-33, the Department of the Treasury (Treasury) and the IRS intend to revise the proposed cafeteria plan regulations to reflect the guidance in this notice, but taxpayers may rely upon Notice 2020-33 in the meantime.

[Read more about the Notice.](#)

## **DOL Releases Updated COBRA Model Notices and FAQs**

The DOL released updated COBRA model notices and [FAQs](#) providing general information on the updated model notices. The FAQs note that the DOL provides a model general COBRA notice and model COBRA election notice that plans may use to satisfy the requirements to timely provide both of these notices to qualified beneficiaries. The DOL has updated these model notices to ensure that qualified beneficiaries have a better understanding of the interactions between Medicare and COBRA.

The updated model notices can be found on the DOL's [COBRA Continuation Coverage webpage](#).

[Read more about the FAQs](#). The updated model general COBRA notice is contained in our [UBA Sample Open Enrollment Notices Packet](#).

## **CMS Issues Bulletin on Extension of Timeframes Due to COVID-19**

Last month the DOL and the Treasury issued a [final rule](#) that extends certain timeframes under the Employee Retirement Income Security Act (ERISA) and Internal Revenue Code (IRC) for group health plans, disability, and other welfare plans, pension plans, and participants and beneficiaries of these plans during the COVID-19 national emergency. See our UBA [Advisor](#) for a summary of the final rule. The DOL also issued [Notice 2020-01](#) (Notice) that applies to employee benefit plans, employers, labor organizations, and other plan sponsors, plan fiduciaries, participants, beneficiaries, and covered service providers. The Notice supplements the extended timeframes final rule issued by the DOL and the Treasury. See our UBA [Advisor](#) on Notice 2020-01 for more information.

Following the release of the final rule and Notice, CMS issued a [bulletin](#) providing that between March 1, 2020, and the end of the outbreak period, CMS will adopt a temporary policy of relaxed enforcement to extend similar timeframes otherwise applicable to non-federal governmental group health plans and health insurance issuers offering group health plans, and their participants and beneficiaries. CMS also will not consider a Small Business Health Options Program (SHOP), a SHOP issuer offering a qualified health plan (QHP) through a SHOP, or small business participating in a SHOP to be out of compliance with rules applicable to the SHOP, to the extent the SHOP, issuer, or small business operates in a manner consistent with the relief provided under the temporary policy.

[Read more about the bulletin](#).

## **IRS Updates FAQs on Qualified Health Plan Expenses Under the Employee Retention Tax Credit**

The IRS updated its [COVID-19-Related Employee Retention Credits: Amount of Allocable Qualified Health Plan Expenses FAQs](#). The FAQs provide guidance on determining the amount of allocable qualified health plan expenses that may be treated as qualified wages for the employee retention tax credit (ERTC).

Previously, the FAQs provided that employers could not treat qualified health plan expenses for employees as qualified wages unless the employer paid the employee other qualified wages. The IRS has modified the FAQs. For employers that averaged 100 or fewer full-time employees in 2019, the employer may treat health plan expenses as qualified wages even if the employees are not working and the employer does not pay the employees' wages for the time they are not working. The FAQs provide two examples.

For employers that average more than 100 full-time employees in 2019, the employer may not treat health plan expenses as qualified wages for the time in which the employees are receiving wages for

providing services; only the portion of health plan expenses allocable to the time that the employees are not providing services are treated as qualified wages. The FAQs provide three examples.

[Read more about the updated FAQs.](#)

## **CMS Releases the Final 2021 Benefit Payment and Parameters Rule**

CMS released a [final rule](#) for benefit payment and parameters for 2021. Although the final rule primarily affects the individual market and the Exchanges, the final rule addresses the following topics that may impact employer-sponsored group health plans:

- Notice requirements for excepted benefit health reimbursement arrangements (EBHRAs)
- Special enrollment period for non-calendar year qualified small employer health reimbursement arrangements (QSEHRAs)
- Maximum annual limitation on cost sharing for plan year 2021
- Cost-sharing requirements and drug manufacturers' coupons

The final rule was published in the Federal Register on May 14, 2020, and will become effective on July 13, 2020.

[Read more about the final rule.](#)

## **IRS Releases 2021 HSA Contribution Limit and HDHP Deductible Minimum and OOP Maximum**

The IRS released [Rev. Proc. 2020-23](#) that provides the annual contribution limits for HSAs and the HDHP minimum annual deductibles and the HDHP annual out-of-pocket (OOP) maximums for the 2021 calendar year.

The HSA contribution limit will be \$3,600 for self-only coverage and \$7,200 for family coverage. The HDHP minimum annual deductible will be \$1,400 for self-only coverage and \$2,800 for family coverage. The HDHP OOP maximum will be \$7,000 for self-only coverage and \$14,000 for family coverage.

[Read more about the HSA and HDHP inflation adjusted amounts.](#)

## **IRS Issues Notice 2020-35**

On March 13, 2020, the President of the United States issued an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act in response to the ongoing Coronavirus Disease 2019 (COVID-19) pandemic (Emergency Declaration). The Emergency Declaration instructed the Secretary of the Treasury "to provide relief from tax deadlines to Americans who have been adversely affected by the COVID-19 emergency, as appropriate, pursuant to 26 U.S.C. 7508A(a)."

The IRS has issued relief in [Notice 2020-35](#) (Notice). Much of the relief does not affect employer sponsored group health plans. However, the Notice extends the deadline for providing HSA contribution information to the account beneficiary and filing Form 5498-SA with the IRS to August 31, 2020, following the calendar year to which the information relates (the deadline had previously been extended to July 15, 2020). This deadline extension also applies to Archer MSAs and Medicare Advantage MSAs.

[Read more about the Notice.](#)

## CRS Issues an Updated ACA Resources for Frequently Asked Questions

The Congressional Research Service issued an [updated Patient Protection and Affordable Care Act \(ACA\): Resources for Frequently Asked Questions](#) (Report). The Report highlights various resources that are available to help answer ACA-related health plan questions.

The Report provides:

- Contact information where individuals can direct specific questions on obtaining and using health coverage (such as contact information for exchanges, state Medicaid agencies, organizations providing enrollment assistance, state insurance departments, and the DOL's consumer hotline for questions on employer-based coverage).
- A glossary of health coverage terms and sources for obtaining the ACA's full text.
- Information on public health care programs, such as Medicaid, the State Children's Health Insurance Program (CHIP), and Medicare.
- Resources on the ACA's provisions on specific populations: women's health care, Indian health care, veterans' and military health care, and the treatment of noncitizens under the ACA.
- Resources on behavioral health (mental health and substance use disorders); public health, workforce, and quality; and state innovation waivers.
- Resources on taxes, congressional efforts to repeal or amend the ACA, ACA agency audits and investigations, cost estimates and spending, insurance coverage statistics, and legal and regulatory issues.

### Question of the Month

**Q.** For 2020, can a cafeteria plan permit an employee to make an election change even if the employee does not experience a permitted election change event under the cafeteria plan regulations?

**A.** Yes, under IRS Notice 2020-29 (Notice), an employer can amend a cafeteria plan to allow employees to make any of the following election changes until December 31, 2020:

- Make a new election for employer sponsored health coverage on a prospective basis, if the employee initially declined to elect employer-sponsored health coverage.
- Revoke an existing election for employer-sponsored health coverage and make a new election to enroll in different health coverage sponsored by the same employer on a prospective basis (including changing enrollment from self-only coverage to family coverage).
- Revoke an existing election for employer-sponsored health coverage on a prospective basis, provided that the employee attests in writing that the employee is enrolled, or immediately will enroll, in other health coverage not sponsored by the employer (the employer may rely on the written attestation provided by the employee, unless the employer has actual knowledge that the employee is not, or will not be, enrolled in other health coverage not sponsored by the employer).
- Revoke an election, make a new election, or decrease or increase an existing election regarding a health FSA on a prospective basis.
- Revoke an election, make a new election, or decrease or increase an existing election regarding a dependent care assistance program on a prospective basis.

Election changes under this Notice should generally be made on a prospective basis. An amendment for the 2020 plan year must be adopted on or before December 31, 2021.

6/1/2020

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The UBA Compliance Advisors help you stay up to date on regulatory changes to help simplify your job and mitigate compliance risk.



This information is general and is provided for educational purposes only. It reflects UBA's understanding of the available guidance as of the date shown and is subject to change. It is not intended to provide legal advice. You should not act on this information without consulting legal counsel or other knowledgeable advisors.

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