



Legislative Brief

Election Changes Within A Cafeteria Plan

This Legislative Brief provides a high level overview of the IRS regulations relating to permitted election changes made within a cafeteria plan. The applicable regulations can be found at 26 C.F.R. § 1.125-4¹ and within the proposed regulations² published in August 2007. These proposed regulations may be relied upon for guidance until final regulations are released.

Elections and Election Changes in General

Under a cafeteria plan, elections must be made before the first day of the plan year or the date taxable benefits would currently be available, whichever comes first. Participant elections generally must be irrevocable until the beginning of the next plan year. Employers do not have to permit any exceptions to this rule. However, an employer may design its cafeteria plan to permit an employee to change his or her election during the year if the participant experiences a “change in status,” an event for which the IRS allows a participant to make a change in election that is consistent with the event. The IRS regulations list the permitted election change events which may be cause for a mid-year election change.

The list below describes events that cafeteria plans **may** recognize as entitling a plan participant to change his or her elections (if the change is consistent with the event). A cafeteria plan may not be more generous than the IRS permits, but it may choose to limit to a greater extent the election change events that it will recognize.

If a cafeteria plan incorporates one or more of the change in status rules, an employee who experiences a change in status is permitted to revoke an existing election and to make a new election consistent with the event for the remaining portion of the period of coverage, but only with respect to cash or other taxable benefits that are not yet currently available. Only an employee of the employer sponsoring a cafeteria plan is allowed to make, revoke or change elections in the employer’s cafeteria plan. The employee’s spouse, dependent or any other individual other than the employee may not make, revoke or change elections under the plan. Changes may be made by employees using electronic media for such transactions.

Permitted Election Change Events

Cafeteria plans may recognize the following events as entitling an employee to make election changes mid-year:

1. **Change in Status.** The IRS considers the following events to be changes in status if they affect eligibility for coverage under an employer’s plan:
 - a. Change in employee’s legal marital status (including marriage, death of spouse, divorce, legal separation and annulment),
 - b. Change in number of dependents (including birth, death, adoption, and placement for adoption),

¹ http://edocket.access.gpo.gov/cfr_2003/aprqr/pdf/26cfr1.125-4.pdf

² <http://edocket.access.gpo.gov/2007/pdf/E7-14827.pdf>



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- c. Change in employment status of employee, employee's spouse or employee's dependent (including termination or commencement of employment, commencement of or return from an unpaid leave of absence, and a change in worksite),
 - d. Dependent's satisfying or ceasing to satisfy dependent eligibility requirements (including attainment of age, student status, or any similar circumstance),
 - e. Change in place of residence of the employee, spouse or dependent, and
 - f. Commencement or termination of adoption proceedings, for purposes of adoption assistance provided through a cafeteria plan.
2. Cost Changes. If the cost of a plan increases or decreases during a period of coverage, and under the terms of the plan, employees are required to make a corresponding change in their payments, the cafeteria plan may on a reasonable and consistent basis, automatically make a prospective increase or decrease in affected employees' elective contributions for the plan.
 3. Significant Cost Changes. If the cost charged to an employee for a benefit package option significantly increases or significantly decreases during a period of coverage, the cafeteria plan may permit the employee to make a corresponding change in election under the cafeteria plan.
 4. Significant Curtailment of Coverage. If an employee or an employee's spouse or dependent has a significant curtailment of coverage under a plan during a period of coverage, the plan may permit the employee to revoke his or her election for that coverage and to elect coverage on a prospective basis under another benefit package option, providing similar coverage is available.
 5. Addition or Improvement of Benefit Package Option. If a plan adds a new benefit package option or other coverage option, or if coverage under an existing benefit package option or other coverage option is significantly improved during a period of coverage, the cafeteria plan may permit eligible employees to revoke their election under the cafeteria plan and to make an election on a prospective basis for coverage under the new or improved benefit package option.
 6. Change in Coverage of Spouse or Dependent under Another Employer Plan. A cafeteria plan may permit an employee to make a prospective election change that is on account of and corresponds with a change made under another employer plan if the other plan allows an election change that is permissible under the IRS regulations, or when the other employer plan has a different period of coverage.
 7. Loss of Certain Other Health Coverage. A cafeteria plan may permit an employee to make an election on a prospective basis to add coverage under a cafeteria plan for the employee, spouse or dependent if they lose coverage under any group health coverage sponsored by a governmental or educational institution. This includes coverage under a State Children's Health Insurance Program (SCHIP).
 8. Changes in 401(k) Contributions. A cafeteria plan may permit an employee to modify or revoke elections related to a 401(k) plan, in accordance with Internal Revenue Code sections 401(k) and (m).



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9. HIPAA Special Enrollment Rights. A cafeteria plan may permit an employee to revoke an election for coverage under a group health plan during a period of coverage and make a new election that corresponds with the special enrollment rights provided under HIPAA.
10. COBRA Qualifying Event. A cafeteria plan may permit the employee to elect to increase payments under the employer's cafeteria plan in order to pay for the continuation coverage for which an employee, spouse or dependent has become eligible.
11. Judgments, Decrees or Orders. A cafeteria plan may change the employee's election to provide coverage for a child if a judgment, decree or order requires coverage for the child under the employee's plan, or permit the employee to cancel coverage for the child if an order requires another individual to cover the child.
12. Entitlement to Medicare or Medicaid. If an employee, spouse or dependent becomes entitled to coverage under Medicare or Medicaid or loses such entitlement, the cafeteria plan may permit the employee to make a prospective election change to cancel/reduce or reinstate/increase coverage under the accident or health plan.
13. FMLA Leave. An employee taking leave under the federal FMLA may revoke an existing election of accident or health plan coverage and make such other election for the remaining portion of the period of coverage as may be provided for under the FMLA.
14. Pre-Tax HSA Contributions. If HSA contributions are made through salary reduction under a cafeteria plan, employees may prospectively elect, revoke or change salary reduction elections for HSA contributions at any time during the plan year with respect to salary that has not become currently available at the time of the election.

A cafeteria plan that intends to recognize one or more election changes provided for in the regulations should review its plan document before making any change in its administration. Unless the plan document indicates that it will follow any guidance provided in temporary, final, or proposed IRS regulations, a formal written plan amendment is suggested.

Please contact your Fickewirth and Associates representative with any questions.

This Fickewirth and Associates Legislative Brief is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.