



Office of the City Manager

CONSENT CALENDAR

November 9, 2021

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Donald E. Ellison, Interim Director of Human Resources

Subject: Opt-In to CAA Health and Dependent Care Account Extension for 2020 and 2021 Plan Years and Return 2020 Employee Funds to American Fidelity for Extended Employee Reimbursement Period

RECOMMENDATION

Adopt a Resolution granting authority to extend the 2020 and 2021 timeframes under the Consolidated Appropriations Act (CAA) for employees to be able to access their American Fidelity flexible spending and dependent care account funds for additional time due to the effects of the COVID-19 pandemic on employees' ability to seek medical/child care services eligible for reimbursement under the City's existing Plan. Return approximately \$19,740.84 of 2020 funds forfeited from City employee flexible spending and dependent care accounts back to American Fidelity in order to allow them to process 2020-2021 employee reimbursement claims until December 31, 2021.

FISCAL IMPACTS OF RECOMMENDATION

The financial impact of this recommendation is approximately \$19,740.84 of funds that need to be returned to American Fidelity in order to allow the vendor to continue to accept reimbursement for eligible claims from employees between January 1, 2020 and December 31, 2021. The cost of this extension will be paid from the General Fund and sufficient funds are available to fund this extension as this was the amount of employee funds forfeited back to the City by American Fidelity in accordance with our Plan document and IRS laws and rules.

CURRENT SITUATION AND ITS EFFECTS

On March 16, 2020, the City of Berkeley's Public Health Officer issued an Order directing individuals to shelter in place and for all businesses to cease non-essential operations due to the COVID-19 pandemic. In response, City offices directed staff to work from home if possible. In addition, places of business throughout the state including medical and dental offices and child care facilities severely restricted operations or closed for business in order to help mitigate the spread of the virus.

Unfortunately, these developments impacted City of Berkeley employees enrolled in the City's flex spending and dependent care Plan. Due to the COVID-19 related business closures, employees were no longer able to schedule routine medical or dental

appointments or access childcare, costs which would normally qualify as claims for reimbursement through American Fidelity as eligible flex spending and dependent care expenses under the City's Plan. This resulted in employees being unable to use all of their 2020 pre-tax funds deducted from their paychecks and held by American Fidelity, the City vendor responsible for processing employee reimbursement claims.

On December 27, 2020, the CAA allowed employers to voluntarily opt-in to extending the period of time employees can request reimbursement for 2020 and 2021 eligible expenses. The CAA addressed many of the problems that employees who contributed to health flex spending accounts or dependent care assistance accounts were facing, since the pandemic limited opportunities to spend the funds they contributed for their own health care or to pay expenses to care for dependents. Under the CAA, health and dependent care accounts may be amended to give participants a grace period of up to 12 months following the end of Plan years ending in 2020 or 2021.

In accordance with IRS rules and the City's Plan, employees were entitled to a 74-day grace period to submit claims for reimbursement after December 31, 2020. After this short grace period, American Fidelity was legally obligated to return any remaining employee funds as a forfeiture back to the City. In early 2021, well past the 74-day grace period, the COVID-19 pandemic was still in effect and continued to hinder the ability of employees to access their pre-tax funds through American Fidelity.

On or about April 20, 2021, American Fidelity reconciled their records and forwarded the forfeited pre-tax funds back to the City. Nine (9) employees enrolled in the American Fidelity dependent care Plan lost approximately \$16,427.26, and 19 employees forfeited approximately \$3,313.58 from their flexible spending accounts for a total of \$19,740.84 of employee funds forfeited back to the City from Plan year 2020. During summer 2021 labor negotiations, the City committed to make affected employees whole.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACT

There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

After review by City staff and a benefits expert, it was determined that the best option for making employees whole was to extend the timeframes under the CAA for all affected employees to seek reimbursement from the vendor for their forfeited 2020 health and dependent care funds.

ALTERNATIVE ACTIONS CONSIDERED

Refunding the funds back to employees would be a violation of IRS rules and laws.

CONTACT PERSON

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Attachments

1: Resolution:

Exhibit A: Opt-In to CAA Health and Dependent Care Account Extension for 2020 and 2021 Plan Years and Return 2020 Employee Funds to American Fidelity for Extended Employee Reimbursement Period

RESOLUTION NO. ##,###-N.S.

OPT-IN TO CAA HEALTH AND DEPENDENT CARE ACCOUNT EXTENSION FOR
2020 AND 2021 PLAN YEARS AND RETURN 2020 EMPLOYEE FUNDS TO
AMERICAN FIDELITY FOR EXTENDED EMPLOYEE REIMBURSEMENT PERIOD

WHEREAS, on March 16, 2020, the City of Berkeley's Public Health Officer issued an Order directing individuals to shelter in place and for all businesses to cease non-essential operations due to the COVID-19 pandemic; and

WHEREAS, employees who contributed to American Fidelity health flex spending accounts or dependent care assistance accounts in 2020 and 2021 under the City's Plan had limited opportunities to spend the funds they contributed for their own health care or to pay expenses to care for dependents during to the pandemic; and

WHEREAS, on December 27, 2020, the Consolidated Appropriations Act (CAA) allowed employers to voluntarily opt-in to extending the period of time employees can request reimbursement for 2020 and 2021 eligible expenses; and

WHEREAS, in April 2021, American Fidelity forwarded a total of approximately \$19,740.84 employee funds forfeited back to the City from nine (9) health and 19 dependent care accounts for Plan year 2020.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is hereby authorized to extend the City's Plan timeframes for employee reimbursement for years 2020 and 2021 under the CAA, and return \$19,740.84 to American Fidelity to allow employees to seek reimbursement for eligible 2020 health and dependent care expenses under the City's Plan.