

IRS Runout / Grace Period FAQs

IRS Notices - General

1. What IRS/Department of Labor (DOL) notices can we refer to the runout extensions, grace period extensions and more?

You can reference the runout extension rule here:

<https://www.federalregister.gov/documents/2020/05/04/2020-09399/extension-of-certain-timeframes-for-employee-benefit-plans-participants-and-beneficiaries-affected>

For mid-year changes, extended FSA claim periods, and relief provided to high-deductible health plans (HDHPs) during COVID-19, reference IRS Notice 2020-29. For the carryover increase and relief regarding first-month premiums in ICHRAs, reference IRS Notice 2020-33.

Runout Extension

2. Are there recommendations on how participants should handle claims filed after the runout and rejected for that reason during processing, now that the runout extension is permissible? Should rejections be reviewed?

While previously denied claims could be proactively reviewed and reprocessed, it is recommended that members resubmit the claim for processing under the new runout extension rules.

3. Would the automatic run-out period extension also apply to current plan years that have not yet entered the runout period (e.g. 6/1/2019-5/31/2020 with original runout until 8/31/2020), and plan years that have not yet started (e.g. 6/1/2020- 6/30/2020 short plan year with original runout until 9/30/2020)? Assuming further notice is not provided prior to reaching those runout dates.

Yes, the automatic extension applies in any situation when the runout period would otherwise end during the Outbreak Period. The guidance says the Outbreak Period is to be disregarded for purposes of determining the date within which individuals may file a benefit claim. This would include any situation when the deadline for submitting a claim (such as the end of a runout period) would fall within the Outbreak Period.

An example in the guidance describes a plan that requires a claim to be submitted within 365 days after it is incurred. The example says the effect of the guidance is to not count any portion of the Outbreak Period against the time period for submitting the claim (365 days in the example). This would suggest the following outcomes:

- **Scenario 1 – Runout Period Partially Completed –** A calendar year plan has a runout period for the 2019 plan year that ends March 31, 2020. One month (31 days) remains on the runout period when the Outbreak Period begins March 1, 2020. The runout period will be suspended during the Outbreak Period and will end 31 days after the end of the Outbreak Period.

- **Scenario 2** – Runout Period Begins and Ends During Outbreak Period – A non- calendar year plan with plan year ending March 31, 2020 has a 91-day runout period that ends June 30, 2020. The runout period will be suspended during the Outbreak Period and will end 91 days after the end of the Outbreak Period.
- **Scenario 3** – Runout Period Begins (But Does Not End) During Outbreak Period –A non-calendar year plan with plan year ending June 30, 2020 has a 92-day runout period that ends September 30, 2020. Assume the Outbreak Period ends July 20, 2020. The first 20 days of the runout period will be suspended during the Outbreak Period and will not begin to run until the Outbreak Period ends. The runout period will end 92 days after the end of the Outbreak Period.
- **Scenario 4** – Short Plan Year During Outbreak Period – A non-calendar year plan with a short plan year beginning June 1, 2020 and ending June 30, 2020 has a 92-day runout period that ends September 30, 2020. Assume the Outbreak Period ends July 20, 2020. The first 20 days of the runout period will be suspended during the Outbreak Period and will not begin to run until the Outbreak Period ends. The runout period will end 92 days after the end of the Outbreak Period.
- **Scenario 5** – Runout Period Begins After the Outbreak Period – A non-calendar year plan with plan year ending September 30, 2020 has a 92-day runout period that ends December 31, 2020. Assume the Outbreak Period ends July 20, 2020. The runout period will not begin until after the Outbreak Period ends, so the Outbreak Period does not impact the runout period, and the runout period will end December 31, 2020, as scheduled.

An alternative view of this scenario is that any claim incurred during the Outbreak Period would have the runout period extended by the number of days remaining in the Outbreak Period at the time the claim is incurred. For example, if the Outbreak Period ends July 20, 2020 and a claim is incurred on July 10, 2020, the member would have 10 additional days beyond December 31, 2020 within which the claim could be submitted. However, this seems to be an impractical interpretation of the guidance and is understood not to be what is intended by the guidance. Rather, it is understood the Outbreak Period extends the runout period only to the extent the runout period falls within the Outbreak Period.

4. Do the same rules apply for terminated members with term employee runout on or after 3/1/2020?

Yes, if a mid-year runout period begins by reason of a termination of employment or other mid-year loss of coverage, the Outbreak Period would suspend the runout period. E.g. Calendar year plan year with a general 3-month runout period (through 3/31). Member terminates employment 1/15/2020 and has 60-day term employee runout until 3/15/2020. Does this terminated member now have extended runout time to submit claims?

Yes, in this example the 15-day period from 3/1/20 to 3/15/20 is suspended during the Outbreak Period. The member would have until 15 days after the end of the Outbreak Period to submit claims.

5. Are DCAs included when we reference FSA?

DCAs technically are not covered by these rules, because they are not subject to the ERISA claims

procedures. However, applying the same principles on a voluntary basis is permissible. An amendment to the DCA plan terms is advisable to clarify this operation of the claims procedures, since the law does not mandate it.

6. Does the runout extension apply to all claims types or is it restricted to certain “health” type claims or only claims processed through health insurance?

The extension is not expressly limited to health claims. It is a modification of the ERISA claims procedure rules, so any plan covered by ERISA would be subject to the extension. However, this would generally be limited to health FSAs and HRAs. e.g. Members can purchase FSA IRS eligible expenses without it processing through insurance. Health FSA reimbursement claims that are subject to a runout period or other submission deadline would be subject to the extension. e.g. Members could technically use their HSA for non-health related expenses. HSA reimbursement claims would not be subject to the extension for one or both of two reasons. (1) HSAs are not covered by ERISA or subject to the ERISA claims procedure rules. (2) HSAs generally do not impose any deadline for submitting claims for reimbursement (“shoebox rule” applies to all expenses incurred after the HSA is established).

7. For the extensions on COBRA, what do you suggest on non-ERISA plans?

Plans of non-federal governmental employers are subject to COBRA but technically may not be required to comply with the Outbreak Period extension. However, due to the substantial similarities in the application of COBRA to these plans and plans of private sector employers, it is generally recommended that they be administered consistently to avoid confusion and errors.

Church plans are not subject to federal COBRA, although some church plans choose to voluntarily comply with COBRA. Those plans that voluntarily follow COBRA may want to comply with the Outbreak Period extension to avoid confusion and errors.

8. If the medical plan is non-ERISA, does the extension also apply to the flex plan?

Generally, no. If the traditional group health plan is a non-ERISA plan (e.g., because it is a church or governmental plan), it is likely the health FSA plan is a non-ERISA plan as well. In that case, the extension of a runout period during the Outbreak Period would not automatically apply, but could be applied voluntarily.

Mid-year Election Changes

9. Is an employer required to allow mid-year election changes, or is this optional for them to implement?

No, employers are not required to amend their plans to allow for mid-year election changes.

10. Can an employer choose to amend plans to allow only some of the changes? For instance, can it allow for mid-year FSA/DCA changes but not mid-year health coverage changes?

Yes, there is flexibility for employers to decide which (if any) of the election changes will be implemented.

11. If an employer chooses not to allow mid-year election changes, does it have to notify the employees of

that?

No, if there is no change in plan terms, no additional notification is required.

12. If an employee decides to revoke health plan coverage through its employer, does the employee need to provide an attestation of another employer-sponsored plan? Or is individual coverage "consistent" and in line with the IRS's consistency rule?

An employee who revokes employer-sponsored health coverage and who does not enroll in other employer-sponsored coverage must provide in writing that they are covered by non-employer-sponsored coverage. This can include individual market coverage and any other coverage that provides comprehensive health benefits.

13. If an employee revokes employer-sponsored dental coverage, do they need to provide in writing that they're receiving other dental coverage?

Although not expressly stated in the guidance, it is understood that an employee revoking employer-sponsored dental coverage would need to attest in writing that they are enrolled in other dental coverage.

14. If any employee has contributed \$1,000 in daycare however will not have any daycare expenses for the plan year can the employer tax the contributions and return the money to the employee?

No. A change in FSA election must be prospective and may not result in any cashout of unused contributions.

15. If a person has not been reimbursed from the FSA at all can they revoke it to 0 and have payroll contributions refunded to them?

No. A change in FSA election must be prospective may not result in any cashout of unused contributions.

16. If an employee enrolls in the healthcare FSA now, would services be reimbursable back to 1/1/20? Or only reimbursement for services back to the employee's enrollment date?

An FSA may only reimburse expenses incurred on or after the date the employee is enrolled in the plan. Thus, a newly enrolled employee would only be permitted to seek reimbursement of expenses incurred on or after the date of enrollment. However, an employee who previously enrolled in the FSA with a lower dollar limit may be permitted to change their election to increase the coverage amount and seek reimbursement of expenses incurred before the change in election, because such expenses were incurred during the period the employee was covered under the FSA.

17. Is there a limit to the number of election changes an FSA/DCA participant can make to those accounts?

Although the guidance does not specifically limit the number of election changes that may be made, it is understood the guidance is generally not intended to allow for multiple election changes absent changes in circumstances.

18. Do the updated cafeteria plan rules extend to other pre-tax elections such as Commuter or Vacation benefits?

No. The only election changes permitted under the guidance are changes to elections regarding employer-sponsored health coverage and changes to elections regarding flexible spending accounts (health, dependent care, and adoption). PTO/vacation benefits under a cafeteria plan are not included, and commuter/transit benefits under a qualified transportation plan are not included.

19. Are qualifying events no longer necessary for modifying FSAs?

In general, FSA elections continue to be subject to the same requirements as have applied historically, including the requirement that elections are generally irrevocable during the plan year, subject only to changes made on account of qualifying mid-year election change events. The guidance provides a limited exception to this rule only during the 2020 calendar year and only to the extent the FSA plan is modified to allow for the additional flexibility provided in the guidance.

Grace Period Extension

20. Does grace extension also imply runout extension? I.e. if member can continue to incur new claims through 12/31/2020, they can also continue to submit claims for dates of service during the plan year prior to grace period start date.

Extension of the runout period is only automatic to the extent the runout period is associated with an ERISA-covered plan (health FSA or HRA) and the runout period falls within the Outbreak Period.

For example, assume a health FSA with plan year ending 4/30 and related runout period ending 7/31. Further assume the Outbreak Period ends 8/15. The runout period is automatically suspended because it falls within the Outbreak Period, regardless of whether the plan is also amended to allow for claims extension through 12/31. However, if the runout period didn't begin until 9/1, there would be no automatic extension in this example, because it is assumed the Outbreak Period ends 8/15. There is no automatic extension of the runout period for non-ERISA plans, such as dependent care FSAs, regardless of whether the plan is also amended to allow for claims extension through 12/31.

To the extent a plan chooses to offer the claims period extension through 12/31, the plan could also allow for a supplemental runout period beyond the end of the extended claims period. For example, if claims may be incurred through 12/31, the plan could offer a runout period for those claims until 2/28. All of this would need to be addressed by plan amendment.

If a plan year ends in 2020 and the plan sponsor chooses to offer the extended claims period through 12/31/20, it may not be necessary to offer the traditional runout period following the end of the plan year, because claims may continue to be submitted through 12/31. However, the extended claims period does not automatically replace a pre-existing runout period. This would need to be addressed in the plan document.

21. Does this ruling mean that an employer can now have a grace period extension and a carryover?

No, this does not change the traditional requirement that a health FSA plan can have either a grace period or a carryover, not both. Think of the IRS grace period extension as a special, one-off form of relief. Both plans that currently offer a carryover and plans that currently offer a grace period can take advantage of this special extension, but only during 2020.

22. Does the rule about cafeteria plans can only offer either grace or carryover/fund rollover not apply for plans with a plan year end date or grace period end date on or after 1/1/2020? E.g. a plan that ends on 1/31/2020 can have a grace extension through 12/31/2020 in addition to a carryover of funds after 12/31/2020.

Yes, the IRS guidance makes clear that health FSAs using carryover may also use this extended claims period. Although the extended claims period works similar to a grace period, it is not considered a true grace period for purposes of the rule that requires using either a grace period or carryover but not both. The following example illustrates how this might work:

Assume a non-calendar year health FSA with a plan year ending June 30, 2020. The plan allows for carryover of up to \$500 in unused amounts to the next plan year. The plan is amended to allow an employee with unused amounts remaining as of June 30, 2020 to be reimbursed from those amounts for eligible medical care expenses incurred through December 31, 2020, including amounts in excess of \$500.

- **Scenario 1: Most Unspent Funds Utilized.** In this scenario, assume an employee has \$2,000 in unspent funds as of June 30, 2020, and the employee incurs \$1,900 in eligible medical expenses between July 1, 2020 and December 31, 2020. The health FSA may reimburse the employee \$1,900 from the \$2,000 remaining at the end of the 2019-2020 plan year. The \$100 in unused amounts from the plan year ending June 30, 2020 may be carried over to the plan year beginning July 1, 2020 under the carryover rule and is available to be used for claims incurred through June 30, 2021.
- **Scenario 2: Carryover Limit Applies to Unspent Funds.** As an alternative scenario, assume an employee has \$1,250 in unspent funds as of June 30, 2020, and the employee incurs \$600 in eligible medical expenses between July 1, 2020 and December 31, 2020. The health FSA may reimburse the employee \$600 from the \$1,250 remaining at the end of the plan year ending June 30, 2020, leaving \$650 still unused. \$500 of the remaining \$650 in unused amounts may be carried over to the plan year beginning July 1, 2020 under the carryover rule and is available to be used for claims incurred through June 30, 2021. \$150 will be forfeited.

23. How would the mandatory runout extension and voluntary grace period extension work together for FSAs? For example, an employer has allowed the grace period extension and the Outbreak Period has not ended as of Dec. 2020. Would the runout extension kick in after grace period extension has ended?

Assuming the Outbreak Period has not yet ended then any deadline for submitting claims incurred during the extended claims period would be suspended during the remainder of the Outbreak Period. Here are a couple of examples, in which we should assume the Outbreak Period will end January 31, 2021.

- **Example 1: No Supplemental Runout Period.** Assume the health FSA is amended to allow for the extended claims period through December 31, 2020, but no further runout period is offered beyond 12/31. The plan language requires submitting all claims incurred through 12/31 no later than 12/31. The claim submission deadline (12/31) will be automatically extended at least until January 31, 2021. In this scenario, it is possible an employee would have as long after the end of the Outbreak Period to

submit their claim as they had before the stated claim deadline. For example, if a claim is incurred on December 1, 2020 (30 days before the claim submission deadline), the employee may have up to 30 days after the end of the Outbreak Period to submit their claim.

- **Example 2:** Supplemental Runout Period. Assume the health FSA is amended to allow for the extended claims period through December 31, 2020, and also offers a supplemental 59-day runout period until February 28, 2021 to submit claims incurred before 12/31. The supplemental runout period will not begin running until after the end of the Outbreak Period, so employees will have at least 59 days following the end of the Outbreak Period during which they may submit claims.

24. With the extended grace period to December 2020, do we have to provide an additional period of time to submit these claims? How about calculating the rollover when factoring this in?

There is no requirement to provide a supplemental runout period or additional period of time to submit claims incurred during the extended claims period. However, it would be reasonable to offer at least a brief supplemental runout period to allow for submission of claims incurred late in the extended claims period.

The amount available for carryover will be determined after all claims incurred during the supplemental runout period have been submitted (by whatever deadline required under the plan) and adjudicated by the plan.

25. Can 2020 calendar plan years that end on December with a grace period that runs into 2021 have the ability to extend their grace periods beyond the 2.5 months?

The recent IRS Notice only applies to 2019 plans with a 2020 grace period and non-calendar year plans with plan years ending in 2020. We would anticipate, but don't know for certain, that there may be additional leniency around the 2020 FSA grace period for 2020 expenses.

26. Does a minimum amount of time exist to extend the grace period? For example, if the GPE ends on 03/15, can the client choose to extend the GPE through 04/30/2020?

There is no minimum. The extended claims period cannot last beyond 12/31/2020, but it can be a shorter period. This would need to be addressed in the plan document.

27. For plan years ending in 2020 who adopt the extended grace period claim incurrence period, for employees who want to preserve their right to make HSA contributions, can those employees change their full healthcare FSA to a limited purpose FSA?

Yes, so long as the plan is amended to provide this option, an employee may be given the right to elect that any health FSA balance remaining available during the extended claims period will be available only to reimburse limited-purpose expenses (dental, vision, and preventive care) incurred during the extended claims period. A plan may also provide for automatically converting unused amounts to a limited-purpose FSA during the extended claims period for any employee who enrolls in the HDHP, or a plan may give employees the right to waive access to unused amounts during the extended claims period.

28. If an employer has offered neither the regular grace period or carryover in its original plan, would they have to adopt one or the other to get the extended claims period granted by this Notice?

No, a plan may be amended solely to offer the extended claims period during 2020 without also adding either a traditional 2-1/2 month grace period or the carryover allowance.

Carryover Increase

29. Can a plan use \$550 carryover even if they only have \$2,700 health FSA maximum? In other words, is the carryover based on federal health FSA limit, not necessarily the maximum of the plan?

Yes, the maximum carryover amount is based on the maximum statutory limit on employee salary reduction contributions under Internal Revenue Code Section 125(i), regardless of the plan's limit on employee salary reduction contributions.

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