

COMPLIANCE BULLETIN



COVID-19 Guidance for Section 125 Mid-year Election Change Rules

On Feb. 18, 2021, the IRS released [Notice 2021-15](#), providing additional mid-year election change relief for Section 125 cafeteria plans **for plan years ending in 2021**. The relief is similar to [prior guidance](#) that applied to mid-year election changes during calendar year 2020, and aims to allow employers to respond to changes in employee needs as a result of the COVID-19 pandemic.

The guidance relates to mid-year elections for:

- Self-insured and fully insured employer-sponsored health coverage;
- Health flexible spending arrangements (health FSAs); and
- Dependent care assistance programs (DCAPs).

A plan may permit any of the election changes described in the guidance, regardless of whether they satisfy existing mid-year election change rules. This Compliance Bulletin summarizes the additional mid-year election changes.

Action Steps

Employers using this relief may determine the extent to which such changes are permitted and applied. If any of the changes are permitted, the employer must adopt a plan amendment and inform employees of the change. The amendment may be retroactive to the beginning of the applicable plan year if certain requirements are satisfied.

Employers should also note that changes to the plan may implicate other applicable laws, such as participant notification requirements under the Employee Retirement Income Security Act (ERISA).

Highlights

Affected Plans

The new IRS mid-year election change guidance applies to:

- Employer-sponsored health care coverage
- Health FSAs
- DCAPs

Employer Requirements

Employers that wish to allow additional mid-year election changes may determine the extent to which such changes are permitted and applied. If permitted, the employer must adopt a plan amendment and inform employees of the change.

Employee Flexibility

The guidance gives employers the option to amend their plans to provide greater flexibility for employees to elect and use these plans during the pandemic, without risking forfeiture of the amounts they have set aside.



Permitted Election Changes

For **employer-sponsored health coverage**, a Section 125 cafeteria plan may permit an employee to prospectively:

- Make a new election if the employee previously declined coverage;
- Revoke an existing election, and make a new election to enroll in different health coverage sponsored by the employer (including changing enrollment from self-only coverage to family coverage); or
- Revoke an existing election, if the employee attests in writing that he or she is, or immediately will be, enrolled in other health coverage.

For **health FSAs and DCAPs**, employees may be permitted to prospectively:

- Revoke an election;
- Make a new election; or
- Decrease or increase an existing election.

The relief applies to all types of health FSAs. In addition, employers are permitted to limit mid-year elections for health FSAs and DCAPs to amounts no less than amounts already reimbursed, and to certain types of mid-year election changes, such as decreases in elections only.

Written Attestation

To accept an employee's revocation of an existing election, employers may rely on an employee's written attestation that he or she is enrolled, or immediately will enroll, in other health coverage—unless the employer has actual knowledge otherwise.

The following is an example of an acceptable written attestation:

Name: _____ (and other identifying information requested by the employer for administrative purposes).

I attest that I am enrolled in, or immediately will enroll in, one of the following types of coverage:

- (1) Employer-sponsored health coverage through the employer of my spouse or parent;
- (2) Individual health insurance coverage enrolled in through the Health Insurance Marketplace (also known as the Health Insurance Exchange);
- (3) Medicaid;
- (4) Medicare;
- (5) TRICARE;
- (6) Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA); or
- (7) Other coverage that provides comprehensive health benefits (for example, health insurance purchased directly from an insurance company or health insurance provided through a student health plan).

Signature: _____



Employer Requirements

Employers using this relief are not required to provide unlimited mid-year election changes but may, in their discretion, determine the extent to which such changes are permitted and applied. Employers that decide to implement the relief for one or more of their cafeteria plans must adopt a plan amendment to do so.

The amendment may be retroactive to the beginning of the applicable plan year, provided that:

- The amendment is adopted by the last day of the first calendar year following the plan year in which it is effective; and
- The plan operates consistently with the amendment terms until the amendment is adopted.

Employers must also inform all employees eligible to participate in the plan of the changes. Note that changes to the plan may also implicate other applicable laws, such as participant notification requirements under ERISA.