

COMPLIANCE BULLETIN

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

On May 12, 2020, the IRS released [Notice 2020-29](#), which provides temporary flexibility for mid-year election changes under a Section 125 cafeteria plan during calendar year 2020. The changes are designed to allow employers to respond to changes in employee needs as a result of the COVID-19 pandemic.

This 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 notice, 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 these changes are permitted, the employer must adopt a plan amendment by Dec. 31, 2021, and inform employees of the change. The amendment may be retroactive to Jan. 1, 2020.

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.

Important Dates

Jan. 1, 2020

The relief may be applied retroactively, to periods on or after Jan. 1, 2020.

Dec. 31, 2021

Employers that wish to allow additional mid-year election changes must adopt a plan amendment by Dec. 31, 2021.



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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, including limited-purpose 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.

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: _____

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Applicability of Relief

In general, the relief may be applied retroactively, to periods prior to the issuance of IRS Notice 2020-29 and on or after Jan. 1, 2020.

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.

If these changes are permitted, the employer must:

- Adopt a plan amendment by Dec. 31, 2021; and
- Inform all employees that are eligible to participate in the plan.

The amendment may be retroactive to Jan. 1, 2020, provided the plan operates in accordance with the notice. Any amendment must apply only to mid-year elections made during calendar year 2020. Changes to the plan may also implicate other applicable laws, such as participant notification requirements under ERISA.

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