

NEW IRS REGULATIONS ESTABLISH THE CIRCUMSTANCES JUSTIFYING CAFETERIA PLAN ELECTION CHANGES

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The Internal Revenue Service has issued regulations governing permitted mid-year election changes by participants in cafeteria plans. These regulations establish the exclusive circumstances under which cafeteria plan administrators may permit participants to revoke an election and make a new election during a plan year.

Note that cafeteria plans need not permit any mid-year election changes. Consequently, employers who wish to provide participants in their cafeteria plans with the greatest latitude to change elections must revise their plan documents to incorporate all of the circumstances enumerated in the regulations.

The following is a description of the categories of circumstances which will permit mid-year changes to cafeteria plan elections:

A. Special Enrollment Rights. A participant may change a cafeteria plan election corresponding to an exercise of the special enrollment rights granted by "HIPPA", which requires that employee health plans provide special enrollment periods for employees and their dependents (i) who declined coverage because they had COBRA coverage from another employer; (ii) who had regular coverage from another employer and that coverage terminated or that employer's contributions terminated; and (iii) who acquire a new dependents through marriage, childbirth or adoption.

B. Change In Status. A participant may change cafeteria plan elections if the participant experiences the following "change in status events": 1. Marriage, death of spouse, divorce, legal separation, and annulment. 2. Events which change the number of dependents. 3. Certain events which change the employment status of the participant, spouse or dependents. 4. Events which cause a dependent to cease to be eligible for health benefits. 5. Change in place of residence. 6. If the cafeteria plan provides adoption assistance benefits, the commencement or termination of adoption proceedings. 7. An employee, spouse or dependent becomes entitled to COBRA benefits.

A cafeteria plan election may be changed if a "change in status event" results in a gain or loss of eligibility by the employee, or his or her spouse or dependents in an employer provided benefit plan, and the change in election must be consistent with the change in status event.

C. Qualified Medical Child Support Orders. An employee may change a cafeteria plan election to add coverage and contributions for a child if a valid order of a domestic relations court requires the employee to provide coverage under the employer's

D. Entitlement to Medicare or Medicaid. If an employee, spouse or dependent becomes eligible for Medicare or Medicaid, the employee may change a cafeteria plan election to reduce or eliminate health coverage for that individual, and conversely may

elect or increase coverage for an individual who becomes ineligible after having been covered by Medicare or Medicaid.

E. Cost or Coverage Changes. Changes in cost or coverage of welfare plans justify a corresponding cafeteria plan election change, except for health care flexible spending account elections.

A cafeteria plan may provide for automatic corresponding changes to employees' cafeteria plan contribution elections in the event of increase or decreases in the cost of benefits.

If the cost charged through a cafeteria plan to an employee for a benefit option increases or decreases significantly during the plan year, the plan may permit the employee to make a corresponding election change.

If there is a significant increase in deductibles, copays or out of pocket cost limits in a health plan, a cafeteria plan participant may change elections correspondingly.

If an employee has a loss of coverage, the plan may permit the employee to revoke the election and elect another benefit providing similar coverage, or, if there is no similar benefit, drop the coverage entirely.

A plan may permit an employee to elect an option which is newly offered or significantly improved during a plan year.

A plan may permit an employee to revoke an election and make a new election which is on account of an election change made under another cafeteria plan of the spouse's employer if that change under the other plan is permitted by the other plan in conformity with the regulations, or the other plan has a different plan year.

A plan must permit election changes as required by the Family and Medical Leave Act.

A plan which permits an employee to divert amounts through a cafeteria plan to a 401(k) plan may change the 401(k) contributions in accordance with the 401(k) plan.