

Publications

IRS Updates Long-Standing Proposed Cafeteria Plan Regulations

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On August 6, 2007, the Internal Revenue Service (IRS) completed the first phase of its overhaul of proposed cafeteria plan regulations originally published in 1984 and 1989, by re-posing the regulations in an updated and expanded form. 72 Fed. Reg. 43938 (Aug. 6, 2007). The new proposed regulations reflect an effort by the IRS to address and clarify many of the questions that have been raised by the public since the original proposed regulations were published. Indeed, these regulations collect, in one document, many of the rules and principles articulated by the IRS through formal and informal guidance issued over the past two decades. However, the cost of this clarity is that once these proposed regulations become final, all of these requirements, including those that are restrictive or administratively burdensome, will be given high deference by a court. Therefore, the public comment period provided for under these regulations is particularly important, because it may mark the last time that the public will be given a meaningful opportunity to shape the IRS's interpretation of the law in this area. Written or electronic comments must be received by November 5, 2007, and the IRS will hold a public hearing on November 15, 2007 (outlines for hearing topics must be submitted by October 25, 2007).

To conform to these regulations, employers and third-party administrators will need to review and possibly amend written plan documents and administrative practices, including election procedures and nondiscrimination testing. With two exceptions, the proposed effective date for these regulations is plan years beginning on or after January 1, 2009. In the attached memo we summarize the most significant changes in these regulations and highlight certain areas in which we think that the IRS should be urged to clarify or change its position.

[Cafeteria Plan Proposed Regulation SummaryDownload](#)