

MIDYEAR ELECTION CHANGE EVENTS: A GUIDE AND MATRIX FOR EMPLOYERS



At a Glance:

To maintain the tax-advantaged status of a cafeteria plan, employers must adhere to specific requirements, offer only qualified benefits, and operate the cafeteria plan and underlying benefit(s) in a manner that does not discriminate in favor of highly compensated employees.

Employers must navigate IRC and ERISA requirements to maintain the tax-advantaged status of cafeteria plans while offering a wide array of benefit choices. Proper documentation, adherence to regulations, and careful management of election changes are crucial for compliance and maximizing tax advantages. This publication outlines the requirements for cafeteria plans, focusing specifically on “change of election” requirements, detailed in the [Permissible Midyear Election Change Matrix](#).

1. [Overview](#)

A cafeteria plan is a tax-advantaged funding arrangement under which employers can use tax-free dollars (on behalf of employees) to pay for certain employee benefits, like health coverage, group term life insurance, and dependent care. Benefits offered through the cafeteria plan may be funded with pre-tax, salary reduction dollars.

2. [Plan Sponsor](#)

Any employer with employees subject to U.S. income taxes can sponsor a cafeteria plan. The plan and qualified benefits must be provided through an employment relationship.

3. [Participants](#)

Only employees, including current and former employees, can participate in a cafeteria plan. Benefits may cover an employee’s spouse, children up to age 26, or tax dependents, but these individuals are not considered participants in the cafeteria plan.

4. [Qualified Benefits](#)

Qualified benefits include group health plan coverage (e.g., accident and health plan coverage, dental, vision, health FSA), dependent care assistance program (DCAP, also referred to as DCFSA), group term life insurance coverage (GTLI), paid time off (PTO), section 401(k) contributions, adoption assistance programs, and HSAs.

5. [Written Plan Document](#)

Employers must maintain a written plan document detailing the operating rules of the cafeteria plan. The document must include descriptions of available benefits, participation rules, election procedures, contribution methods, and compliance provisions. Failure to maintain a proper written plan can result in adverse tax consequences for both the employer and employee.

6. [Permissible Election Changes](#)

Participant elections must generally be prospective and irrevocable for the plan year, but certain midyear changes are allowed under specific conditions. The consistency rule requires that election changes be “on account of and correspond with” a specific event affecting eligibility for coverage.



7. Nondiscrimination Testing

Cafeteria plans must not discriminate in favor of highly compensated employees. Failure to meet nondiscrimination requirements results in adverse tax consequences for affected employees. Non-highly compensated employees are not affected by discriminatory plan designs.

PERMISSIBLE MIDYEAR ELECTION CHANGE MATRIX

This matrix provides an overview of specific events and permissible election changes for various benefits offered under a cafeteria plan.

Categories of Permissible Election Changes:

- **Change in status events:** Changes in marital status, number of dependents, employment status, eligibility requirements for dependents, and residence.
- **Change in cost or coverage events:** Changes in cost, coverage curtailment, addition or improvement of benefit options, and changes under another employer's plan.
- **HIPAA special enrollment rights:** Loss of other coverage, acquisition of new dependents, loss of CHIP or Medicaid coverage, and eligibility for state premium assistance.
- **Judgments, decrees, or orders:** Court orders requiring coverage for a child.
- **Medicare or Medicaid events:** Entitlement or loss of entitlement to Medicare or Medicaid.
- **FMLA leave:** Commencement or return from FMLA leave.
- **401(k) election changes**

EXAMPLES

1. OVERVIEW

A cafeteria plan is a tax-advantaged funding arrangement under which employers can use tax-free dollars (on behalf of employees) to pay for certain employee benefits, like health coverage, group term life insurance, and dependent care. A cafeteria plan is defined under Section 125 of the Internal Revenue Code (IRC) as a written plan under which "all participants are employees, and the participants may choose among two or more benefits consisting of cash and qualified benefits."

At its core, this definition sets the basic requirements for a cafeteria plan. IRS regulations, notices, and other guidance (collectively known as "rules") provide the parameters for cafeteria plan administration. This publication broadly outlines those requirements but focuses more specifically on "change of election" requirements, which are described in greater detail in the [Permissible Midyear Election Change Matrix](#) below.

Most employers providing health and welfare benefits to employees do so through a cafeteria plan using salary reduction dollars or nonelective employer contributions. Salary reduction satisfies the "cash" requirement provided in the cafeteria plan definition (stated above). The employee has the option to forgo some salary (i.e., before it is earned and subject to taxation) and the employer uses those "forfeited" dollars to pay for qualified benefits provided under the applicable plan. From an ERISA perspective, salary reduction dollars are seen as plan assets and subject to ERISA requirements; but, from a tax perspective, salary reduction dollars are considered employer money.

It is a balancing act for employers to navigate the IRC and ERISA, but cafeteria plans provide significant employment and business expense tax savings for employers and allow them to offer a wider array of benefit choices than if the benefits were funded strictly with employer dollars (i.e., not via salary reduction) or with employee after-tax dollars. Cafeteria plans also offer a tax advantage to employees, permitting them to direct pre-tax salary reduction dollars to select the benefits they want from among the employer's options (which ultimately saves on tax expense and gives them more take-home pay relative to after-tax deductions).

To maintain the tax-advantaged status of a cafeteria plan, employers must adhere to specific requirements, offer only qualified benefits, and operate the cafeteria plan and underlying benefit(s) in a manner that does not discriminate in favor of highly compensated employees. Below is a brief discussion of those requirements.

2. PLAN SPONSOR

Any employer (corporations, limited liability companies, partnerships, sole proprietors, nonprofit organizations, governmental entities) with employees subject to US income taxes can sponsor or maintain a cafeteria plan. The plan and qualified benefits must be provided through an employment relationship.

3. PARTICIPANTS

Cafeteria plan regulations indicate that only employees can participate in a cafeteria plan. This includes current and former employees of the employer (e.g., employees with a severance agreement or retired employees, among others). Thus, benefits provided through a cafeteria plan may not be offered to independent contractors, board members, or other workers who otherwise would not qualify as common law employees (e.g., those receiving a Form W-2). Salary reduction or other employer dollars can be used to pay for benefits (e.g., health coverage) that cover an employee's spouse, children up to age 26 (as of the end of the calendar year), or tax dependents, but these individuals would not be considered participants in the cafeteria plan.

For further information about domestic partner benefits, including permissible coverage election changes, see the PPI publication **Domestic Partner Benefits: A Guide for Employers**.

4. QUALIFIED BENEFITS

Qualified benefits include group health plan coverage (e.g., accident and health plan coverage, dental, vision, health FSA), dependent care assistance program (DCAP, also referred to as DCFSA), group term life insurance coverage (GTLI), paid time off (PTO), section 401(k) contributions, adoption assistance programs, and HSAs.

5. WRITTEN PLAN DOCUMENT

As referenced in the definition of a cafeteria plan, employers are required to maintain a written plan document that details the operating rules of the cafeteria plan. Proposed regulations specifically provide that if there is no written plan or the written plan does not comply with the applicable requirements regarding content, timing of adoption, and/or operation of the terms, the plan is not a cafeteria plan and employee elections will result in taxable gross income. There could be tax consequences to both the employer and employee. Note that this plan requirement is separate from the plan document and summary plan description (SPD) requirement for ERISA benefits. While many benefits provided through a cafeteria plan are also subject to ERISA, the cafeteria plan itself is not an ERISA benefit. For more information about ERISA plan document requirements, see the PPI publication **ERISA Compliance Considerations for Health and Welfare Benefit Plans**.

Employers should maintain a document that clearly addresses the cafeteria plan and the pre-tax election of benefits. A written cafeteria plan must be formally adopted by the employer prior to the first day of the plan year. It is also important that the cafeteria plan document align with the terms of component or underlying benefit plans. Employers that may be operating a plan without proper adoption (e.g., taking pre-tax elections prior to a plan document being properly executed) should consult with legal counsel to discuss appropriate remedies.

A cafeteria plan document must contain minimally all of the following information:

- Description of available benefits
- Rules addressing participation (including a statement that all participants must be employees)
- Election and election change procedures
- Manner of contributions (e.g., salary reduction, flex credits, nonelective employer contributions)
- Maximum amount of contributions
- The plan year
- The ordering rules for use of nonelective and elective PTO (if the purchase or sale of PTO is offered)
- The provisions complying with any additional requirements for FSAs (i.e., health FSA or DCAP), if offered
- The provisions complying with IRS requirements for a grace period or carryover, if applicable

6. PERMISSIBLE ELECTION CHANGES

As stated above, a written plan is required to specify the procedures that govern participant elections, including when elections may be made and the period for which they are effective (which cannot exceed 12 months). Generally, cafeteria plan rules mandate that participant elections be prospective (i.e., before the salary is available to them) and irrevocable for the period of coverage (e.g., the plan year). The IRS, however, has made several exceptions to this general principle. Thus, while participants ordinarily may not change elections midyear, an employer can design a plan to permit certain midyear changes as long as specific conditions are met.

Consistency Rule Must Be Met

The regulations set out a two-part test, both parts of which must be met:

- A specific event must have occurred.
- The election change must be “consistent” with that event.

To be “consistent,” the event must affect an individual’s eligibility for coverage and the requested change must be in line with that impact. In most cases, the rules dictate the allowable change for a specified event.

Events fit broadly into three main categories: change in status, change in cost or coverage, and court orders and other mandates. The category “court orders and other mandates” encompasses HIPAA special enrollment rights; judgments, decrees, or orders; Medicare or Medicaid events; Family and Medical Leave Act leave; and 401(k) election changes, as described in greater detail in the [Permissible Midyear Election Change Matrix](#) below.

The cafeteria plan rules provide that allowing election changes under the terms of the plan is permissible, not mandatory. While some underlying laws might mandate the reduction or addition of health coverage in specific instances, they do not directly govern a cafeteria plan (and the pre-tax election). For purposes of administrative ease, however, the cafeteria plan rules generally coordinate with the requirements of other, non-cafeteria-plan laws (like HIPAA special enrollments, for example) and permit pre-tax election changes for these events.

Election Change Window Can Be Limited

While not required under the cafeteria plan rules, plans can and should impose a time limit (e.g., 30 or 60 days) on when an election change must be requested following a specified event. Such limits are a matter of plan design and make sense for administrative purposes. Note that for specific events like HIPAA special enrollments, the election change window is dictated by the mandate (e.g., 30 days for marriage; 60 days for loss of CHIPRA and Medicaid coverage). Even where the election change window is dictated in the mandate, plans can be more generous. So, if a cafeteria plan wants to provide a 60-day window for all change in election events, it could. Plan sponsors should note, however, that lengthy election change windows may make it difficult to distinguish between a presumed precipitating event and subsequent intervening events.

PPI Observation	One potential problem with allowing a long (or open-ended) change of election window is that, if too much time has elapsed, the event may no longer be considered the cause/reason for the request. While cafeteria plan rules do not dictate specifically how long an election window must be, a change made beyond the legal minimum number of days from the event may no longer be seen as being made “on account of” the event. Consequently, most cafeteria plans require that employees submit their election change requests within a narrow window after the event occurs (a 30- to 60-day request deadline is most common).
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Changes Must Generally Be Prospective

As previously noted, elections must generally be prospective — that is, employees must make their elections before the cash that they could otherwise receive is available to them. The rules are quite strict about this notion, and the same principles apply to changing an existing election as well. For example, when an employee notifies the employer of a marriage, the election change should be made as of the date of the notification, not retroactively to the date of the marriage. The HIPAA special enrollment right mandates that the individual be allowed to add coverage for their new spouse. It does not mandate that the coverage be retroactive to the date of the marriage. That said, with respect to retroactive coverage, special rules for new hires and the HIPAA

special enrollment right of birth, adoption, and placement for adoption permit retroactive coverage (i.e., back to the date of the event) as long as certain criteria are met. The matrix below provides more detailed information on specific events and consistent election changes.

Terms of Insured Plans Addressed

When it comes to election changes, the cafeteria plan (in its written form, as well as in practice) must also conform with any applicable insurance policy rules (including stop-loss insurance) to the extent that they are less generous. While an election change might be permissible under cafeteria plan rules, it might not be possible under the terms of an insured policy (e.g., the underlying insurance policy might not allow the additional coverage for “tag-along” purposes). Alternatively, an insured policy or component plan might be more generous than the cafeteria plan rules would permit. In that instance, the plan must adhere to the cafeteria plan change in election rules.

PPI Observation	Employers and plan administrators routinely encounter situations that would seem to justify an election change but are not specifically addressed in the IRS rules. While no formal advice has been issued, the IRS has informally acknowledged several circumstances under which election changes might be permitted, such as election mistakes on the part of the administrator or employee (there should be evidence of an error; a change of mind would not be considered a mistake), failure to pass medical underwriting, nondiscrimination test failures, and automatic loss of coverage under plan terms. Cafeteria plan rules provide that the list of election change events is exhaustive, so allowing a change based on one of these informal instances should be carefully and judiciously considered, and trusted advisors (e.g., legal counsel) should be consulted.
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7. NONDISCRIMINATION TESTING

Cafeteria plans (and many of the component benefit plans) were created by Congress primarily to benefit “rank and file” employees. Rules were adopted to ensure that these plans don’t discriminate in favor of highly compensated and key employees. The tax code and related regulations set out the nondiscrimination requirements, which generally provide eligibility, availability, and utilization tests to ensure that the cafeteria plan (and many of the underlying plans) are not discriminatory. If a plan does not meet those requirements (i.e., if the plan is discriminatory), generally, the highly compensated and key employees will have adverse tax consequences. For example, salary reduction amounts will be included in their wages and subject to employment and income taxes. Importantly, non-highly compensated or key employees are not affected by a discriminatory plan design; they still qualify for all of the tax advantages associated with the plan. In addition, there are no monetary penalties for employers for offering a discriminatory plan design; the consequence is borne solely by the affected employees. For further information about nondiscrimination rules, including definitions of highly compensated and key employees, see the PPI publication **Sections 105 and 125 Nondiscrimination Rules: A Guide for Employers**, **Dependent Care Assistance Program Nondiscrimination Rules: A Guide for Employers**, and **Nondiscrimination Rules: A Quick Reference Chart**.

PERMISSIBLE MIDYEAR ELECTION CHANGE MATRIX

This matrix provides an at-a-glance outline of permissible election changes for the major categories of benefits offered through a cafeteria plan – medical; dental and vision; GTLI, AD&D, and disability; health FSA; and DCAP. It is organized in categories with a brief explanation and high-level examples of the required analysis, including the consistency rule, which requires the election change to be “on account of and correspond with the event’s effect on coverage.”

The permissible election changes are detailed in the matrix below. Examples at the end of this document illustrate some common election change events and the consistency rule. The matrix categorizes permissible election change events into the following groups:

- Change in status events
 - Legal Marital Status
 - Change in Number of Dependents
 - Changes in Employment Status of Employee, Spouse, or Dependent
 - Eligibility Requirements for Dependent
 - Change in Residence
- Change in cost or coverage events, which include access to ACA Marketplace coverage
 - Changes in Cost
 - Changes in Coverage
 - Change in Coverage Under Another Employer’s Plan
 - Change in Marketplace Coverage
 - Loss of Coverage Under Other Group Health Coverage
- HIPAA special enrollment rights
- Judgments, decrees, or orders
- Medicare or Medicaid events
- Family and Medical Leave Act (FMLA) leave
- 401(k) election changes

Note that this matrix denotes the “realm of possible election change events.” It should not be construed as legal or tax advice nor relied on in lieu of a legal or tax advisor. For administrative and other reasons, where appropriate, some employers choose to limit election changes permitted under their plan (e.g., not allowing changes for a health FSA). Additionally, as described above, administrators should confirm that a permitted change conforms with any applicable insurance (including stop-loss coverage) or underlying coverage policy. Please consult with legal, tax or other trusted advisors before applying this information to a specific set of facts.

CHANGE IN STATUS

Change in status events encompass a number of different life events, including changes to marital status, number of dependents, employment, and residence. Under these rules, all permissible election changes must be made “on account of and correspond with” a change in status event that affects eligibility for coverage under an employer’s plan. In this way, the election change is considered “consistent” with the event. Subject to plan design, coverage option changes (e.g., PPO, HMO, POS) are allowable whenever there is a permissible coverage tier change (e.g., single, employee plus spouse, family, etc.). For example, if a spouse terminates employment and the employee, who previously had single coverage, adds the spouse to obtain employee plus spousal coverage, the plan may permit the employee to switch from a PPO to an HMO option.

<p>PPI Observation</p>	<p>Consistency Rules Generally and for Specific Benefits and Events:</p> <p>In addition to the general requirement that an election change must be “on account of and correspond with” a change in status event that affects eligibility for coverage, certain benefits and events are subject to more tailored consistency rules. These rules vary in strictness depending on the type of benefit and the nature of the event. Health coverage changes – especially those involving dropped coverage – are subject to stricter standards, while greater flexibility is allowed for GTLI, disability, and dependent care assistance. These rules provide the following:</p> <p>Health and GTLI Coverage: An event “affects eligibility” if it changes the number of an employee’s family members or dependents who may benefit from coverage under the plan (i.e., results in an “increase or decrease in the number of an employee’s family members or dependents who may benefit from coverage under the plan.”)</p> <p>GTLI and Disability Coverage: An election change to increase or decrease coverage is considered consistent with any change in status event, even if plan eligibility is not directly gained or lost.</p> <p>DCAP: An election change is permitted when the event affects eligibility for the tax exclusion (e.g., when a spouse stops working and the employee no longer incurs dependent care expenses that qualify for the exclusion, such as those necessary to enable both spouses to work, seek employment, or attend school full-time).</p> <p>Divorce, Legal Separation, Annulment, Death, or Loss of Dependent Status: Health coverage may be dropped only for the affected spouse or dependent — not for other covered individuals.</p> <p>Change in Marital or Employment Status: If an employee, spouse, or dependent gains eligibility under another plan, an election to cease or reduce coverage is consistent only if coverage is added or increased under the other plan.</p> <p>These special consistency rules are reflected throughout the matrices below.</p>
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A “tag-along” rule applies when an event results in a dependent or spouse gaining eligibility for coverage under the employer’s plan. In that situation, it is permissible to add dependents who were previously eligible for coverage but not currently covered (e.g., upon the birth of a child, the employee may add not only the child and spouse (as required by HIPAA) but also other dependents not previously covered).

If an employee, spouse, or dependent becomes eligible for continuation coverage under the employer’s plan (as provided under COBRA or any similar state law), the plan may permit the employee to increase their election to pay for the continuation coverage. The continuation coverage must extend from the employee’s employer, and the spouse or dependent must remain a spouse or dependent (as defined by tax law) for the coverage to be paid on a pre-tax basis.

Some of the change in status events also create special enrollment rights under HIPAA. (See [HIPAA Special Enrollment Rights](#) below.)

Legal Marital Status

Action/Event	Medical	Dental and Vision	GTLI, AD&D, and Disability	Health FSA	DCAP
Gain Spouse <ul style="list-style-type: none"> • Marriage 	May enroll or increase coverage (e.g., for newly eligible spouse and dependent children). May decrease or cease coverage (only if covered under spouse's plan).	May enroll or increase coverage (e.g., for newly eligible spouse and dependent children). May decrease or cease coverage (only if covered under spouse's plan).	May enroll, increase, decrease, or cease election.	May enroll or increase coverage (e.g., for newly eligible spouse and dependent children). Likely decrease coverage (if employee or dependents become covered under spouse's plan).	May enroll, increase, decrease, or cease election depending on circumstances.
Lose Spouse <ul style="list-style-type: none"> • Divorce • Legal Separation • Annulment • Death of Spouse 	May decrease coverage to account for loss of spouse only. May enroll or increase coverage if no longer covered under spouse's plan.	May decrease coverage to account for loss of spouse only. May enroll or increase coverage if no longer covered under spouse's plan.	May enroll, increase, decrease, or cease election.	May decrease coverage. May enroll or increase coverage (if coverage is lost under spouse's plan).	May enroll or increase election to accommodate newly eligible dependents, or decrease or cease if eligibility is lost.

Change in Number of Dependents

Action/Event	Medical	Dental and Vision	GTLI, AD&D, and Disability	Health FSA	DCAP
Gain Dependent(s) <ul style="list-style-type: none"> • Birth • Adoption • Placement for Adoption 	May enroll or increase coverage for newly acquired dependent. May revoke or decrease employee's or dependent's coverage if eligible under spouse's plan.	May enroll or increase coverage for newly acquired dependent. May revoke or decrease employee's or dependent's coverage if eligible under spouse's plan.	May enroll or increase, decrease, or cease coverage.	May enroll or increase coverage for newly acquired dependent. May revoke or decrease employee's or dependent's coverage if eligible under spouse's plan.	May enroll or increase to accommodate newly eligible dependent.
Lose Dependent(s) <ul style="list-style-type: none"> • Death 	May decrease coverage for the lost dependent only. ¹	May decrease coverage for the lost dependent only. ²	May enroll, increase, decrease, or cease coverage.	May decrease or cease coverage for deceased dependent.	May decrease election for deceased dependent.

¹ Although unlikely, employee may enroll or increase coverage if no longer covered under dependent's plan.

² Although unlikely, employee may enroll or increase coverage if no longer covered under dependent's plan.

Changes in Employment Status of Employee, Spouse, or Dependent

Action/Event	Medical	Dental and Vision	GTLI, AD&D, and Disability	Health FSA	DCAP
Increase Hours: Change in Employee's Employment Status³ <ul style="list-style-type: none"> • Commence Employment • Part-Time to Full-Time • Hourly to Salaried 	May enroll or increase coverage for employee, spouse, and dependents.	May enroll or increase coverage for employee, spouse, and dependents.	May enroll, increase, decrease, or cease coverage.	May enroll or increase coverage for employee, spouse, and dependents.	May enroll or increase coverage for employee, spouse, and dependents.
Increase Hours: Change in Spouse's or Dependent's Employment Status⁴	May cease or decrease coverage if added to spouse's or dependent's coverage.	May cease or decrease coverage if added to spouse's or dependent's coverage.	May enroll, increase, decrease, or cease coverage.	May decrease or cease election to reflect new eligibility for coverage under spouse's or dependent's plan.	May enroll, increase, cease or decrease election to reflect new eligibility for coverage.
Reduction in Hours: Change in Employee's Employment <ul style="list-style-type: none"> • Termination⁵ • Unpaid Leave • Full-Time to Part-Time • Strike • Salaried to Hourly 	<p>May revoke or cease coverage for employee, spouse, or dependent who loses eligibility.</p> <p>Hours reduced below 30/wk: May revoke or cease coverage for employee, spouse, or dependent if employee's hours are reduced from a reasonably expected average of at least 30 hrs/wk to a reasonably expected average of less than 30 hrs/wk, even if the reduction does not result in loss of eligibility. Must correspond with intended enrollment of employee (and spouse and/or dependent(s)) in another plan that 1) provides MEC and 2) is effective by the first day of the second month following the month coverage is revoked or ceases.</p>	May revoke or cease coverage for employee, spouse, or dependent who loses eligibility.	May enroll, increase, decrease, or cease coverage.	May cease or decrease election to reflect loss of eligibility for coverage.	May cease or decrease election to reflect loss of eligibility for coverage.

³ Reminder: Change must trigger eligibility for coverage under plan (except with respect to GTLI and disability).⁴ Reminder: Change must trigger eligibility for coverage under the employer plan of the spouse or dependent.⁵ 30-day safe harbor rule for rehired employees: Rehired within 30 days, employer may reinstate prior elections. Rehired after 30 days, employee may make a new election. In addition, coverage may end as a result of plan operation.

Changes in Employment Status of Employee, Spouse, or Dependent (continued)

Action/Event	Medical	Dental and Vision	GTLI, AD&D, and Disability	Health FSA	DCAP
Reduction in Hours: Change in Spouse's or Dependent's Employment	May enroll or increase coverage for employee, spouse, or dependent who loses eligibility. ⁶	May enroll or increase coverage for employee, spouse, or dependent who loses eligibility.	May enroll, increase, decrease, or cease coverage.	May enroll or increase election to reflect loss of eligibility for health coverage.	May enroll, increase, cease, or decrease to reflect eligibility for coverage.
Change in Worksite of Employee, Spouse, or Dependent – Triggers Eligibility	May elect coverage or change coverage option for newly eligible employee, spouse, or dependent.	May elect coverage or change coverage option for newly eligible employee, spouse, or dependent.	May enroll, increase, decrease, or cease coverage.	No change.	No change.
Change in Worksite of Employee, Spouse, or Dependent – Triggers Loss of Eligibility • Move Outside HMO Service Area	May drop coverage or make new election.	May drop coverage or make new election.	May enroll, increase, decrease, or cease coverage.	No change.	No change.

Eligibility Requirements for Dependent

Action/Event	Medical	Dental and Vision	GTLI, AD&D, and Disability	Health FSA	DCAP
Dependent Satisfies Eligibility Requirements Under Employer's Plan	May enroll or increase coverage for affected dependent.	May enroll or increase coverage for affected dependent.	May enroll, increase, decrease, or cease coverage.	May enroll or increase election if dependent gains eligibility under health FSA.	May enroll or increase coverage for dependent.
Dependent Ceases to Satisfy Eligibility Requirements Under Employer's Plan⁷	May decrease or cease coverage for affected dependent.	May decrease or cease coverage for affected dependent.	May enroll, increase, decrease, or cease coverage.	May decrease or revoke election to account for ineligibility of expenses of affected dependent, but only if eligibility is lost.	May decrease or cease election for affected dependent.

⁶ See also HIPAA special enrollment right.⁷ COBRA event for the dependent/adult child. Employee may increase election to pay for dependent COBRA coverage so long as individual continues to be a tax dependent.

Change in Residence

Action/Event	Medical	Dental and Vision	GTLI, AD&D, and Disability	Health FSA	DCAP
Change in Residence of Employee, Spouse, or Dependent – Triggers Eligibility <ul style="list-style-type: none"> • Transfer or Move Across the Country 	May elect coverage or change coverage option for newly eligible employee, spouse, or dependent.	May elect coverage or change coverage option for newly eligible employee, spouse, or dependent.	May enroll, increase, decrease, or cease coverage.	No change.	No change.
Change in Residence of Employee, Spouse, or Dependent – Triggers Loss of Eligibility <ul style="list-style-type: none"> • Move Outside HMO Service Area 	May drop coverage or make new election.	May drop coverage or make new election.	May enroll, increase, decrease, or cease coverage.	No change.	No change.

CHANGE IN COST OR COVERAGE

Cost or coverage changes generally take place prior to the beginning of a cafeteria plan year and are communicated as part of the enrollment process. However, in some circumstances, changes can occur in the middle of the cafeteria plan year, such as when a component plan and a cafeteria plan have different plan years. This category of permissive change events is designed to enable an employee's election to correspond with component plan cost and coverage changes.

When a cost change is not significant, the terms of a plan may provide for an automatic corresponding increase or decrease to an employee's election. With "significant" cost changes, as distinct from automatic changes, employees may increase their elections, but also must be allowed to choose among any other similar coverage options offered under the plan.

For significant coverage changes, consistent election changes depend on whether there is a "loss of coverage" (detailed in the matrix below). Coverage is significantly curtailed when there is an overall reduction in plan coverage. By contrast, the loss of one particular physician in a network is not typically a significant curtailment. A plan may permit an employee to change elections midyear on account of a significant coverage curtailment (with or without loss of coverage). The regulations set out two approaches for determining what election changes are permitted when a curtailment of coverage occurs. If the curtailment results in a loss of coverage, the employee can drop the coverage elected but only if no other similar coverage option is available. If the coverage curtailment does not result in a loss of coverage, an employee may elect alternative similar coverage but the participant cannot drop coverage, presumably because at least one possible coverage option remains. Under the second approach, if the curtailment of coverage results in a loss of coverage, the participant can drop the coverage elected but only if no other option providing similar coverage is available. Examples of "with or without a loss of coverage" are detailed in the matrix below.

PPI Observation	The IRS has provided little guidance as to the definition of "significant" in the context of cost of coverage changes. Such a determination should be based on all the facts and circumstances surrounding a given situation.
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Plans may permit employees who are eligible to enroll in Marketplace coverage (i.e., a Marketplace special or open enrollment period) to drop the employer's health coverage if they intend to enroll in Marketplace coverage (and certain other conditions are met). For election changes occurring under this category, health FSAs may not be changed.

Changes in Cost

Action/Event	Medical	Dental and Vision	GTLI, AD&D, and Disability	Health FSA	DCAP
Insignificant Cost Increase or Decrease <ul style="list-style-type: none"> • Employer Motivated Change • Changes in Employee Contributions 	May automatically increase or decrease affected employees' election.	May automatically increase or decrease affected employees' election.	May automatically increase or decrease affected employees' elections.	No change.	May automatically increase or decrease affected employees' elections.
Significant Cost Increase or Decrease⁸	<p>Significant Increase: May increase election correspondingly or may elect coverage under another benefit package option providing similar coverage. If no similar option is available may revoke election.</p> <p>Significant Decrease: May decrease election correspondingly or may elect coverage with decreased cost (even if no prior participation) if permitted under plan terms.</p>	<p>Significant Increase: May increase election correspondingly or may elect coverage under another benefit package option providing similar coverage. If no similar option is available may revoke election.</p> <p>Significant Decrease: May decrease election correspondingly or may elect coverage with decreased cost (even if no prior participation) if permitted under plan terms.</p>	<p>Significant Increase: May increase election correspondingly or may elect coverage under another benefit package option providing similar coverage. If no similar option is available may revoke election.</p> <p>Significant Decrease: May decrease election correspondingly or may elect coverage with decreased cost (even if no prior participation) if permitted under plan terms.</p>	No change.	<p>Significant Increase: May increase election correspondingly or may elect other coverage option (providing similar coverage). If no similar option is available may revoke election.</p> <p>Significant Decrease: May decrease election correspondingly or elect coverage with decreased cost.⁹</p>

⁸ Reminder: IRS regulations do not define "significant." A determination of "significant change" should be based on all the facts and circumstances (and documented).

⁹ No change is permissible where the cost change is imposed by a dependent care provider who is a relative of the employee.

Changes in Coverage

Action/Event	Medical	Dental and Vision	GTLI, AD&D, and Disability	Health FSA	DCAP
Significant Coverage Curtailment "Without Loss of Coverage" ¹⁰ <ul style="list-style-type: none"> • Significant Increase in Deductible • Significant Increase in Copay • Significant Increase in Out-of-Pocket Cost Sharing 	May cease election for curtailed coverage and make new prospective election for coverage under another similar benefit package option. Technically, employees may not drop coverage even if no other similar package exists or other options are more expensive.	May cease election for curtailed coverage and make new prospective election for coverage under another similar benefit package option.	May cease election for curtailed coverage and make new prospective election for coverage under another similar benefit package option.	No change.	May cease election for curtailed coverage and make new prospective election for coverage under another similar benefit package option.
Significant Coverage Curtailment "With Loss of Coverage" ¹¹ <ul style="list-style-type: none"> • Elimination of a Benefit Option • HMO Ceasing to Be Available in Area Where Employee Resides • Individual Reaching Annual or Lifetime Maximum • Substantial Decrease in Medical Providers Available Under Option • Reduction in Benefits for Specific Medical Condition Individual is Receiving Treatment 	May cease election for curtailed coverage and make new prospective election for coverage under another similar benefit package option. May drop coverage if no similar coverage is available.	May cease election for curtailed coverage and make new prospective election for coverage under another similar benefit package option. May drop coverage if no similar coverage is available.	May cease election for curtailed coverage and make new prospective election for coverage under another similar benefit package option. May drop coverage if no similar coverage is available.	No change.	May cease election for curtailed coverage and make new prospective election for coverage under another similar benefit package option. May drop coverage if no similar coverage is available.

¹⁰ Coverage is significantly curtailed when there is an overall reduction in plan coverage. Loss of a particular physician in a network is not usually a significant curtailment.

¹¹ Coverage is significantly curtailed when there is an overall reduction in plan coverage. "Loss of coverage" is considered a complete loss of coverage under the benefit option. Employees may drop coverage if no other similar option is available.

Changes in Coverage (continued)

Action/Event	Medical	Dental and Vision	GTLI, AD&D, and Disability	Health FSA	DCAP
Addition or Significant Improvement of Benefit Package Option <ul style="list-style-type: none"> • New Health Plan Offered • Reduction in Copays 	May cease existing election and elect newly added or improved option (applies to all eligible employees, whether or not currently participating in the benefit option and as permitted by the plan).	May cease existing election and elect newly added or improved option.	May cease existing election and elect newly added or improved option.	No change.	May cease existing election and elect newly added or improved option.

Change in Coverage Under Another Employer's Plan

Action/Event	Medical	Dental and Vision	GTLI, AD&D, and Disability	Health FSA	DCAP
Change in Coverage Under Another Employer's Cafeteria Plan or Qualified Benefits Plan¹² <ul style="list-style-type: none"> • Open Enrollment Under Other Employer's Plan • Other Employer's Plan Increases Coverage • Other Employer's Plan Decreases Coverage 	May enroll, increase, decrease, or cease election for employee, spouse, or dependents if employee, spouse, or dependents have elected or received corresponding coverage under other employer's plan (e.g., increase election where coverage decreased under other employer's plan).	May enroll, increase, decrease, or cease election for employee, spouse, or dependents if employee, spouse, or dependents have elected or received corresponding coverage under other employer's plan (e.g., increase election where coverage decreased under other employer's plan).	May enroll, increase, decrease, or cease election for employee, spouse, or dependents if employee, spouse, or dependents have elected or received corresponding coverage under other employer's plan (e.g., increase election where coverage decreased under other employer's plan).	No change.	May enroll, increase, decrease, or cease election for employee, spouse, or dependents if employee, spouse, or dependents have elected or received corresponding coverage under other employer's plan (e.g., increase election where coverage decreased under other employer's plan).

¹² Change must be on account of, and correspond with, the change in coverage under the other employer's plan.

Change in Marketplace Coverage

Action/Event	Medical	Dental and Vision	GTLI, AD&D, and Disability	Health FSA	DCAP
Change in Coverage Available in the ACA Marketplace¹³ <ul style="list-style-type: none"> • Marketplace Open Enrollment Period • Marketplace Special Enrollment Period 	May revoke or cease coverage for employee, spouse, or dependent if the employee, spouse, or dependent enrolls in Marketplace coverage (which must be effective no later than the day after the last effective date of the employer's coverage).	No change, where coverage is excepted benefit.	No change.	No change.	No change.

Loss of Coverage Under Other Group Health Coverage

Action/Event	Medical	Dental and Vision	GTLI, AD&D, and Disability	Health FSA	DCAP
Loss of Coverage under Other Group Health Plan Sponsored by Governmental or Educational Institution <ul style="list-style-type: none"> • State's Children's Health Insurance Program¹⁴ • Indian Tribal Government Medical Care Program • University Health Plan 	May enroll or increase election for coverage for employee, spouse, or dependent who loses coverage.	May enroll or increase election for coverage for employee, spouse, or dependent who loses coverage; however, consistency requirement might prohibit electing dental/vision coverage if only medical coverage was lost.	No change.	No change.	No change.

¹³ Applies only to employer group health plans that meet the MEC standard. Employer coverage cannot be added midyear if Marketplace coverage is dropped.

¹⁴ May also trigger HIPAA special enrollment rights.

HIPAA SPECIAL ENROLLMENT RIGHTS

HIPAA requires group health plans that are subject to HIPAA's portability requirements to provide special enrollment opportunities to employees, spouses, and dependents in certain circumstances. Individuals qualifying for special enrollment rights must be given the opportunity to enroll in health coverage in a group health plan. Further, HIPAA requires (and the cafeteria plan rules allow) that all benefit package options be made available to individuals qualifying for special enrollment rights. So, for example, an employee with a special enrollment right can switch from a PPO to an HDHP benefit option offered under the group health plan.

HIPAA special enrollment rights often overlap with permitted election change events. That said, HIPAA special enrollment rights relate to access to health coverage, but not to the pre-tax payment. Cafeteria plan election changes involve making changes to pre-tax (salary reduction) elections. There are important differences between these two concepts.

HIPAA special enrollment events are required, but cafeteria plan election changes are permissive. Under the cafeteria plan rules, a plan may be drafted to allow for certain midyear election changes that correspond with HIPAA special enrollment rights. As a practical matter, allowing the required coverage to be paid for on a pre-tax basis under the cafeteria plan will be administratively easier than facilitating any additional contributions on an after-tax basis. Additionally, certain HIPAA special enrollment events require retroactive coverage (i.e., to the date of the event). While generally otherwise impermissible, where retroactive coverage is required for specific events under HIPAA, cafeteria plan rules allow pre-tax payment for the coverage. HIPAA requires a special enrollment period of a specified minimum duration (30 or 60 days, depending on the event), whereas the time limits for the other permitted election changes are a matter of plan design.

The cafeteria plan rules for HIPAA special enrollment events also allow other related individuals special "tag-along" rights (if provided for under the plan) that may not apply for other events. Note that election changes for HIPAA special enrollment rights only apply to benefits that are subject to HIPAA (i.e., not an "excepted benefit" like stand-alone dental and vision plans as well as many health FSAs). For more information on HIPAA-excepted benefits, see the discussion of "potential exceptions from the ACA" in the PPI publication [Point Solution Programs: A Guide for Employers](#).

HIPAA Special Enrollment Rights

Action/Event	Medical	Dental and Vision	GTLI, AD&D, and Disability	Health FSA	DCAP
Special Enrollment for Loss of Other Coverage¹⁵ <ul style="list-style-type: none"> • COBRA Coverage Exhausted or Terminated • Lose Eligibility for Other Coverage 	May elect coverage for employee, spouse, or dependent who has lost other coverage; coverage option change (e.g., HDHP to PPO) permitted.	May elect coverage for employee, spouse, or dependent who has lost other coverage; no change permitted unless plan is subject to HIPAA (i.e., not an excepted benefit under HIPAA).	No change.	No change.	No change.

¹⁵ This event may overlap with a change in status event (see above) for which election changes (even for HIPAA excepted benefits) may be permissible.

HIPAA Special Enrollment Rights (continued)

Action/Event	Medical	Dental and Vision	GTLI, AD&D, and Disability	Health FSA	DCAP
Special Enrollment for Acquisition of New Dependent by Birth, Marriage,¹⁶ Adoption or Placement for Adoption (For newborn or newly adopted children enrolled under HIPAA's special rules, coverage may be retroactive to date of the birth, adoption, or placement for adoption; for marriage, coverage is effective prospectively.) ¹⁷	May elect coverage for employee, spouse, and dependent; coverage option change (e.g., HDHP to PPO) permitted.	May elect coverage for employee, spouse, or dependent; no change permitted unless plan is subject to HIPAA (i.e., not an excepted benefit under HIPAA).	No change.	No change.	No change.
Special Enrollment for Loss of CHIP or Medicaid Coverage	May elect coverage for employee or dependent who has lost other coverage; coverage option change (e.g., HDHP to PPO) permitted.	May elect coverage for employee or dependent who has lost other coverage; no change permitted unless plan is subject to HIPAA (i.e., not an excepted benefit under HIPAA).	No change.	No change.	No change.
Special Enrollment Due to Eligibility for State Premium Assistance Subsidy from Medicaid or CHIP	May elect coverage for employee or dependent who has become eligible for premium assistance subsidy from Medicaid or CHIP; coverage option change (e.g., HDHP to PPO) permitted.	May elect coverage for employee or dependent who has become eligible for premium assistance subsidy from Medicaid or CHIP; no change permitted for dental or vision unless plan is subject to HIPAA (i.e., not an excepted benefit under HIPAA).	No change.	No change.	No change.

¹⁶ Stepchildren have HIPAA special enrollment rights as dependents following a marriage if the group health plan terms define dependents to include stepchildren.

¹⁷ This event may overlap with a change in status event (see above) for which election changes (even for HIPAA excepted benefits) may be permissible.

JUDGMENTS, DECREES, OR ORDERS

A plan may be drafted to allow for certain midyear election changes to properly comply with judgments, decrees, or orders, including qualified medical child support orders (also known as QMSCOs). The rules provide that complying with the judgment, decree, or order essentially suffices as the “consistency rule” for this event. By its terms, this election change event is restricted to orders relating to coverage for an employee’s child or dependent foster child; it does not extend to orders involving coverage for other individuals (e.g., an employee’s spouse). Note that those covered by benefits provided under the cafeteria plan must be the employee’s child up to age 26 or a tax dependent for health coverage purposes.

Judgments, Decrees, or Orders

Action/Event	Medical	Dental and Vision	GTLI, AD&D, and Disability	Health FSA	DCAP
Order that Requires Coverage for Child Under Employee’s Plan	May enroll or increase election to provide coverage for the child.	May enroll or increase election to provide coverage for the child.	No change.	May enroll or increase election to provide coverage for the child.	No change.
Order that Requires Spouse, Former Spouse, or Other Individual to Provide Coverage for the Child	May cease coverage for the child.	May cease coverage for the child.	No change	May cease coverage for the child.	No change.

MEDICARE OR MEDICAID

A plan may be drafted to permit certain midyear election changes when an employee, spouse, or dependent becomes entitled to Medicare or Medicaid coverage, or loses entitlement to that coverage.

Medicare or Medicaid

Action/Event	Medical	Dental and Vision	GTLI, AD&D, and Disability	Health FSA	DCAP
Employee, Spouse, or Dependent Becomes Entitled to Medicare or Medicaid	May cease coverage for employee, spouse, or dependent, as applicable.	May cease coverage for employee, spouse, or dependent, as applicable. ¹⁸	No change.	May decrease or revoke election.	No change.
Employee, Spouse, or Dependent Loses eligibility for Medicare or Medicaid	May enroll or increase coverage for employee, spouse, or dependent as applicable.	May enroll or increase coverage for employee, spouse, or dependent as applicable. ¹⁹	No change	May increase or commence election.	No change.

¹⁸ As Medicare and Medicaid are major-medical type coverage, it is unclear under the regulations whether dental or vision coverage can be dropped.

¹⁹ As Medicare and Medicaid are major-medical type coverage, it is unclear under the regulations whether dental or vision coverage can be dropped.

FMLA LEAVE

A plan may allow for certain midyear election changes due to leaves of absence under the FMLA, or for certain aspects of an FMLA event.

FMLA Leave

Action/Event	Medical	Dental and Vision	GTLI, AD&D, and Disability	Health FSA	DCAP
Employee's Commencement of FMLA Leave	May cease election and make another election as provided under FMLA.	May cease election and make another election as provided under FMLA.	May cease election and make another election as provided under the plan for employees taking non FMLA leave.	May cease election and make another election as provided under FMLA.	May cease election and make another election as provided under the plan for employees taking non FMLA leave.
Employee's Return from FMLA Leave	May make a new election if coverage terminated while on FMLA leave.	May make a new election if coverage terminated while on FMLA leave.	May make a new election if coverage terminated while on FMLA leave.	May make a new election if coverage terminated while on FMLA leave.	May make a new election if coverage terminated while on FMLA leave.

401(K) ELECTION CHANGES

A plan may be drafted to allow an employee who has elected to participate in a 401(k) defined contribution option under the cafeteria plan to make a midyear change to their deferral percentage. An allowance for this change does not permit changes to other cafeteria plan elections.

401(k) Election Changes

Action/Event	Medical	Dental and Vision	GTLI, AD&D, and Disability	Health FSA	DCAP
Changes in 401(k) Contributions	No change.	No change.	No change.	No change.	No change.

EXAMPLES

Divorce and Court Order

Employer maintains a calendar year cafeteria plan under which it offers health, dental, vision, GTLI, and DCAP coverage to employees and their families. Employee enrolls in family coverage. In June, Employee and Spouse separate and divorce, effective June 17. Employee is ordered by the court to pay for the health coverage of the former spouse. Employee provides notice of the divorce on July 2. A consistent election change (e.g., one that corresponds with and is made on account of the event that affects eligibility for benefits) would be for Employee to reduce their cafeteria plan election and drop coverage for their former spouse (but not for Employee or Child). Thus, Employee may change to employee plus child coverage. While Employee is required by a court to pay for the former spouse's health coverage, Employee may not continue to cover Spouse under the family coverage option (or to cover the former spouse under any other benefits provided under the cafeteria plan).

Cost of Coverage

Employer maintains a calendar year cafeteria plan under which it offers two health coverage options to employees and their families. Option A is an indemnity plan that requires an employee cost-share contribution of \$350 per month. Option B is an HMO that requires an employee cost-share contribution of \$100 per month. Employee elects the indemnity option during the annual open enrollment period. Later in the plan year, Employee decides the indemnity plan is too expensive and requests to switch to the HMO option. This is not a permissible election change event recognized under the cafeteria plan rules. Employee has not experienced a cost or coverage change that would allow Employer to honor the request and revise the pre-tax cost-share contribution downward. (If permitted by the insurance carrier, Employer could allow Employee to switch to the HMO coverage but could not alter the pre-tax payment associated with the original coverage election.)

Change in Residence – Move Away from Coverage Territory

Employer maintains a calendar year cafeteria plan under which it offers health, dental, vision, health FSA, GTLI, and DCAP coverage to employees and their families. Employee elects family coverage under the HMO medical coverage option during the annual open enrollment period. Later in the plan year, Employee and family move to a new location outside the HMO service area. Employee has experienced a recognized election change event — change in residence. That event, in turn, impacts Employee's "eligibility" for coverage (the consistency rule) under the HMO option. Under the consistency rule for health coverage, a change in status event affects eligibility for health coverage if it "results in an increase or decrease in the number of an employee's family members or dependents who may benefit from coverage under the plan." Employee has moved outside the HMO service network, effectively nullifying the ability to benefit from the coverage.

The cafeteria plan rules would allow Employee to choose another health coverage option offered under the plan. Subject to a plan design that recognizes this event, Employer can permit Employee to make an election change. Note that if Employee had initially chosen a medical coverage option with a national network, such as a PPO or HDHP, the consistency rule would likely prevent an election change in this instance. While the analysis requires examination of the specific facts, a change in residence generally will not affect eligibility for coverage when the plan uses a national network because the scope of accessible benefits remains unchanged.

PPI Observation	Note that an example in the cafeteria plan rules allows an employee who is transferred to a worksite that is out of the HMO service area to choose another health coverage option or drop major medical coverage entirely. Although it may seem reasonable to draw parallels between the Change in Residence example immediately above and the example in the cafeteria plan rules, it is advisable to seek legal counsel before permitting an employee to drop coverage entirely, particularly when other health coverage options are available under the plan.
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Change in Residence – Move from Abroad/Loss of Foreign Government Health Plan

Employer maintains a calendar year cafeteria plan under which it offers health, dental, vision, health FSA, GTLI, and DCAP coverage to employees and their families. In February, Employee marries Spouse, who lives and works in Korea. In July, Spouse receives a visa and moves to the U.S. Employee would like to add Spouse to their group health plan coverage (health, dental, vision, and health FSA). Several recognized midyear election change (status change) events may apply to this situation — marriage, change in residence, and loss of foreign government group health plan coverage.

Marriage: The marriage of Employee and Spouse is a HIPAA special enrollment event (as well as a change in status event) that affects Spouse’s eligibility for coverage under the cafeteria plan. Employee could add Spouse to Employer’s group health plan at the time of the marriage in accordance with HIPAA’s special enrollment and change in status rules. However, Spouse may not be able to meaningfully access or benefit from the U.S. health plan coverage while still residing in Korea.

Change in Residence: Spouse’s move to the U.S. in July may also be considered a change in residence that affects eligibility for health coverage (e.g., a gain of eligibility). Under the cafeteria plan rules, an event “affects eligibility” if it results in an “increase or decrease in the number of an employee’s family members or dependents who may benefit from coverage under the plan.” For example, if the plan excludes individuals residing outside the U.S., Spouse’s relocation would qualify as a midyear election change event that affects eligibility and would permit a corresponding election change.

<p>PPI Observation</p>	<p>While some group health plans may impose geographic limitations on services (e.g., network restrictions or exclusions for care received abroad), eligibility for enrollment is typically based on the individual's relationship to the employee (and, in some cases, age for dependents), rather than physical presence in the U.S. Thus, in this example Spouse's move to the U.S. may not technically alter eligibility for coverage. That said, it may also be reasonable to argue that a change in residence from abroad does affect eligibility, on the grounds that it increases the number of family members who can now effectively "benefit from coverage under the plan."</p> <p>Under this broader interpretation, Spouse's relocation from Korea to the U.S. effectively converts Spouse's restricted coverage abroad into practical access to meaningful coverage, comparable in effect to a gain in eligibility (or functionally equivalent to becoming newly eligible). If the plan offers limited coverage to individuals residing outside the U.S., Spouse's presence in the U.S. enables full access to the domestic provider network and a broader range of services. Although Spouse's formal eligibility for enrollment may not have specifically changed, the relocation significantly increases the extent to which Spouse can utilize and benefit from the plan. This could be viewed as increasing the number of family members who can effectively benefit from coverage under the plan. As a result, the move could be treated as a change in residence that affects eligibility, thereby permitting Employee to make a corresponding midyear election change to add Spouse to coverage.</p> <p>Note that this fact pattern is not specifically addressed in existing IRS guidance, and the interpretation described above reflects one reasonable reading of the cafeteria plan rules based on the circumstances presented. Whether a change in residence such as this qualifies as an event that affects eligibility is a fact-specific determination. Employers should consult legal counsel to assess how this interpretation aligns with their specific plan terms (which also include an insurer's coverage terms) and ensure that any adopted approach is applied consistently going forward.</p>
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Loss of Foreign Government Health Plan Coverage: Employee may add spousal coverage if Spouse's change in residence results in a loss of coverage under Korea's universal health care system or under the group health plan of Spouse's employer.

Furlough (Short-Term Unpaid Leave of Absence)

Employer maintains a calendar year cafeteria plan offering health, dental, vision, health FSA, GTLI, and DCAP coverage to employees and their families. In June, Employee is placed on a two-week, unpaid furlough. The commencement of a furlough (an unpaid leave of absence) is a change in status event. If it impacts Employee's eligibility for coverage, the cafeteria plan may permit Employee to drop coverage. Upon return from the furlough, the 30-day safe harbor rule generally suggests that Employee's previous elections be reinstated. Otherwise, absent a new election change event, Employee will not be eligible to participate again in the cafeteria plan until the new plan year.

Typically, however, during a two-week furlough, employees are considered in "active" employment status and their eligibility for coverage is not adversely affected. If eligibility for coverage is not affected by a furlough, cafeteria plan elections may not be changed in connection with the furlough. While there is no specific guidance on payment strategies for furloughed employees, it seems reasonable to use the payment methods provided in IRS regulations related to the Family and Medical Leave Act (FMLA). Under those regulations, employees can pay for group health plan coverage using a pre-pay, pay-as you-go, or catch-up method.

- **Pre-pay:** Before the furlough begins, Employee pre-pays the contributions due during the leave, reducing final pre-leave paychecks or making special salary reduction contributions.
- **Pay-as-you-go:** Employee pays their share of the premiums during the furlough period, generally as an after-tax payment.
- **Catch-up:** Employer advances payment of Employee's share during the furlough, and Employee repays Employer upon returning to work via salary reduction contributions.

Cafeteria plan documentation should address unpaid leaves as well as available funding/payment methods.

Change in Marketplace Coverage

Employer maintains a July 1 to June 30 cafeteria health plan under which it offers health, dental, vision, GTLI, and DCAP coverage to employees and their families. Employee is enrolled in coverage offered through the Marketplace. As of January 1, Employee's insurer pulls out of the Marketplace and Employee loses health coverage. Employee's loss of coverage in this instance triggers a special enrollment right for Employee. Note that HIPAA's definition of "health insurance coverage" is not limited to employer-sponsored coverage. Thus, Employee's loss of coverage in the Marketplace (which is not due to a failure to pay premiums on a timely basis or termination of coverage for cause (e.g., fraudulent claim or an intentional misrepresentation of a material fact)), provides a special enrollment right for Employer's group health plan coverage. Employee (and any spouse and dependents) should be permitted to enroll in Employer's major medical health plan option(s). Assuming Employer's dental, vision, and health FSA plans are HIPAA excepted benefits, no election changes with respect to those benefits would be permitted. No change to GTLI, disability, or DCAP coverage would be permitted.

Reduction in Hours – Below 30 Hours

Employee works full-time, 35 hours a week, and is enrolled in family coverage under the Employer's calendar year group health plan. Employee changes from full-time to part-time work status and is expected to work 25 hours per week. Under the terms of Employer's plan, Employee's eligibility for coverage is not affected. That said, Employer offers another benefit package option at a lower cost to part-time workers (i.e., those working fewer than 30 hours a week). Employee would like to revoke their current election and enroll in part-time worker option. Employee's reduction in hours is a change in status event. Under the rules, Employee's hours are reduced from a reasonably expected average of at least 30 hours per week to a reasonably expected average of less than 30 hours per week. Even though the reduction does not result in a loss of eligibility for the coverage in which Employee is currently enrolled, Employee is allowed to change their election to the part-timers option. This is because the election change corresponds with the intended enrollment of the employee (and spouse and/or dependent(s)) in another plan that 1) provides minimum essential coverage and 2) is effective by the first day of the second month following the month coverage is revoked or stops.

Reduction in Hours – Variable-Hour Employee

Employee is a variable hour worker meeting the 30 hours of service requirements during the most recent measurement period to enroll in employer-sponsored coverage (during a subsequent 12-month stability period). Although Employee is eligible for coverage and will remain eligible for the remainder of the stability period, Employee's hours have been reduced and they are not expected to continue to work 30 hours a week, making the cost of coverage burdensome. Employer offers a basic MEC plan option at a lower cost to part-time employees working fewer than 30 hours a week and Employee wishes to revoke their current election and enroll in this option. Even though eligibility for coverage is not affected, the cafeteria plan allows and Employer permits Employee to drop coverage midyear because Employee intends to switch to the other benefit package option that meets the MEC standard and will be effective the first of the month following the revocation.

Enrollment in Marketplace Coverage

Employer maintains a July 1 to June 30 cafeteria plan under which it offers health, dental, and vision (all HIPAA excepted benefits), GTLI, and DCAP coverage to employees and their families. Employee enrolls in health, dental, vision, and DCAP coverage. However, come December 10, Employee intends to enroll themselves and their family in Marketplace coverage (effective January 1). Open enrollment for the Marketplace runs from November 1 to December 15. Employee notifies Employer of their intent to enroll in Marketplace coverage. Employee has experienced a change in coverage event — access to Marketplace coverage via open enrollment. Cafeteria plan rules provide a "consistency-like" requirement for this event. Employee's election change will "correspond with" their intended enrollment in Marketplace coverage, effective beginning no later than the day immediately following the last day the original coverage is revoked. Employer grants Employee's request to drop family coverage midyear. No other election changes to benefits provided under the cafeteria plan would be permissible for this event.

Mistakes Happen

Employer maintains a calendar year cafeteria plan under which it offers two types of PPO health coverage (platinum and silver levels), dental, vision, health FSA, GTLI, and DCAP coverage to employees and their families. For the new plan year, Employer also offers a qualified HDHP/HSA option and a limited-purpose health FSA. During open enrollment, Employee enrolls in the new HDHP/HSA option. Employee elects salary reduction contributions to an HSA and also intends to elect the limited-purpose health FSA. By mistake, Employee elects the general-purpose health FSA option. The employee discovers the mistake one month into

the plan year when they receive written confirmation of their elections. Employee promptly notifies Employer and asks that the mistake be corrected.

Generally, cafeteria plan rules do not permit an election change absent a recognized change of election event. As noted above (in the PPI Observation box under the Permissible Election Change section), the IRS has informally acknowledged that a mistake can be corrected where there is “clear and convincing evidence” of an error. Whether the “clear and convincing” standard is satisfied depends on the nature of the mistake, when it occurred, and when it was discovered.

After considering all the facts and circumstances, including that the HDHP/HSA option and limited-purpose health FSA had not previously been offered to employees and that participation in a general-purpose health FSA would make Employee ineligible to make HSA contributions, Employer determines that Employee’s general-purpose health FSA election constituted a clerical mistake when completing the election form. (Among other things, Employer considers that the simultaneous election of HSA contributions and general-purpose health FSA contributions should be a logical impossibility even if the enrollment system allowed it to occur.) Employer, in consultation with its legal and tax accounting teams, corrects the mistake by undoing the erroneous election. Employer directs existing funds from the general-purpose health FSA to the limited-purpose health FSA and amends the election to reflect Employee’s intended election (i.e., what Employee would have elected had the error not occurred). Additionally, after consulting with trusted advisors, Employer takes steps to limit future mistakes of this type by providing election confirmations before the beginning of the plan year, clarifying enrollment instructions, and implementing system controls that prevent employees from electing both an HSA and a general-purpose health FSA.

More Mistakes Happen

Employer maintains a calendar year cafeteria plan under which it offers health, dental, vision, health FSA, GTLI, and DCAP coverage to employees and their families. For the previous three consecutive years, Employee has made an annual DCAP election of \$3,000 and a health FSA election of \$1,200. For the new plan year, Employee makes a \$3,000 health FSA election and does not make a DCAP election. Two months into the new plan year, Employee informs the plan administrator that they made a clerical mistake – they intended their \$3,000 election to be for the DCAP, not the health FSA.

Generally, cafeteria plan rules do not permit an election change absent a recognized change of election event. As noted above (in the PPI Observation box under the Permissible Election Change section), the IRS has informally acknowledged that a mistake can be corrected where there is “clear and convincing evidence” of an error. Whether the “clear and convincing” standard is satisfied depends on the nature of the mistake, when it occurred, and when it was discovered.

By way of illustration, a clear and convincing error seemingly would have occurred if Employee made a DCAP election but did not have any eligible dependents. (The employee could not have benefitted from that election.) Absent facts that would lead to an impossibility, Employer must decide if it is willing to entertain Employee’s request. Looking at all the facts and circumstances, including Employee’s election history and benefit usage, it may be impossible to ascertain whether a true error was made or Employee simply changed their mind. The facts here are ambiguous; Employer may decide to allow the change or may reasonably decide not to make Employee’s requested election change.

PPI Observation

Employers that choose to recognize mistakes (employers are not required to do so) should set standards and internal policies for when mistaken elections can be corrected, apply those standards and policies in an objective and consistent manner, and document all such decisions. Considerations for an internal policy might include: written certification from the employee regarding the nature of the mistake and intended election; established time limits (e.g., 60 days after the beginning of the plan year or close of the first payroll period) for providing notice of mistakes to the employer; and documentation of the employer’s rationale for granting or denying the election change request. Some employers may limit corrections exclusively to impossibility events or clear administrative errors on the part of the employer or plan administrator. Others may feel comfortable adjudicating requests based on facts and circumstances. Additionally, because this is an informal IRS position, employers should work with legal counsel before implementing their policy.

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