Taxpayer Certainty and Disaster Tax Relief Act of 2020

Disaster Tax Relief and Other Provisions

For purposes of the disaster tax relief provisions of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Title III of the Act, which includes Act Sections 301–306), Section 301 of Title III provides the following applicable definitions.

- *Qualified disaster area.* Any area with respect to which a major disaster was declared, during the period beginning on January 1, 2020 and ending on February 25, 2021, by the President under Section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act if the incident period of the disaster with respect to which such declaration is made begins on or after December 28, 2019, and on or before December 27, 2020. **Note:** A qualified disaster area does not include any area with respect to which such a major disaster has been so declared only by reason of COVID-19.
- *Qualified disaster zone.* The portion of any qualified disaster area that was determined by the President, during the period beginning on January 1, 2020 and ending on February 25, 2021, to warrant individual or individual and public assistance from the federal government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act by reason of the qualified disaster with respect to such disaster area.
- *Qualified disaster.* With respect to any qualified disaster area, the disaster by reason of which a major disaster was declared with respect to such area.
- *Incident period.* With respect to any qualified disaster, the period specified by the Federal Emergency Management Agency as the period during which such disaster occurred (but not ending after January 26, 2021).

Act Sec.	*General Rule*	*Disaster Tax Relief Provision*
Retirement Plans and IRAs		
302(a)	Distributions from qualified retirement plans and IRAs are generally taxable unless they are rolled over to an eligible retirement plan or IRA within 60 days after the funds are received [IRC Secs. 402(c)(3)(A) and 408(d)(3)(A)]. Unless an exception applies, taxable distributions from qualified retirement plans and IRAs before the taxpayer reaches age 59½ are subject to an early withdrawal penalty [IRC Sec. 72(t)]. Mandatory 20% federal income tax (FIT) withholding is normally required on the taxable portion of a distribution from a qualified retirement plan, unless the distribution is rolled over tax-free via a direct trustee-to-trustee transfer [IRC Sec. 3405(c)].	The following tax relief is provided for qualified disaster distributions: • Up to $100,000 of such distributions are exempted from the early withdrawal penalty. • All or a part of a distribution can be recontributed tax-free (rolled over) to eligible retirement plans or IRAs any time during the three-year period beginning on the day after the distribution is received. • To the extent a distribution is not recontributed, the taxable amount is taken into gross income ratably over three years beginning with the year in which the distribution is received unless the taxpayer elects out of this treatment. • Such distributions are not subject to the mandatory 20% FIT withholding requirement. A *qualified disaster distribution* is a distribution from most types of tax-favored retirement plans, including IRAs, made on or after the first day of the incident period of a qualified disaster and before June 25, 2021 to an individual whose principal residence was in the qualified disaster area at any time during the incident period and who sustained economic loss due to the qualified disaster.
302(b)	If the plan permits, 401(k) and 403(b) plans can distribute elective deferrals on account of hardship before the participant reaches age 59½ or terminates employment. Hardship distributions are taxable and cannot be rolled over [IRC Sec. 402(c)(4)]. A *qualified first-time homebuyer* distribution is an IRA distribution of up to $10,000 that is used within 120 days to buy, build, or rebuild the first home of a first-time homebuyer. Such distributions are taxable, but not subject to the early withdrawal penalty [IRC Sec. 72(t)(8)].	Any individual who received a qualified distribution to buy or build a home can roll the money back into an eligible retirement plan (including an IRA) tax free during the applicable period (the period beginning on the first day of the incident period of a qualified disaster and ending on June 25, 2021). A *qualified distribution* is a hardship distribution from a 401(k) or 403(b) plan or a qualified first-time homebuyer distribution from an IRA that was: (1) received during the period (a) beginning 180 days before the first day of the incident period of the qualified disaster and (b) ending 30 days after the last day of the incident period and (2) intended for the purchase or construction of a principal residence in a qualified disaster area that didn't take place due to the qualified disaster.

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Act Sec.	***General Rule***	***Disaster Tax Relief Provision***
Retirement Plans and IRAs (Continued)		
302(c)	Qualified retirement plan loans cannot exceed the lesser of: (1) $50,000 or (2) 50% of the present value of the participant's (borrower's) vested accrued benefit, or, if greater $10,000. They generally must be repaid over five years or less unless secured by the participant's residence [IRC Sec. 72(p)(2)].	For plan loans made to a qualified individual during the period beginning on December 27, 2020 and ending on June 25, 2021, the maximum loan amount is increased to the lesser of: (1) $100,000 or (2) 100% of the present value of the participant's vested accrued benefit. A *qualified individual* is any person whose principal residence was in a qualified disaster area at any time during the incident period of the qualified disaster and who sustained economic loss due to the qualified disaster. Also, for any qualified individual who has a plan loan (1) outstanding on or after the first day of the incident period of a qualified disaster, (2) for which the due date of any repayment occurs during the period (a) beginning on the first day of the incident period of the qualified disaster and (b) ending 180 days after the last day of the incident period, the due date for such repayment is extended one year (or, if later, until June 25, 2021).
302(d)	N/A	If the Taxpayer Certainty and Disaster Tax Relief Act of 2020 provisions for retirement plans and IRAs affect the operation of any plan or IRA, it's treated as being operated in accordance with the law as long as the relevant document is amended to reflect the Act rules by: (1) the last day of the first plan year that begins on or after January 1, 2022 or (2) any later date that may be set forth in future IRS guidance.
Employee Retention Tax Credit		
303	Certain business incentive credits are combined into one general business credit (GBC) for purposes of determining each credit's allowance limitation for the tax year. A GBC (claimed on Form 3800) is allowed against income tax for a particular tax year and equals the sum of: (1) the business credit carryforwards carried to the tax year, (2) the current year GBC, and (3) the business credit carrybacks carried to the tax year (IRC Sec. 38).	*Eligible employers* can claim a *2020 qualified disaster employee retention credit* equal to 40% of up to $6,000 of qualified wages per eligible employee. The credit is a GBC. Certain tax-exempt entities are provided the option to claim the credit against payroll taxes. *Eligible employers* include those that conducted an active business in a qualified disaster zone at any time during the incident period of the qualified disaster, if the business was inoperable at any time during the period beginning on the first day of the incident period and ending on December 27, 2020 as a result of damage sustained because of the qualified disaster. An *eligible employee* of such employers is one whose principal place of employment with the eligible employer, immediately before the qualified disaster, was in the qualified disaster zone. *Qualified wages* include wages paid or incurred by an eligible employer with respect to an eligible employee at any time (1) on or after the date the business first became inoperable at the employee's principal place of employment; and (2) before the earlier of (a) the date the business resumes significant operations at such principal place of employment or (b) 150 days after the last day of the incident period of the qualified disaster, whether or not the employee performs any services.

Taxpayer Certainty and Disaster Tax Relief Act of 2020 Disaster Tax Relief and Other Provisions (Continued)		
Act Sec.	***General Rule***	***Disaster Tax Relief Provision***
Charitable Contribution Deduction for Corporations		
304(a)	A C corporation generally can deduct charitable contributions up to 10% of its contribution base—taxable income with certain adjustments [IRC Sec. 170(b)]. The Coronavirus Aid, Relief, and Economic Security (CARES) Act temporarily increased the limit to 25% of taxable income for certain qualified contributions made in 2020. A qualified contribution is any charitable contribution (1) that is paid in cash during calendar year 2020 to an organization described in IRC Sec. 170(b)(1)(A) [Section 501(c)(3) and certain other charitable organizations] and (2) for which the taxpayer elected to apply this provision with respect to the contribution. However, contributions to a Section 509(a)(3) supporting organization or a donor advised fund are not qualified contributions.	*Qualified disaster relief contributions* made by C corporations are not subject to the income limits that normally apply. Rather, these contributions are deductible up to 100% of a corporation's contribution base. *Qualified disaster relief contributions* are qualified contributions as defined in the CARES Act, made from January 1, 2020 through February 25, 2021 for relief efforts in one or more qualified disaster areas for which the taxpayer receives contemporaneous written acknowledgement from the charity stating that the contribution was (or is to be) used for such efforts. **Practice Tip:** This provision is available to C corporations regardless of their location. A corporation must elect to have the provision apply.
Personal Casualty Losses		
304(b)	Losses to personal-use property resulting from a casualty may be deductible (IRC Sec. 165). The amount of the casualty loss is generally the lesser of: (1) the adjusted basis of the property immediately before the casualty event or (2) the decrease in the property's FMV due to the casualty. For 2018–2025, personal casualty losses are not deductible unless attributable to a federally declared disaster or, if the taxpayer has a personal casualty gain, to the extent of such gain. The casualty loss (reduced by applicable insurance proceeds) must be further reduced by $100 per casualty event. After applying the $100 reduction, the taxpayer's personal casualty losses for the year are combined. The next step is to reduce the combined loss figure by 10% of AGI. Any loss remaining after these reductions can be claimed as an itemized deduction.	If an individual has a net disaster loss for any year— • The $100 reduction is increased to $500. • The 10% of AGI reduction does not apply to the net disaster loss. • The taxpayer's standard deduction is increased by the *net disaster loss*. In other words, the taxpayer does not have to itemize deductions to claim the loss. Additionally, the net disaster loss portion of the standard deduction is deductible for alternative minimum tax (AMT) purposes. An individual has a net disaster loss for any year that *qualified disaster-related personal casualty losses* exceed personal casualty gains. *Qualified disaster-related personal casualty losses* are personal casualty losses that arise in a qualified disaster area on or after the first day of the incident period of the qualified disaster, and which are attributable to such qualified disaster.

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Act Sec.	***General Rule***	***Disaster Tax Relief Provision***
Low-Income Housing Tax Credit		
305	A low-income housing tax credit (LIHTC) is allowed annually over a 10-year credit period beginning with the tax year a qualified building is placed in service, or, under an irrevocable election, the next tax year [IRC Sec. 42(f)(1)]. There is a limit on the total amount of credits available for buildings not financed with tax-exempt bonds subject to certain state volume limitations [IRC Sec. 42(h)]. Each state is permitted to annually allocate LIHTCs with a ceiling amount [the state housing credit ceiling, under IRC Sec. 42(h)(3)(C)(ii)], for calendar year 2021, equal to the greater of (1) $2.8125 multiplied by the state population or (2) $3,245,625. Subject to certain exceptions, a housing credit allocation is taken into account only if it is made no later than the close of the calendar year in which the building is placed in service [IRC Sec. 42(h)(1)(B)]. Under the carryover allocation exception, a credit allocation is taken into account if it is made with respect to a qualified building placed in service not later than the close of the second calendar year following the calendar year in which the allocation is made [IRC Sec. 42(h)(1)(E)(i)]. A *qualified building* for which a carryover allocation under the carryover allocation exception can be made is any building that is part of a project if the taxpayer's basis in the project (as of the date that is one year after the date the allocation was made) is more than 10% of the taxpayer's reasonably expected basis in the project at the close of the second calendar year after the calendar year of the allocation [IRC Sec. 42(h)(1)(E)(ii)].	For purposes of the LIHTC, the state housing credit ceiling for any state for each of calendar years 2021 and 2022 will be increased by the aggregate housing credit dollar amount allocated by the state housing credit agencies of that state for that calendar year to buildings located in any qualified disaster zone in that state. To determine the unused state housing credit ceiling for any calendar year, any increase in the state housing credit ceiling under this rule will be treated as an amount described in IRC Sec. 42(h)(3)(C)(ii) (effectively, an increase in the overall state housing credit ceiling for that state). The increase for any state will not exceed (1) in the case of an increase determined for calendar year 2021, the applicable dollar limitation for that state and (2) in the case of an increase determined for calendar year 2022, the applicable dollar limitation for that state reduced by the amount of any increase determined for that state for calendar year 2021 [Act Sec. 305(a)(2)(A)]. The *applicable dollar limitation* for any state is the lesser of (1) the product of $3.50 multiplied by the population of that state (as determined for calendar year 2020) that resides in qualified disaster zones in that state or (2) 65% of the state housing credit ceiling for that state for calendar year 2020. For housing credit dollar amounts that are allocated by a state housing credit agency for calendar year 2021 or 2022 to a building located in a qualified disaster zone in that state and that is designated by that state housing credit agency as a housing credit dollar amount to which this rule applies, under the carryover allocation exception, a credit allocation is taken into account if it is made with respect to a qualified building placed in service not later than the close of the third (rather than second) calendar year following the calendar year in which the allocation is made. IRC Sec. 42(h)(1)(E)(ii) is amended to provide that a qualified building for which a carryover allocation under the carryover allocation exception can be made is any building that is part of a project if the taxpayer's basis in the project, as of the date that is two years (rather than one year) after the date the allocation is made, is more than 10% of the taxpayer's reasonably expected basis in the project at the close of the third (not second) calendar year after the calendar year of the allocation. The aggregate amount of housing credit dollar amount designated under the above rule for any calendar year by all state housing credit agencies of a state will not exceed the amount determined under Act Sec. 305(a)(2)(A) for that state for that calendar year. The above rules apply for calendar years 2021 and 2022.

Taxpayer Certainty and Disaster Tax Relief Act of 2020 Disaster Tax Relief and Other Provisions (Continued)		
Act Sec.	***General Rule***	***Disaster Tax Relief Provision***
Disaster Relief for U.S. Possessions		
306	N/A	This provision specifies how the disaster relief provisions in Title III of the Taxpayer Certainty and Disaster Relief Act of 2020 (Act Secs. 301–306) apply to U.S. possessions. The treatment of each possession depends on whether it has a mirror code tax system. A U.S. possession has a mirror code tax system if the income tax liability of the possession's residents under the possession's income tax system is determined by reference to the U.S. income tax laws as if the possession were the United States. For U.S. possessions that have mirror code tax systems (the U.S. Virgin Islands, Guam, and the Northern Mariana Islands), the U.S. Treasury will pay amounts equal to the loss (if any) to that possession by reason of the disaster relief provisions. The U.S. Treasury will determine these amounts based on information provided by the possession's government. For U.S. possessions that do not have mirror code tax systems (Puerto Rico and American Samoa), the U.S. Treasury will pay amounts estimated as being equal to the aggregate benefits (if any) that would have been provided to residents of that possession because of the disaster relief provisions if a mirror code tax system had been in effect in the possession. But a possession will not receive the payments unless it has a plan, approved by the U.S. Treasury, under which it will promptly distribute the payments to its residents.
Other Provisions		
201	The annual amount of the low-income housing credit is determined by using a percentage prescribed by the IRS to yield credit amounts, in total over a 10-year period, with a present value of 70% of the qualified basis for certain new buildings and 30% of the qualified basis for certain other buildings. The percentage must be at least 9%-per-year for new buildings that are not federally subsidized [IRC Sec. 42(b)].	The Act provides a 4%-per-year credit floor for buildings that are not eligible for the 9% credit floor [IRC Sec. 42(b)(3)]. The provision applies to buildings placed in service after 12/31/20 that (1) receive an allocation of housing credit dollar amount after 12/31/20 and (2) in the case of any building any portion of which is financed with certain tax exempt obligations described in IRC Sec. 42(h)(4)(A), the obligation is issued after 12/31/20.
202	The 2017 Tax Cuts and Jobs Act (TCJA) enacted business interest expense deduction limitations, but allowed a real property trade or business to elect out of them [IRC Sec. 163(j)(7)]. An electing real property trade or business must, for tax years beginning after 12/31/17, depreciate its nonresidential real, residential rental, and qualified improvement property using the alternative depreciation system (ADS). Also, the TCJA changed the ADS recovery period for residential rental property from 40 years to 30 years for property placed in service after 12/31/17.	For tax years beginning after 12/31/17, the Act assigns a 30-year ADS recovery period to residential rental property even though it was placed in service before 1/1/18, if the property is held by an electing real property trade or business and, before 1/1/18, the property was not subject to the ADS.

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Other Provisions (Continued)		
205	To qualify as life insurance contracts for tax purposes, permanent life insurance policies must meet several requirements under IRC Sec. 7702. These requirements include two interest rate assumptions for determining the premiums that can be used to fund the contracts. The interest rate assumptions were set by statute at 4% and 6% when IRC Sec. 7702 was enacted in 1984.	The Act updates IRC Sec. 7702 to reflect the interest rate environment that has been exacerbated by the COVID-19 crisis, and ensures that the rates will continue to appropriately reflect economic conditions, by tying the rates to either a floating rate prescribed in the National Association of Insurance Commissioners' Standard Valuation Law or a floating rate based on the average applicable Federal mid-term rates over a 60-month period [IRC Sec. 7702(b), (c), and (f)]. These changes apply to contracts issued after 12/31/20.
206 and 207	The Coronavirus Aid, Relief, and Economic Security (CARES) Act enacted a refundable payroll tax credit for 50% of qualified wages of up to $10,000 per employee for a maximum credit of $5,000 per employee [the employee retention credit (ERC)]. The ERC is available to (1) employers, including nonprofits, whose operations were fully or partially suspended due to a COVID-19-related shut-down order and (2) employers whose gross receipts declined by more than 50% when compared to the same quarter in the prior year. The ERC may be claimed for wages paid after 3/12/20 and before 1/1/21.	Effective retroactively to 3/12/20, the Act: • Clarifies the determination of gross receipts for certain tax-exempt organizations [Act Sec. 206(a)]; • Reaffirms prior IRS guidance that group health plan expenses can be considered qualified wages, even when no wages are paid to an employee [Act Sec. 206(b)]; and • Provides that employers who receive Paycheck Protection Program (PPP) loans may still qualify for the ERC with respect to wages that are not paid for with forgiven PPP loan proceeds [Act Sec. 206(c)]. Beginning on 1/1/21 and through 6/30/21, the Act extends and expands certain CARES Act provisions as follows: • Increases the ERC rate from 50% to 70% of qualified wages [Act Sec. 207(b)]; • Increases the limit on per-employee creditable wages from $10,000 for the year to $10,000 for each quarter [Act Sec. 207(c)]; • Expands eligibility for the credit by reducing the required year-over-year gross receipts decline from 50% to 20% [Act Sec. 207(d)(1)(A)] and provides a safe harbor allowing employers to use prior quarter gross receipts to determine eligibility [Act Sec. 207(d)(2)]; • Provides rules to allow new employers who were not in existence for all or part of 2019 to be able to claim the credit [Act Sec. 207(d)(1)(B)]; • Allows certain public instrumentalities to claim the credit [Act Sec. 207(d)(3)]; • Increases the delineation for determining the relevant qualified wage base from "greater than 100" to "greater than 500" employees [Act Sec. 207(e)(1)]; • Removes the 30-day wage limitation, allowing employers to, for example, claim the credit for bonus pay to essential workers [Act Sec. 207(e)(2)]; • Allows businesses with 500 or fewer employees to receive an advance payment of the credit at any point during the quarter based on wages paid in the same quarter in a previous year [Act Sec. 207(g)(1)]; and • Provides for a small business public awareness campaign regarding availability of the credit to be conducted by the Secretary of the Treasury in coordination with the Administrator of the Small Business Administration [Act Sec. 207(i)].

Taxpayer Certainty and Disaster Tax Relief Act of 2020 Disaster Tax Relief and Other Provisions (Continued)		
Act Sec.	***General Rule***	***Disaster Tax Relief Provision***
Other Provisions (Continued)		
208	A trust forming part of a pension plan is not subject to tax solely because the plan provides that a distribution may be made from the trust to an employee who has attained age 59½ and who is not separated from employment at the time of the distribution [IRC Sec. 401(a)(36)].	The Act amends IRC Sec. 401(a)(36) to provide that certain pension plan trusts will not lose their status as qualified trusts solely because the plan allows certain employees in the building and construction industries who are not separated from employment to take distributions at age 55. The amendment applies to distributions made before, on, or after the Act's 12/27/20 date of enactment.
209	A qualified retirement plan must provide that, upon its partial termination, the rights of all affected employees to benefits accrued to the date of the partial termination, to the extent funded as of that date, or the amounts credited to their accounts, are nonforfeitable [IRC Sec. 411(d)(3)].	The layoff of a significant number of employees could cause a plan to incur a partial plan termination, even in cases where it is expected that many employees may be rehired once the economy recovers. To help prevent this unfavorable result, a plan will not be treated as having a partial termination [within the meaning of IRC Sec. 411(d)(3)] during any plan year that includes the period beginning on 3/13/20 and ending on 3/31/21, if the number of active participants covered by the plan on 3/31/21 is at least 80% of the number of active participants covered by the plan on 3/13/20.
210	Taxpayers may generally deduct the ordinary and necessary food and beverage expenses associated with operating a trade or business, including meals consumed by employees on work travel. The deduction is generally limited to 50% of the otherwise allowable amount [IRC Sec. 274(n)(1)]. There are exceptions to the 50% limit, but there was no exception for meals provided by a restaurant.	Under the Act, the 50% limit will not apply to expenses for food or beverages provided by a restaurant that are paid or incurred after 12/31/20 and before 1/1/23 [IRC Sec. 274(n)(2)(D)]. **Observation:** The use of the word "by" (rather than "in") a restaurant makes it clear that the new exception is not limited to meals eaten on the restaurant's premises. Takeout and delivery meals provided by a restaurant are also fully deductible.
211	To the extent the child tax credit (CTC) exceeds the taxpayer's tax liability, the taxpayer is eligible for a refundable credit equal to 15% of so much of his taxable earned income for the tax year as exceeds $2,500 [IRC Sec. 24(d)(1)(B)(i) and (h)(6)]. The earned income credit (EIC) equals a percentage of the taxpayer's earned income [IRC Sec. 32(a)]. For both purposes, *earned income* means wages, salaries, tips, and other employee compensation, if includible in gross income for the tax year. Earned income also includes self-employment income, reduced by the deduction for one-half of self-employment tax [IRC Sec. 32(c)(2)].	The Act provides that, in determining the refundable CTC and the EIC for 2020, taxpayers may elect to substitute the earned income for the preceding tax year if it is greater than the taxpayer's earned income for 2020 [Act Sec. 211(a)]. For joint returns, the taxpayer's earned income for the preceding tax year is the sum of each spouse's earned income for that preceding tax year [Act Sec. 211(b)(2)]. An incorrect use on a return of earned income under Act Sec. 211(a) is a mathematical or clerical error for which the IRS may make a summary assessment under IRC Sec. 6213(b)(1) [Act Sec. 211(c)(1)]. The substitution of the previous year's earned income allowed under Act Sec. 211(a) has no other effect on the application of the Internal Revenue Code [Act Sec. 211(c)(2)]. These changes apply to the taxpayer's first tax year beginning in 2020 [Act Sec. 211(a)].
212	For 2020, individuals who normally do not itemize deductions may take up to a $300 above-the-line deduction for cash contributions to qualified charitable organizations. This $300 limit also applies to MFJ filers [IRC Sec. 62(a)(22) before repeal by Act Sec. 212]. A 20% penalty applies to tax underpayments attributable to any overstated cash contribution by non-itemizers.	The Act extends the non-itemizer charitable deduction through 2021. It allows individuals not filing MFJ a deduction in 2021 of up to $300, and increases the deduction allowed in 2021 to $600 for MFJ filers, for cash contributions to qualified charitable organizations [IRC Sec. 170(p)]. The Act also restructures the deduction so that while it may be claimed only by non-itemizers, the deduction does not reduce AGI. An increased penalty of 50% applies to tax underpayments attributable to any overstated cash contribution by non-itemizers under IRC Sec. 170(p) [IRC Sec. 6662(l)].

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Other Provisions (Continued)		
213	The CARES Act increased charitable contribution limitations as follows for: • *Individuals:* from 60% to 100% of modified income for cash contributions, generally to public charities, made in 2020. • *Corporations:* (1) from 10% to 25% of taxable income for certain cash contributions and (2) from 15% to 25% of taxable income for contributions of food inventory (also applies to businesses that are not corporations).	The Act extends these CARES Act rules through 2021.
214	A cafeteria plan may provide for a grace period, not to exceed 2½ months, immediately following the end of each plan year. A participant who has unused benefits or contributions relating to a particular qualified benefit [including a flexible spending arrangement (FSA)] from the immediately preceding plan year, and who incurs expenses for that same qualified benefit during the grace period, may be paid or reimbursed for those expenses as if the expenses had been incurred in the prior plan year. A participant generally must forfeit any amount remaining in an FSA at the end of the plan year or grace period, but the IRS allows a limited carryover for health FSAs. The maximum amount that can be carried over from a plan year starting in 2020 to the following plan year beginning in 2021 is $550 (IRS Notice 2020-33). The carryover limit will be indexed for inflation going forward.	The Act provides the following relief for health and dependent care FSAs for plan years ending in 2020 or 2021: • Any unused benefits or contributions remaining in a health FSA or dependent care FSA at the plan year end can be carried over to the succeeding plan year. • If the plan provides a grace period with respect to unused benefits or contributions, the grace period can be extended to 12 months after the end of the plan year. • Employees can be permitted to prospectively modify the amount contributed to a health FSA or dependent care FSA without regard for the change of status rules. • An employee whose employment was terminated during the plan year and who was participating in a health FSA can be allowed to continue to receive reimbursements from unused benefits or contributions through the end of the plan year (including any grace period) during which he was terminated. The Act further provides that for dependent care FSAs, the maximum age of an eligible dependent may be extended from 12 to 13 years for dependents who aged out of eligibility during the last plan year with a regular enrollment period ending on or before 1/31/20. Also, a dependent care FSA may allow employees with unused benefits for that plan year to carry over the balance to the subsequent plan year and use the benefits until the child turns 14. A cafeteria plan electing to provide any of the above listed voluntary changes must be amended by the last day of the first calendar year following the plan year in which the change first applies. A calendar year plan adopting these voluntary changes would generally need to be amended by 12/31/21.