Cafeteria Plans: Mid-year Election Changes

Participant elections under an Internal Revenue Code (Code) Section 125 cafeteria plan 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.** This means that participants ordinarily cannot make changes to their cafeteria plan elections during a plan year.

Employers do not have to permit any exceptions to the election irrevocability rule for cafeteria plans. However, Internal Revenue Service (IRS) regulations permit employers to design their cafeteria plans to allow employees to change their elections during the plan year, if certain conditions are met. The IRS regulations list the permitted events that may be cause for a mid-year election change. Also, IRS Notice 2014-55 expanded the mid-year election change rules in response to certain Affordable Care Act (ACA) provisions.

**GENERAL RULES**

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

A cafeteria plan sponsor that recognizes one or more mid-year election change events allowed by the IRS should review its plan document to confirm that it addresses the permitted election changes.

**Key Concept**—If a cafeteria plan incorporates one or more of the mid-year election change events, an employee who experiences one of these events may revoke an existing election and 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.

For an employee to be eligible to change his or her cafeteria plan election during a plan year, the following general rules apply:

1. The employee must experience a mid-year election change event recognized by the IRS.

2. The cafeteria plan must permit mid-year election changes for that event.

3. The employee’s requested change must be consistent with the mid-year election change event.

Also, employees' mid-year election changes must be effective prospectively. The one exception to this rule is for retroactive election changes that are permissible under the HIPAA special enrollment event for birth, adoption or placement for adoption.
Cafeteria Plans: Mid-year Election Changes

Some of the IRS’ mid-year election change events apply to all qualified benefits that can be offered under a cafeteria plan. However, other mid-year election change events only apply to certain qualified benefits—for example, not all of the IRS’ mid-year election change events apply to elections for health flexible spending accounts (FSAs).

**SPECIAL RULE FOR HSAs**

Health savings accounts (HSAs) are commonly offered with high deductible health plans (HDHPs) under an employer’s cafeteria plan. This allows employees to make their HSA and HDHP contributions as pre-tax salary reductions.

The **irrevocable election rules do not apply to a cafeteria plan’s HSA benefit** (IRS Notice 2004-50). An employee who elects to make HSA contributions under a cafeteria plan may start or stop the election or increase or decrease the election at any time during the plan year, as long as the change is effective prospectively. If an employer places additional restrictions on HSA contribution elections under its cafeteria plan, then the same restrictions must apply to all employees. Also, to be consistent with the HSA monthly eligibility rules, HSA election changes must be allowed at least monthly and upon loss of HSA eligibility.

**PERMITTED ELECTION CHANGE EVENTS**

Cafeteria plans may recognize certain events where an employee is entitled to make election changes during a plan year. The IRS recognizes three broad categories of mid-year election change events.

The following chart provides an overview of the IRS’ permitted mid-year election change events. Keep in mind that this is a general overview and that more detailed rules may apply to specific situations or certain types of qualified benefits.

<table>
<thead>
<tr>
<th>CHANGE IN STATUS EVENTS</th>
<th>DESCRIPTION</th>
<th>REQUIREMENTS</th>
<th>TYPE OF BENEFITS</th>
</tr>
</thead>
</table>
|                         | Employee’s requested election change must be on account of and correspond with the change in status event. In general, no election change is allowed unless the event affects eligibility for the coverage. This includes a change in status event that results in an increase or decrease in the number of an employee’s family members or dependents who may benefit from the coverage. An election change for dependent care assistance or adoption assistance satisfies the consistency requirement if it is on account of and corresponds with a change in status that affects dependent care or adoption expenses. If the change in status is the employee's divorce, annulment or legal separation from a spouse, the death of a spouse or dependent, or a dependent ceasing to satisfy...
| Applies to all qualified benefits, including health FSAs |
### Cafeteria Plans: Mid-year Election Changes

| status of employee, employee's spouse or employee's dependent (for example, a termination or commencement of employment, a strike or lockout, commencement of or return from an unpaid leave of absence or a change in worksite) | the eligibility requirements for coverage, an employee's election to cancel accident or health insurance coverage for any individual other than the spouse involved in the divorce, annulment or legal separation, the deceased spouse or dependent, or the dependent that ceased to satisfy the eligibility requirements for coverage, respectively, fails to correspond with that change in status. |
| A dependent satisfies or ceases to satisfy dependent eligibility requirements (including attainment of age, student status or any similar circumstance) |  |
| Change in place of residence of the employee, spouse or dependent |  |
| Commencement or termination of adoption proceedings, for purposes of adoption assistance benefits |  |

### COST CHANGES

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>REQUIREMENTS</th>
<th>TYPE OF BENEFITS</th>
</tr>
</thead>
</table>
| Automatic increases or decreases in employees’ contributions for insignificant cost changes | A cafeteria plan may automatically make a prospective increase or decrease in affected employees’ elective contributions for the plan if:  
- The cost of a qualified benefit increases or decreases during a period of coverage; and  
- Under the terms of the plan, employees are required to make corresponding changes in their payments. This change must be made on a reasonable and consistent basis for plan participants. | Applies to all qualified benefits, except health FSAs |
| IRS regulations provide little guidance as to when a cost change is insignificant or significant. Plan sponsors will need to make that determination based on all the facts and circumstances, |  |  |

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Cafeteria Plans: Mid-year Election Changes

Including the dollar amount and percentage of increase (or decrease).

**Significant cost changes**

As with insignificant cost changes, both employer-initiated and employee-initiated cost changes are recognized. IRS regulations provide little guidance as to when a cost change is insignificant or significant. Plan sponsors will need to make that determination based on all the facts and circumstances, including the dollar amount and percentage of increase (or decrease).

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. Changes that may be made include:

- Electing to participate in the cafeteria plan for the option with a decrease in cost; or
- Revoking an election when there is an increase in cost and either:
  - Electing coverage under another benefit package option providing similar coverage; or
  - Dropping coverage if no other benefit package option providing similar coverage is available.

For example, if the cost of an indemnity option under an accident or health plan significantly increases during a period of coverage, employees who are covered by the indemnity option may make a corresponding prospective increase in their payments or may elect to revoke their elections for the indemnity option and instead elect coverage under another benefit package option including an HMO option (or drop coverage under the accident or health plan if no other benefit package option is offered).

### Coverage Changes

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
<th>REQUIREMENTS</th>
<th>TYPE OF BENEFITS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Significant curtailment of coverage</strong></td>
<td>If an employee (or an employee’s spouse or dependent) has a significant curtailment of coverage under a plan during a period of coverage that is:</td>
<td>Applies to all qualified benefits, except health FSAs</td>
</tr>
<tr>
<td></td>
<td>• <strong>Not a loss of coverage</strong> (for example, there is a significant increase in the deductible, the copayment or the out-of-pocket maximum)—the plan may permit the employee to revoke his or her election for that coverage and to elect coverage under another benefit package option providing similar coverage</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• <strong>A loss of coverage</strong>—the plan may permit the employee to revoke his or her election for that coverage and elect coverage under another benefit package option providing similar coverage or to drop coverage if no similar benefit package option is available.</td>
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A “loss of coverage” means a complete loss of coverage under the benefit package option (including the elimination of a benefits package option or an HMO ceasing to be available in the area where the individual resides). In addition, a cafeteria plan may treat the following as a loss of coverage:

- A substantial decrease in the medical care providers available under the option;
- A reduction in benefits for a specific type of medical condition for which treatment is being received; and
- Any other similar fundamental loss of coverage.

### Addition or significant improvement of benefits package option

**IRS regulations do not define a “significant improvement” of coverage. One example from IRS regulations provides that a decrease in copayments under an indemnity health insurance plan is a significant benefit improvement.**

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 plan may permit eligible employees to revoke their elections under the cafeteria plan and to make elections for coverage under the new or improved benefit package option. Employees can elect the new (or improved) benefit regardless of whether they have previously made an election under the cafeteria plan or previously elected the benefit package option.

| Applies to all qualified benefits, except health FSAs |

### Change in coverage under other employer plan

A cafeteria plan may permit an employee to make an election change that is on account of, and corresponds with, a change made under another employer plan (including a plan of the same employer or of another employer) if:

- The other cafeteria plan or qualified benefits plan allows an election change that is permissible under the IRS regulations; or
- The other cafeteria plan has a different period of coverage.

| Applies to all qualified benefits, except health FSAs |

### Loss of health coverage sponsored by governmental or educational institution

A cafeteria plan may permit an employee to make an election to add coverage under a cafeteria plan for the employee, spouse or dependent if the employee, spouse or dependent loses coverage under any group health coverage sponsored by a governmental or educational institution. This includes coverage under a state Children’s Health Insurance Program (CHIP).

| Applies to all qualified benefits, except health FSAs |

### OTHER LAWS OR COURT ORDERS

<table>
<thead>
<tr>
<th>DESCRIPTION</th>
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<th>TYPE OF BENEFITS</th>
</tr>
</thead>
<tbody>
<tr>
<td>HIPAA special enrollment rights</td>
<td>A cafeteria plan may permit an employee to revoke an election for coverage during a period of coverage and make a new election that corresponds with the special HIPAA’s portability</td>
<td>Group health plans that are subject to HIPAA’s portability</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>Cafeteria Plans: Mid-year Election Changes</th>
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</thead>
<tbody>
<tr>
<td><strong>COBRA qualifying event (or similar state law continuation coverage event)</strong></td>
</tr>
<tr>
<td><strong>Judgments, decrees or orders (including QMCSOs)</strong></td>
</tr>
<tr>
<td><strong>Entitlement to Medicare or Medicaid</strong></td>
</tr>
<tr>
<td><strong>FMLA leave</strong></td>
</tr>
<tr>
<td><strong>Changes in 401(k) Contributions</strong></td>
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## ACA CHANGES

<table>
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<th>DESCRIPTION</th>
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</table>
| **Exchange enrollment**          | A cafeteria plan may allow an employee to revoke an election of coverage under a group health plan if both of the following conditions are met:  
- The employee is eligible for special enrollment in an Exchange plan or the employee wants to enroll in an Exchange plan during the Exchange’s annual open enrollment period; and  
- The revocation of the election of coverage under the group health plan corresponds to the intended enrollment of the employee (and any related individuals who cease coverage due to the revocation) in an Exchange plan. The Exchange coverage must be effective beginning no later than the day immediately following the last day of the original coverage that is revoked.  
A cafeteria plan may rely on the reasonable representation of an employee who has an enrollment opportunity for an Exchange plan, that he or she and related individuals have enrolled (or intend to enroll) in an Exchange plan for new coverage that is effective within the required timeframe. | Group health plans that provide minimum essential coverage  
Does not apply to health FSAs                                                                                                           |
| **Reduction in hours of service**| A cafeteria plan may allow an employee to revoke an election of coverage under a group health plan if both of the following conditions are met:  
- An employee who was reasonably expected to average at least 30 hours of service per week has a change in employment status so that the employee will reasonably be expected to average less than 30 hours of service per week after the change (even if that reduction does not result in the employee ceasing to be eligible under the group health plan); and  
- The revocation of the election of coverage under the group health plan corresponds to the intended enrollment of the employee (and any related individuals who cease coverage due to the revocation) in another plan that provides minimum essential coverage. The new coverage must be effective no later than the first day of the second month after the month in which the original coverage is revoked.  
A cafeteria plan may rely on an employee’s reasonable representation that he or she and related individuals have enrolled (or intend to enroll) in another plan that provides minimum essential coverage within the required timeframe. | Group health plans that provide minimum essential coverage  
Does not apply to health FSAs                                                                                                           |