



## Health Care Reform **Bulletin**

# IRS Clarifies Transition Relief for Cafeteria Plan Elections

Provided by Brown & Brown Consulting

### Quick Facts

- On Oct. 31, 2013, the IRS released Notice 2013-71 to clarify a transition rule allowing amendments to a cafeteria plan to permit certain changes in salary reduction elections.
- Relief is available to employers with a cafeteria plan that have a non-calendar plan year beginning in 2013, regardless of the size of the employer.

**Notice 2013-71 clarifies that transition relief is available to an employer with a cafeteria plan that has a non-calendar plan year beginning in 2013, whether or not the employer is an applicable large employer.**

Many employers offer health plans to employees through salary reduction under a section 125 cafeteria plan. Generally, cafeteria plan elections must be made before the start of the plan year and are irrevocable during the plan year (except for a narrow set of circumstances).

In December 2012, the Internal Revenue Service (IRS) issued [proposed regulations](#) that included a transition rule for health plan coverage elected under a cafeteria plan with a non-calendar year plan year. Under the transition rule, an applicable large employer could amend its cafeteria plan to permit certain mid-year changes in salary reduction elections.

On Oct. 31, 2013, the IRS released [Notice 2013-71](#) (Notice), which clarifies the scope of the transition rule. The Notice clarifies that relief is available to an employer with a cafeteria plan that has a non-calendar plan year beginning in 2013, whether or not the employer is an applicable large employer or applicable large employer member.

The clarifications apply beginning on or after Dec. 28, 2012 (the date on which the proposed regulations were issued).

### Cafeteria Plan Elections

Generally, cafeteria plan elections must be made before the start of the plan year and are irrevocable during the plan year, with limited exceptions, including certain changes in status. However, the availability of health plan coverage through an Affordable Insurance Exchange beginning with calendar year 2014 does not constitute such a change in status.

The individual mandate and the availability of coverage through an Exchange are both effective as of Jan. 1, 2014. This date may raise issues for plans that do not have a Jan. 1 plan year, which the IRS calls “fiscal year plans.”

An employee who is eligible to enroll in an employer’s plan, but did not do so, may wish to enroll in the employer’s plan in the middle of the plan year to meet the individual mandate requirements. (On June 26, 2013, the IRS issued Notice 2013-42 to provide transition relief from the individual mandate for certain months in 2014 to individuals who are eligible to enroll in employer-sponsored fiscal year plans.)

An employee who is already covered under a fiscal year plan might wish to discontinue



coverage under that plan and enroll in an Exchange plan in the middle of the plan year.

#### **The Transition Rule**

Under the proposed regulations, an applicable large employer may choose to amend its cafeteria plan to permit either (or both) of the following changes in salary reduction elections, which apply regardless of whether employees experience a change of status event under the cafeteria plan regulations:

- An employee who made a salary reduction election through his or her employer's cafeteria plan for health plan coverage with a fiscal year beginning in 2013 can prospectively revoke or change his election regarding the plan during that plan year.
- An employee who did not make a salary reduction election under his employer's cafeteria plan for health plan coverage with a fiscal deadline beginning in 2013 (before the applicable deadline under the cafeteria plan regulations) can make a prospective salary reduction for coverage on or after the first day of the cafeteria plan's 2013 plan year.

These changes are permitted only once during the plan year, and only with respect to accident and health plan coverage offered under a fiscal year plan.

#### **Clarification**

The Notice clarifies the scope of a transition rule under the employer mandate “pay or play” provision for health plan coverage elected under a section 125 cafeteria plan.

Although the transition rule refers specifically to applicable large employer members, the Notice clarifies that relief is available to an employer with a cafeteria plan with a non-calendar plan year beginning in 2013, whether or not the employer is an applicable large employer or applicable large employer member.

The Notice also states that any cafeteria plan amendment adopted under this transition rule may be more restrictive than the amendments described in the rule, but may not be less restrictive. For example, an employer may amend its cafeteria plan to allow an employee to prospectively revoke or change his or her election once during a limited period (for example, the first month of 2014 only, rather than the entire plan year), regardless of whether the employee experienced a change in status event under the cafeteria plan rules.

#### **Other Issues in the Notice**

The Notice also relaxes the “use-or-lose” rule for health FSAs. Under the relaxed rule, an employer, at its option, is permitted to amend its section 125 cafeteria plan document to allow up to \$500 of unused funds remaining at the end of a plan year in a health FSA to be paid or reimbursed to plan participants for qualified medical expenses incurred during the following plan year. The plan may specify a lower amount as the permissible maximum (and has the option of not permitting any carryover at all).

This modification applies only if the plan does not also incorporate the grace period rule.

#### **More Information**

Please contact Brown & Brown Consulting for more information on the transition relief for cafeteria plans or the “use-or-lose” rule for health FSAs.

