

CAA COVID-19 Relief Amendment to the BESTflex Plan Adoption Agreement

Phone support: (800) 346-2126 | (608) 831-8445

E-mail support: employerservices@ebcflex.com

■ Understanding the Impact of the Amendment to Your BESTflex Plan

The Consolidated Appropriations Act, 2021 (CAA) allows for temporary relief to Health Care and Dependent Care flexible spending accounts (FSAs). The available relief options may impact your other benefits in a way that is unfavorable to your participants. Please review this important information before amending your plan.

Health Savings Account (HSA) Considerations

Plan changes can have an impact on your participant's HSA eligibility, whether they have an HSA through you or through another source. Visit www.ebcflex.com/COVID19Answers for details about the options provided by CAA.

Reminder: Your Health Care FSA may allow your participants to choose either a standard health FSA or a limited health FSA. Standard health FSAs are disqualifying coverage for an HSA, which means individuals who have active coverage under the standard health FSA are ineligible to make or receive contributions to an HSA during the period of coverage, regardless of the standard health FSA balance. A limited health FSA is compatible with an HSA.

- **Health Care FSA Grace Period:** CAA provides an option to extend your Health Care FSA grace period. If you choose to extend your grace period, the participants who have a standard health FSA balance as of the last day of the plan year are disqualified from making HSA contributions until the first of the month following the end of the new grace period, even if they exhaust their balance during the grace period. Participants are not able to opt out of the standard health FSA grace period feature nor are they able to switch their standard health FSA to a limited health FSA during the grace period in order to begin making HSA contributions.
- **Health Care FSA Rollover:** CAA provides an option to rollover any unused Health Care FSA funds to the following plan year. Unless your plan currently has features to preserve HSA eligibility, choosing to offer rollover of any unused Health Care FSA funds may cause HSA disqualifying coverage for participants. Any participant who has funds roll over into a standard health FSA are disqualified from making HSA contributions for the entire new plan year. Participants are not able to opt out of the standard health FSA rollover. Your plan provisions dictate what type of Health Care FSA you will have after the rollover. Participants cannot choose to deviate from the plan direction.
- **Health Care FSA Spend Down:** CAA provides an option to offer a spend down feature to Health Care FSA participants who terminate Health Care FSA coverage mid-year (due to either an employment termination, a permitted election change event, or the temporarily permissible mid-year change without an event). If you choose to provide a spend down feature account to these participants, those with a standard health FSA will be disqualified from making HSA contributions through the end of the plan year (and grace period, if applicable). Participants are not able to opt out of the Health Care FSA spend down feature, nor are they able to switch their standard health FSA to a limited health FSA during the spend down period in order to begin making HSA contributions.

Adopt the Amendment to Your BESTflex Plan Document

To amend your plan’s grace period, rollover, or Health Care FSA spend down provisions temporarily in light of COVID-19 concerns, fill out this amendment, sign, and return to Employee Benefits Corporation. Use one amendment form per BESTflex Plan. The amendment must be signed by a person who has the plan sponsor’s authority to execute plan documents and amendments. This must be kept with your Plan Document, as it is a formal legal amendment.

Once you have amended your plan, create a *Summary of Material Modification (SMM)* and distribute it to all plan participants (refer to detailed instructions in the section titled *Create and Distribute Participant-Facing Documents*).

Amendment Authorization

GumGum, Inc. (G145330)
 Legal Name of Organization (“Employer”)

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Federal Employer ID Number (FEIN) (xx-xxxxxxx)

The undersigned, as an authorized representative of the Employer hereby certifies that on

0 1 - 2 0 - 2 0 2 1 the governing body of the Employer adopted the following resolutions:
 Date (mm-dd-yyyy)

WHEREAS, the Employer maintains for the benefit of its employees the following plan (the Plan) with the name of:

BESTflex Plan (IRC § 125 Cafeteria Plan)

Choose only one option:

- [Employer Name] Flexible Compensation Plan
- Previously established custom name: [Enter the custom Plan name]

WHEREAS, the Consolidated Appropriations Act, 2021 allows employers to amend a § 125 cafeteria plan with a plan year ending in 2020 or 2021 to permit employees to apply unused amounts to pay or reimburse medical care expenses or dependent care expenses incurred up to 12 months after the end of the plan year through a health FSA, or a dependent care assistance program;

WHEREAS, the Consolidated Appropriations Act, 2021 allows employers to amend a § 125 cafeteria plan with a plan year ending in 2020 or 2021 to permit employees to rollover any unused health FSA funds into the subsequent plan year;

WHEREAS, the Consolidated Appropriations Act, 2021 allows employers to amend a § 125 cafeteria plan to permit employees who terminated participation in a health FSA during calendar year 2020 or 2021 to continue to incur claims against a remaining available balance through the end of the plan year.

NOW THEREFORE, BE IT RESOLVED, that the Employer hereby amends the Plan with modifications to Plan language and procedures consistent with the following selected Plan options, effective as of the date(s) indicated in each section:

Grace Period Options

CAA provides an option to extend your Health Care and/or Dependent Care FSA grace period.

Limitations: Extending your grace period also amends your plan to extend the runout period that applies to all FSAs. The runout period ends the same day as the end of the grace period. If you add a grace period to both Health Care and Dependent Care FSAs, the duration of the grace period must be the same for both plans. You cannot offer grace period and rollover on the same benefit during the same plan year. You cannot retroactively remove rollover to add grace period on a plan year that has ended. You can offer grace period on one benefit (such as Dependent Care FSA) and rollover on another (such as Health Care FSA) during the same plan year.

Amend the Plan effective as of the last day of the plan year ending in (choose one):

- 2020 with such provision in effect for only one plan year
- 2020 with such provision in effect for two plan years
- 2021 with such provision in effect for only one plan year

Plan: Standard Health FSA and Limited Health FSA Dependent Care FSA

Grace Period Duration: Add/Change to 12 month Grace Period
 Add/Change to Grace Period under 12 months, of months, days

Amendments to include an extended grace period as indicated above will hereby amend the section of the plan titled *Reimbursement Rules* as follows:

Timing of Reimbursement Applications. Applications for reimbursement of expenses incurred during the Plan Year (or during the Grace Period, if applicable) shall be submitted to the Administrator prior to the end of the Health Care FSA Dependent Care FSA extended Grace Period.

Grace Period For Health Care FSA Dependent Care FSA. As permitted by Internal Revenue Service Notice 2005-42, the Health Care FSA Dependent Care FSA portions of this Plan shall have a Grace Period extending 12 months months, days after the end of the Plan Year. Participants in such FSAs may have an additional 12 months months, days after the end of the Plan Year in which to incur (and be reimbursed for) eligible expenses.

(a) **Payment of Claims During Grace Period.** In accordance with this Section, eligible expenses incurred during the Grace Period shall be reimbursed from the balance that remains unused at the end of the immediately preceding Plan Year. Such expenses incurred during the Grace Period shall not be reimbursed from the current Plan Year election amount unless and until the remaining balance from the preceding Plan Year has been exhausted.

(b) **Forfeiture at the end of Grace Period.** If at the end of the Grace Period, and after all reimbursements have been made for eligible expenses incurred during the preceding Plan Year and the Grace Period, any balance remains in the FSA for which a Grace Period applies in accordance with this Section, such remaining balance shall be forfeited to the Employer at the end of the Runout Period.

(c) **Effect on Runout Period.** Applications for reimbursement of expenses incurred during the Plan Year or the Grace Period must be submitted to the Administrator prior to the end of the extended Grace Period or the Runout Period indicated in the Plan Adoption Agreement, whichever is later.

Rollover Options

CAA provides an option to rollover any unused Health Care FSA funds to the following plan year.

Limitations: BESTflex Plan rollover is only available for Health Care FSAs. You cannot offer both grace period and rollover on the same benefit during the same plan year. You can offer grace period on one benefit (such as Dependent Care FSA) and rollover on another (such as Health Care FSA) during the same plan year. You cannot retroactively remove grace period to add rollover on a plan year that has ended.

- Amend the Plan effective as of the last day of the plan year ending in (choose one):
 - 2020 with such provision in effect for only one plan year
 - 2020 with such provision in effect for two plan years
 - 2021 with such provision in effect for only one plan year

To change Health Care FSA rollover:

- Standard Health FSA and Limited Health FSA

Rollover Maximum: Add/Change to Rollover with Unlimited Maximum RR
 REMOVE Add/Change to Rollover with Defined Maximum \$

Health Care FSA Rollover Options (These provisions cannot be changed on a plan that has already ended if rollover was previously offered.)

Change Rollover Options

Require New Election: Require participants to make a new plan year election in order to roll over Health Care FSA funds to the new plan year

- Yes (if chosen, skip to the next section)
- No

Minimum Balance: (applies only when there is no new plan year election) No Minimum Set Minimum: \$
 Minimum Rollover Amount

Change Year-to-Year Account Setting: Choose one.

- Same Plan Type:** Health Care FSA rollover funds retain their prior account type (limited or standard) for all participants who do not make an FSA election in the new plan year.
 - When a participant has rollover funds in a Health Care FSA, the funds will roll into the prior account type (limited or standard) in the new plan year.
 - If you have an HSA, this option will not preserve HSA eligibility for a participant in a standard health FSA who does not make a limited health FSA election for the new plan year.
- Auto-Convert for HSA Eligibility:** Standard health FSA rollover funds automatically convert to a limited health FSA in the new plan year.
 - If you have SimplyHSA, auto-conversion takes place if the participant enrolls in SimplyHSA for the new plan year.
 - If you have a different HSA, auto-conversion takes place if the participant does not make a new Health Care FSA election of any kind for the new plan year.
 - If you choose Auto-Convert and do not have a limited health FSA, you must also add a limited health FSA to your plan.

■ Create and Distribute Participant-Facing Documents

Any time you amend your plan with a material change that impacts participation in the plan, you need to communicate changes to your plan participants. We've gathered information here to help you communicate changes to your plan related to CAA and COVID-19 relief. Refer to www.ebcflex.com/SPD for details about requirements and options for distributing information to your participants.

What do I need to communicate for the changes to the plan?

If your plan offers a Dependent Care FSA:

Create a Summary of Material Modification (SMM) and distribute it to all plan participants. The IRS provided temporary and automatic relief for plans that concluded open enrollment on or before January 31, 2020 allowing them to reimburse expenses for their dependents under the age of 14 during that plan year (including grace period, if applicable).

This change is temporary so your SPD will not be updated to include it. This automatic relief may be considered a material modification to the plan and you may want to distribute a *Summary of Material Modification (SMM)* to your employees detailing this relief. If you made multiple changes to your plan due to the temporary regulations, you may include all details in a single SMM; however, distributing multiple SMMs is also permitted. Refer to detailed instructions in the section titled *Creating a Summary of Material Modification (SMM)*.

If you are adding rollover or a grace period:

Download and distribute an updated Summary Plan Description (SPD) and My Company Plan. After the amendment is processed, log into your account at www.ebcflex.com and access *Menu > Forms and Materials* to download an updated SPD to share with your participants. *Access Menu > Plan Information > BESTflex Plan* to download a copy of My Company Plan. Please note that if you are adding rollover or a grace period to a plan year that has already ended, you will need to contact us to get your prior year's SPD.

If you are increasing grace period duration, increasing rollover amount, or adding Health Care FSA spend down:

Create a Summary of Material Modification (SMM) and distribute it to all plan participants. These changes are temporary regulations, so your SPD will not be updated to include them. Therefore, an SMM is required to communicate these features to your plan participants. If you made multiple changes to your plan due to the temporary regulations, you may include all details in a single SMM; however, distributing multiple SMMs is also permitted. Refer to detailed instructions in the section titled *Creating a Summary of Material Modification (SMM)*.

If you are amending your plan's permitted election change provisions:

Follow the instructions in the BESTflex Plan COVID-19 Relief Permitted Election Change Amendment that you completed. If you made multiple changes to your plan due to the temporary regulations, you may include all details in a single SMM; however, distributing multiple SMMs is also permitted.

■ Creating a Summary of Material Modification (SMM)

When the changes you make to your plan are temporary, your SPD is not updated to include them, and therefore you need to create a *Summary of Material Modification (SMM)* and distribute it to your plan participants. You may include several different changes in one SMM; however, distributing multiple SMMs is also permitted.

1. Access the *Summary of Modification Template* in your online account by logging in at www.ebcflex.com, accessing *Forms and Materials* from the main menu, and downloading the SMM template.
2. Fill out the *What Changed?* section of the SMM template.
 - a. Enter the following text as a lead statement:
In light of the Consolidated Appropriations Act, 2021 the following changes will be permitted on the BESTflex Plan:
 - b. Following the lead statement, enter text for each of the applicable changes for your plan, including the start and end dates of the changes. Sample text is included below. Where brackets are included, please insert the information relevant to your plan choices. If the options you have selected to offer only apply to a specific Health Care FSA or Dependent Care FSA, include references to the specific FSAs as appropriate.

Increase in Dependent Care Age:

The Dependent Care FSA age limit has been temporarily changed to 14 for your [plan year affected] plan year for participants who made their Dependent Care FSA election in 2020. If your child turned 13 during the plan year, you can continue to use your Dependent Care FSA to pay for care through the end of that plan year. [If your Dependent Care FSA plan has grace period, add: This age limit also applies to the grace period for this plan year.]

Increasing Grace Period Duration:

For the Plan Year(s) ending [date(s)], your [Health Care FSA (and) Dependent Care FSA] option temporarily includes a grace period, which extends your plan year. The duration of the grace period has increased from 2 months and 15 days to [# of months] months [and # of days]. This allows you to continue to incur eligible expenses until [date] and submit them for reimbursement from your plan. Your runout period for all FSAs has also been extended to the end of the extended grace period. Please refer to your *BESTflex Plan Summary Plan Description (SPD)* and *My Company Plan* for more information.

Increasing Rollover Amount:

For the Plan Year(s) ending [date(s)], your Health Care FSA option includes rollover. The amount of available rollover into the subsequent plan year has temporarily increased from unused balances up to \$[current rollover limit] to \$[new rollover limit/any unused balance]. [Include any plan provisions or requirements, such as new plan year election requirement, auto-convert, minimum rollover amount]. Please refer to your *My Company Plan* and your *BESTflex Plan Summary Plan Description (SPD)* for more information about rollover.

Adding Health Care FSA Spend Down:

After a mid-year termination of a Health Care FSA (provided the loss of coverage was between [date, no earlier than January 1, 2020] and [date, no later than December 31, 2021]), you can now temporarily continue to incur expenses for reimbursement from your Health Care FSA through the end of the plan year in which your participation ended under certain circumstances. The amount available for reimbursement of expenses is limited to the amount you contributed to the Plan as of your termination date. You may, alternatively, be offered and choose to elect COBRA continuation coverage if you wish to have access to your full election amount through the end of the plan year. All claims must be submitted for reimbursement by the end of the plan's standard runout period as identified in *My Company Plan*.

BESTflex Plan COVID-19 Relief Permitted Election Change Amendment Instructions

Phone support: (800) 346-2126 | (608) 831-8445
E-mail support: employerservices@ebcflex.com

■ Adopt the Amendment to Your Plan Document

To amend your plan's permitted election change provisions temporarily in light of COVID-19 concerns, fill out the Amendment, sign, and keep for your records. You **do not need to return** to Employee Benefits Corporation. Use one Amendment form per plan.

Tips for completing the *BESTflex Plan COVID-19 Relief Permitted Election Change Amendment and Certificate of Resolution*:

- Determine the date on or after the first day of your plan year which ends in 2021, that you intend to allow these changes in your plan, or the date you began allowing them if you are amending your plan retroactively. Keep in mind that even if you amend the plan retroactively, election changes made by participants must be prospective.

- The Consolidated Appropriations Act, 2021 (CAA 2021) gives you broad flexibility to allow opportunities for mid-year changes.

Keep the following in mind:

1. Be cautious about amending to allow participants to revoke their Health Care FSA elections. The uniform coverage rule is still in effect, and revocation poses a high risk that employers could lose money.
 - a. If revocation is allowed, the participant's account terminates and you cannot collect further contributions to pay for claims incurred while the plan was open.
 - The participant can only seek reimbursement of expenses incurred prior to their revocation date (unless you separately adopt the temporary spend down feature which requires an additional amendment), but can be reimbursed up to their total annual election (plus rollover funds, if applicable)
 - All participants would have the ability to revoke, even if they have overspent their account (meaning they have been reimbursed more than they have contributed)
 - b. If you choose to allow new elections and revocations, former participants could spend their entire election, revoke their election, and then turn around and make a new election.
 - A black-out period in which no claims can be incurred applies during the period the individual had no election in effect. This can be confusing to participants.
 - Even though the new election takes prior reimbursements into account, multiple periods of uniform coverage during the same plan year creates a higher risk of overspent accounts.
2. We recommend keeping any modifications consistent across FSAs to reduce participant confusion.
3. If you allow participants to decrease elections, they cannot decrease their election below the greater of the participant's payroll contributions to date, or their reimbursements to date.
 - a. Unlike with revocation, a participant's account remains open after they decrease an election, through the end of the plan year.
 - b. Payroll contributions continue (unless the election is reduced to the amount of contributions to date) and expenses incurred during the remainder of the plan year are eligible for reimbursement.
4. If you allow participants to increase elections, they will only have access to the increased amount for expenses incurred after the date of the increase.
5. If you allow eligible employees to make new elections, they will only have access to the new election for expenses incurred after their new election date.

- **The amendment must be signed by a person who has the plan sponsor's authority to execute plan documents and amendments. This must be kept with your Plan Document as it is a formal legal amendment.**

■ Create and Distribute Participant-Facing Documents

Once you have amended your plan, create a *Summary of Material Modification (SMM)* and distribute it to all plan participants. If you made multiple changes to your plan due to the temporary regulations, you may include all in a single SMM. For more information on other plan changes available, please visit ebcflex.com/Covid19Answers. You can access an SMM template in the *Forms and Materials* section of your online account at ebcflex.com.

To fill out the “What Changed?” portion of the SMM, follow these steps:

1. Enter the following text:
“In light of COVID-19, the following changes will be permitted beginning [effective date of amendment] and through [the date you choose on your amendment, no later than the last day of your plan year ending in 2021] without experiencing one of the Permitted Election Change Events detailed in the SPD. All changes must be effective on a prospective basis.”
2. Referring back to your amendment, describe the change(s) you are allowing. Be sure to indicate the plan(s) you are allowing the change(s) to.
Examples:
 - You may revoke your existing [Health Care FSA or Dependent Care FSA] election and terminate your account. If you revoke a Health Care FSA, you will not be able to use Health Care FSA funds for expenses you incur after the date you revoke. After the deadline to submit claims passes, you will forfeit funds left in your account at the time of revocation, including any rollover dollars left from the prior plan year.
 - You may decrease your existing [Health Care FSA or Dependent Care FSA] election, as long as you do not decrease your election below the greater of: the amount you have contributed, or the amount you have been reimbursed as of the date of the decrease.
 - You may increase your existing [Health Care FSA or Dependent Care FSA] election. Note that the increase to the election will only be available for expenses you incur after the date your election changes.
 - You may make a new [Health Care FSA or Dependent Care FSA] election if you do not currently have one for expenses that occur after the new election date.
3. Indicate if you have placed any limits on the number of changes participants can make or the timeframe they have to make these changes.

■ Send in Participants’ Permitted Election Changes

If you use our *Permitted Election Change Form* to communicate your participants’ Health Care FSA and Dependent Care FSA election changes due to this amendment, you may skip the sections starting with Add or Revoke. Instead, fill in the *Additional Information* box near the end of the form by writing “COVID-19” along with the type of change (Add/Revoke/Increase/Decrease) and the FSA to which the change applies. Be sure to include other information required on the form, including the effective date and first payroll date affected by the change.



Employee Benefits Corporation

BESTflex Plan COVID-19 Relief Permitted Election Change Amendment and Certificate of Resolution

Phone support: (800) 346-2126 | (608) 831-8445
E-mail support: employerservices@ebcflex.com

GumGum, Inc. (G145330)

Legal Name of Organization

2 6 - 1 2 7 6 2 5 6

Federal Employer ID Number (FEIN) (xx-xxxxxx)

Authorization

The undersigned, as an authorized representative of the Employer hereby certifies that the governing body of the Employer adopted the following resolutions on:

0 1 - 0 1 - 2 0 2 1

Date (mm-dd-yyyy)

WHEREAS, the Employer maintains for the benefit of its employees the following plan (the Plan) with the name of: BESTflex Plan (IRC § 125 Cafeteria Plan)

Choose only one option:

[Employer Name] Flexible Compensation Plan

Previously established custom name:

[Empty box for Custom Plan Name]

Custom Plan Name

WHEREAS, according to Treas. Reg. § 1.125-4, elections regarding qualified benefits under a § 125 cafeteria plan generally must be irrevocable and must be made prior to the first day of the plan year;

WHEREAS, the Consolidated Appropriations Act, 2021 allows employers to amend a § 125 cafeteria plan to permit each employee who is eligible to make salary reduction contributions under the plan to make prospective election changes (including an initial election) during plan years ending in 2021 regarding a health FSA or a dependent care assistance program, regardless of whether the basis for the election change satisfies the criteria set forth in Treas. Reg. § 1.125-4;

WHEREAS, the Employer wishes to amend the Plan as of the effective date below, with such amendment expiring on the last day of the plan year ending in 2021 if not later amended by the Employer, pursuant to the Employer's amendment authority as set forth in the plan.

Effective Date (no earlier than the first day of the plan year ending in 2021):

0 1 - 0 1 - 2 0 2 1

NOW, THEREFORE, BE IT RESOLVED, that the Employer hereby amends the section of the plan titled "Exceptions to the Irrevocability Rule" to provide that the irrevocability rule does not apply to any of the following requests as long as the change is applied only to future pay periods and the change request is made by the participant on or before:

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(date must be no later than the last day of the plan year ending in 2021)

Check all permitted FSA election changes below:

Health Care FSA

Dependent Care FSA



Revoking an existing election. Coverage will terminate on the date of the change



Decreasing an existing election to an amount not below the greater of payroll contributions to date or reimbursements to date



Increasing an existing election up to the maximum permitted by the Plan



Making a new election when the employee initially declined to make an election

(Choose only one of the options below)

Participants are limited to making [] election change requests in accordance with this amendment.

Participants may make unlimited election change requests in accordance with this amendment.

BE IT FURTHER RESOLVED, that all other terms and conditions of the Plan, including the effect of any new or changed elections made, shall remain in full force and effect.

I hereby attest that the individual signing below is authorized to execute the amended and restated plan document and related documents on behalf of the Employer and take such other actions as are necessary or appropriate to carry out the above resolution.

x Reena Rai

Employer: Signature

01 / 21 / 2021

Date (mm-dd-yyyy)

Reena Rai

Print Name

Director, PeopleOps

Title

Signature: 

Email: reena@gumgum.com







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Final Audit Report

2021-02-05

Created:	2021-02-03
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Status:	Signed
Transaction ID:	CBJCHBCAABAAZ2HCv6mQM0axyqXv0ipMs-kQ7U8Ds4qX

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-  Document created by Kimmie Mills (kmills@sullicurt.com)
2021-02-03 - 1:02:50 AM GMT- IP address: 63.234.29.106
-  Document emailed to Reena Rai (reena@gumgum.com) for signature
2021-02-03 - 1:03:47 AM GMT
-  Email sent to Kimmie Mills (kmills@sullicurt.com) bounced and could not be delivered
2021-02-03 - 1:03:59 AM GMT
-  Email viewed by Reena Rai (reena@gumgum.com)
2021-02-05 - 4:47:12 AM GMT- IP address: 66.249.80.177
-  Document e-signed by Reena Rai (reena@gumgum.com)
Signature Date: 2021-02-05 - 4:47:37 AM GMT - Time Source: server- IP address: 75.82.171.60
-  Agreement completed.
2021-02-05 - 4:47:37 AM GMT