



Mid-Year Cafeteria Plan Election Changes

Nov. 22, 2022

The IRS recently released revised guidance to permit employers to amend their cafeteria plans to allow mid-year election changes when an individual related to a plan participant is eligible to elect a qualified health plan on the Marketplace due to either a special enrollment period or during the Marketplace's annual open enrollment period. Longstanding guidance had allowed such changes relating to covered employees, but recent legislation to address the so-called family glitch required the expanded guidance to permit changes when related individuals choose Marketplace coverage independent of the covered employee.

As with standard permitted election changes, any change for dependent Marketplace eligibility must correspond to the intended Marketplace enrollment. Moreover, any permitted change may be made only prospectively for coverage beginning no later than the day immediately following the last day of the revoked coverage. For example, a participant may revoke family coverage and switch to a different coverage tier to account for a family member (or multiple family members) choosing Marketplace coverage but would not be permitted to make changes that did not relate to the change in number of covered dependents.

Plans are not required to receive any formal written proof of Marketplace coverage. Rather, the IRS will permit plans to rely on an affected individual's reasonable representation that they have elected, or intend to elect, Marketplace coverage.

Plan sponsors do not have to allow election changes under the new guidance. However, plans that choose to permit such changes may do so for elections effective on or after January 1, 2023. A plan may be amended retroactively by the last date of the year in which the amendment is effective as long as the plan has continuously operated according to the amendment and participants have been informed of the change. Additionally, specifically for plan years that begin during 2023, plans may be amended by the end of the 2024 plan year.

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