

**DBS Notice: 11/11/2014**

## **IRS Notice Allows Two New Election Changes For Section 125 Cafeteria Plans**

### **Overview**

The IRS issued Notice 2014-55 that expanded the election change rules for Section 125 Cafeteria Plans. The Notice addressed two specific situations when a plan participant could be permitted to revoke an election during the plan year in order to purchase a qualified health plan through a Health Insurance Marketplace, also referred to as an Exchange (in this Notice the term 'Marketplace' will be used). Generally pre-tax Section 125 Cafeteria Plan elections are irrevocable unless there is a qualified status change/life event.

The guidance is effective 9/18/2014 and the employer's Cafeteria Plan document will need to be amended in order to allow for the new election changes. Plan participants can revoke their election of coverage under the group health plan but the new rules would not allow employees to change their Flexible Spending Account (FSA) election.

### **Background**

There has been extensive writing about Section 125 plans regarding definitions, written plan document, definition of a Cafeteria Plan, qualified benefits and permitted changes to elections. Please click on <http://www.irs.gov/pub/irs-drop/n-14-55.pdf> to read the entire IRS Notice 2014-55.

### **What Is The Purpose of Notice 2014-55?**

The purpose of the Notice is to expand the application of the permitted change rules for health coverage under a Section 125 Cafeteria Plan. The Notice addresses two specific situations in which a Cafeteria Plan participant may wish to revoke an election during the plan year for employer-sponsored health coverage under the Cafeteria Plan in order to purchase a Qualified Health Plan through a Health Insurance Marketplace as established under the Patient Protection and Affordable Care Act.

### **What Are the Two Situations Addressed in Notice 2014-55?**

1. The first situation involves a participating employee whose hours of service are reduced so that the employee is expected to average less than 30 hours of service per week but for whom the reduction does not affect the eligibility for coverage under the employer's group health plan. This may occur under certain employer plan designs intended to avoid any potential assessable payment under 4980H of the Internal Revenue Code – the 'pay or play' rules.
2. The second situation involves an employee participating in an employer's group health plan who would like to cease coverage under the group health plan and purchase coverage through a Marketplace as established by ACA without this resulting in either a period of duplicate coverage or a period of no coverage under the employer's group health plan and the Marketplace.

The Notice permits a Cafeteria Plan to allow a participant to revoke an election under the Cafeteria Plan for coverage under the employer's group health plan (other than a flexible spending arrangement (FSA)) during the plan year in each of the above situations, provided specified conditions are met.



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### **What Are the Conditions that Need to be met to allow the Election Changes Described?:**

- Conditions for revocation due to reduction in hours of service
  - (1) The employee was reasonably expected to average at least 30 hours of service per week and there is a change in that employee's 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
  - (2) 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 with the new coverage effective no later than the first day of the second month following the month that includes the date the original coverage is revoked.
- Conditions for revocation due to enrollment in a Qualified Health Plan
  - (1) The employee is eligible for a Special Enrollment Period (established by regulation by the Federal Government) to enroll in a Qualified Health Plan through a Marketplace, or the employee seeks to enroll in a Qualified Health Plan through a Marketplace during the Marketplace's annual open enrollment period; and
  - (2) 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 a Qualified Health Plan through a Marketplace for new coverage that is effective beginning no later than the day immediately following the last day of the original coverage that is revoked.

### **What is the Effective Date and What Do Employers Need to do?**

The guidance is effective on September 18, 2014. To allow for the new permitted election changes employers must:

- Amend their Cafeteria Plan to provide for the election changes (DBS has already provided the document amendment to clients).
- The amendment must be adopted on or before the last day of the plan year in which the elections are allowed. The amendment may be effective retroactively to the first day of that plan year.
- A Cafeteria Plan may be amended to adopt the new permitted election changes for a plan year that begins in 2014 at any time on or before the last day of the plan year that begins in 2015.
- Inform participants of the amendment.
- In no event may an election to revoke coverage on a retroactive basis be allowed.
- Plan participants can revoke their election of coverage under the group health plan but they would not be allowed to change their Flexible Spending Account (FSA) election.