



The American Rescue Plan Act of 2021 (ARPA, HR 1319)

Congress has passed and Thursday, March 11, 2021, the president signed into law the \$1.9 trillion American Rescue Plan Act of 2021 (ARPA, HR 1319).

The law temporarily increases the Dependent Care FSA maximum and provides for a 100% COBRA premium Subsidy as well as additional COBRA enrollment rights for employees and their families who have lost group health plan coverage due to an involuntary termination of employment or reduction of hours.

Dependent Care FSA Increase

ARPA temporarily increases the maximum amount of Dependent Care Flexible Spending Arrangement (FSA) benefits that can be excluded from income from \$5,000 to \$10,500 for the 2021 calendar year. Employers will need to adopt an amendment increasing their Dependent Care FSA for the 2021 calendar year to provide this increased amount. Retroactive amendments are permissible if the amendment is adopted on or before the last day of the plan year.

Employer's adopting this increased maximum may allow their employees to increase their dependent care election *mid-year* under the change in status flexibility provided under the Consolidated Appropriations Act, 2021 (CAA, 2021) and further clarified under [IRS Notice 2021-15](#) for plan years ending in 2021. However, employers who have not adopted that flexibility may still allow employees to increase their elections under [26 CFR § 1.125-4](#), the change in status regulations, provided that the increased maximum qualifies as a significant improvement of a benefit package. Navia has updated the change in status amendment posted to our website for employers that would like to download and adopt change in status flexibility.

Please keep in mind that these changes may affect nondiscrimination testing, particularly the 55% dependent care average benefits test. Navia is making some enhancements to our NDT portal, and **employers may begin pretesting their day care benefit after April 1, 2021**. To access the online tool, select the Nondiscrimination Testing Link in the Resources Section to submit your pretest.

Finally, for those plans that straddle tax years, employers may need to permit employees to reduce their salary reductions by December 31, 2021, to ensure employees do not exceed the maximum in the subsequent tax year. Depending on timing this change could be permitted based again on the change in status flexibility under IRS Notice 2021-15 or existing change in status rules governing significant curtailment of coverage.

After filling out our plan change [form](#), you will be able to download a copy of the amendment. Again, employers can find change in status amendments for plan years ending 2021 for employers who would like to adopt change in status flexibility for group health plans (GHP), the health care FSAs or the dependent care FSAs. These amendments are provided in word and can be altered, as necessary.