

Checkpoint Contents  
Pension & Benefits Library  
Pension & Benefits Editorial Materials  
EBIA Benefits Compliance Library  
Cafeteria Plans  
What's New in the 1st Qtr. 2014 Edition

## What's New in the 1st Quarter 2014 Edition

### Cafeteria Plans

This What's New section highlights the changes made in the last quarter to the *Cafeteria Plans* manual-the authoritative guidebook for employers, administrators, and advisors.

We have made numerous changes to the Outline and the Appendix. Here are some highlights:

- **Section IV- Governing Law for Cafeteria Plans.** This Section has been updated in full to reflect recent developments and agency website changes. It's the place to look for an overview of the types of laws and agency guidance that cafeteria plan sponsors and their advisors need to know about. We discuss statutes, regulations, court decisions, and other types of guidance, as well as their significance. This Section also lists specific laws and regulations that apply to cafeteria plans.
- **Section IX- Who Can Participate in a Cafeteria Plan?** Subsection C ("How to Design and Administer a Cafeteria Plan's Eligibility Rules") has been updated for the final employer shared responsibility regulations that were issued earlier this month.
- **Section X- What Benefits Can Be Offered Under a Cafeteria Plan?** We have expanded subsection B.1.e ("Premiums for Medicare Supplement Coverage, Medicare Part B, and Medicare Part D") to address whether cafeteria plans can reimburse active employees' premiums for Medicare Part B, Medicare Part D, or Medicare supplement coverage when a small-employer exception to the MSP rules applies.
- **Section XI- Offering Dependent Health Coverage Under a Cafeteria Plan.** Subsection B.2 ("Cafeteria Plan Transition Issues and Action Items Following the *Windsor* Decision") has been updated to address IRS guidance regarding the *Windsor* decision's impact on cafeteria plans.
- **Section XII- Contributions and Cash-Outs.** The text box in subsection B.1.a ("Salary Reductions Under the Code") regarding the impact of salary reductions on health care reform affordability determinations has been updated for the final employer shared responsibility

regulations that were issued earlier this month.

- **Section XIII- General Rules Governing Participant Elections.** We have updated the discussion of "no-choice" arrangements in subsection C.3 ("Employees Must Take Benefits, With a Corresponding Pay Reduction-Cafeteria Plan Rules May Not Apply (but Other Laws May)") for the final employer shared responsibility regulations that were issued earlier this month.
- **Section XIV- When May Participant Elections Be Changed?** Subsection R ("Accident and Health Coverage Changes Under Non-Calendar-Year Plans During 2013 Plan Year") has been updated to note that the IRS has expressly declined to extend this transition relief to non-calendar years beginning in 2014. We have also updated subsection T.10 ("Election Change Requests on Account of the *Windsor* Decision") to address IRS guidance regarding the election changes permitted as a result of the *Windsor* decision.
- **Section XVII- Other Laws That Affect Cafeteria Plans.** Subsection F ("Cafeteria Plans and the Health Coverage Tax Credit (HCTC)") has been updated to note that the legislation authorizing the HCTC has now expired. We have also updated subsection J ("Impact of Health Care Reform on Cafeteria Plans") for the final employer shared responsibility regulations that were issued earlier this month.
- **Section XIX- Overview of Legal Requirements for Health FSAs.** We expanded the discussion of the uniform coverage rule in subsection D ("There Must Be Uniform Coverage Throughout the Coverage Period") to include an example showing how the rule applies to employer contributions.
- **Section XX- What Expenses Can Be Reimbursed Under a Health FSA?** Subsection E ("Employee, Spouse, or Other Individual Eligible for Tax-Free Health Coverage Must Have Incurred the Expense") has been updated to address IRS guidance regarding the impact of the *Windsor* decision on health FSAs. We have also revised the "telephone equipment for persons with hearing disabilities" entry in the table in subsection M ("Table of Common Expenses, Showing Whether They Are for 'Medical Care'") to note, consistent with recent IRS guidance, that such equipment may also be a qualifying expense for persons with speech disabilities.
- **Section XXI- Selected Health FSA Plan Design and Administration Issues.** We updated the discussion of health FSA debit cards in subsection G ("Electronic Payment Card Programs for Health FSAs") to address whether cards can be used to access amounts from a prior plan year when the health FSA provides for carryovers. We have also expanded the discussion of health FSA carryovers in subsection H ("Carryovers and the Use-or-Lose Rule") to address more issues and provide more examples.
- **Section XXII- Other Laws That Affect Health FSAs.** We have expanded the discussion of how COBRA applies to health FSAs (see subsections F, G, and H) to address the impact of the IRS carryover guidance on various aspects of COBRA administration. In subsection J.7, we

added a text box that addresses whether employees who are eligible for or entitled to Medicare can participate in a health FSA. We have also expanded subsection K ("Which Health FSAs Are 'Excepted Benefits'?") to provide more detail on the potential impact of carryovers on a health FSA's excepted benefit status, and to include a caution about inadvertent failures of the Availability Condition. In addition, we have updated this subsection to discuss the impact of recently issued proposed regulations.

- **Section XXIV- *What Expenses Can Be Reimbursed Under a DCAP?*** Subsection D.5 ("Impact of the Supreme Court's *Windsor* Decision") has been updated to address recent IRS guidance regarding the *Windsor* decision's impact on DCAPs. We have also revised subsection F.1 ("Primary Function of Care Must Be for 'Well-Being and Protection'") to mention recent IRS guidance on child-support payments, and we have added an entry for child-support payments to the table in subsection O ("Table of Common Expenses, Showing Whether They Are 'Employment-Related'").
- **Section XXV- *Selected DCAP Design and Administration Issues.*** We have updated subsection J ("Correcting a Married Couple's Elections in Excess of the \$5,000 DCAP Limit") to mention recent IRS guidance regarding the *Windsor* decision's impact on DCAPs, under which same-sex married couples are subject to the DCAP exclusion limits for married individuals for all of 2013, including the portion before the *Windsor* decision.
- **Section XXIX- *Cafeteria Plan Nondiscrimination Rules.*** Subsection G ("The Eligibility Test (Test #1 of 3 for Cafeteria Plans)") has been updated for the final employer shared responsibility regulations that were issued earlier this month.
- **Section XXXIV- *Form 5500 and Other Reporting Requirements.*** This Section has been updated to reflect changes to the Form 5500 filing requirements applicable for that 2013 plan year. Among other things, we address the new requirement that welfare plans include information about their compliance with the Form M-1 filing requirement in their 2013 Form 5500 filing.
- **Appendix Tab 10**
  - *Filled-In Sample Form 5500.* We have replaced last year's filled-in sample Form 5500 with a filled-in 2013 Form 5500. The guide to the filled-in sample form (which provides background information about the document) has also been updated for 2013. The filled-in 2013 Form 5500 includes the new required "Form M-1 Compliance Attachment," and the updated guide includes an explanation of the attachment. See Section XXXIV for a discussion of Form 5500, as well as other reporting requirements for cafeteria plans, health FSAs, and DCAPs.

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**Lots More to Come!** From the feedback we've received, we know that our manuals are the premier group health plans resource in the country. But here at EBIA we're not satisfied. We are constantly striving to make the manual even better. In upcoming

look forward to complete coverage of all legal developments affecting cafeteria plans, and to our further analysis of existing more examples and Q/As, etc.

**EBIA Weekly.** Keep up with new legal developments as they occur: sign up now for the EBIA Weekly, a free email newsletter at [www.ebia.com](http://www.ebia.com).

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