

# Cafeteria Plans



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The Guidebook for Employers, Administrators, and Advisors

**EBIA**

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## *What's New in the 1st Qtr. 2012 Edition*

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

Also see the 1st Qtr. 2012 *Current Developments* newsletter, which can be accessed under the Bookmarks tab. The *Current Developments* newsletter summarizes important legal developments that occurred during the quarter.

- **Section II—*Cafeteria Plans: The Short Course*.** We updated the tax example in subsection C to reflect the recently enacted employee payroll tax reduction that applies for 2012.
- **Section IX—*Who Can Sponsor and Who Can Participate in a Cafeteria Plan?*** In subsection E, we added a text box describing an IRS settlement program that allows employers to voluntarily reclassify workers as employees, with a limited employment tax liability for former treatment of the workers as non-employees.
- **Section XIII—*General Rules Governing Participant Elections*.** We updated subsection E for DOL guidance indicating that regulations on automatic enrollment are not expected to be issued and become applicable until after 2014.
- **Section XIV—*When May Participant Elections Be Changed?*** We made a number of enhancements and clarifications in this Section. Among other things, we explain how the cost-change events allow an election change for an employee who becomes eligible for a state premium assistance subsidy from Medicaid or CHIP when already enrolled in the employer's major medical plan.
- **Section XVI—*Selected Cafeteria Plan Design and Administration Issues*.**
  - XVI.I—*Receipt of Proceeds From a Benefit Offered Under the Cafeteria Plan*. We updated this subsection for regulations and other guidance issued since the manual's last quarterly update regarding medical loss ratio (MLR) rebates.
  - XVI.K—*Special Considerations for HSAs Offered Through Cafeteria Plans*. This subsection has been updated to reflect that qualified HSA distributions are no longer permitted. See Section XXI for more information about these distributions.
- **Section XVII—*Other Laws That Affect Cafeteria Plans*.** Subsection J has been updated to mention DOL guidance indicating that regulations on automatic enrollment are not expected to be issued and become applicable until after 2014.
- **Section XIX—*Overview of Legal Requirements for Health FSAs*.** We expanded subsection F to discuss additional issues regarding the \$2,500 limit on annual health FSA salary reductions, including the question of whether the limit applies on a calendar-year or plan-year basis.
- **Section XX—*What Expenses Can Be Reimbursed Under a Health FSA?*** We updated the entries for breast reconstruction surgery following mastectomy, guide dog, and hearing aids in the table of expenses in subsection M to reflect additional guidance provided in the latest version of IRS Publication 502. We also updated the entry for transportation expenses to show the 2012 standard mileage rate.
- **Section XXI—*Selected Health FSA Plan Design and Administration Issues*.**
  - XXI.D—*How Do Midyear Election Changes Affect a Participant's Annual Coverage Limit?* We revised this subsection to address the impact of the \$2,500 limit on health FSA salary reductions (which is effective for taxable years beginning after 2012).

- **XXI.H—Qualified HSA Distributions From Health FSAs.** We made revisions throughout this subsection to reflect that qualified HSA distributions are not permitted after 2011. We’ve also added a text box explaining that the literal language of the Code actually prevented any qualified HSA distributions from calendar-year health FSAs for the 2011 plan year, because rollovers under the rule had to actually be made no later than December 31, 2011.
- **Section XXIII—Overview of Legal Requirements for DCAPs.** We updated the discussion of the dependent care tax credit (DCTC) in subsection C to reflect the recently enacted employee payroll tax reduction that applies for 2012. The employee payroll tax rate is one of the many factors that are relevant when calculating an employee’s federal tax savings under a DCAP as compared to the DCTC.
- **Section XXIV—What Expenses Can Be Reimbursed Under a DCAP?** New entries have been added to the table of expenses in subsection P.
- **Section XXIX—Cafeteria Plan Nondiscrimination Rules.** We expanded the discussion of the safe harbor test for premium-only plans in subsection J to discuss whether the safe harbor test can be used by an employer whose only employees are prohibited group members.
- **Section XXXIII—Simple Cafeteria Plans.** This Section has been expanded to address whether a simple cafeteria plan can be established by an employer whose only employees are prohibited group members.
- **Section XXXIV—Form 5500 and Other Reporting Requirements.** This Section has been updated to reflect additional IRS guidance on health care reform’s Form W-2 reporting requirement. See subsection D.6 regarding which health FSAs are subject to this requirement and how to determine the amount to be reported for a health FSA when Form W-2 reporting is required, including a new example and a discussion of reporting for employees whose employment terminates when their health FSA reimbursements exceed their contributions.
- **Section XXXVII—Mistakes Happen: Correcting Administrative Errors and Compliance Problems.** We expanded the discussion in subsection M regarding a health FSA’s failure to offer COBRA as required to address the challenges of correcting these mistakes by offering retroactive COBRA coverage under a health FSA. We also address correcting COBRA mistakes under health FSAs with a prospective offer of COBRA coverage.
- **Appendix Tab 10.**
  - *Filled-In Sample Form 5500.* We have replaced last year’s filled-in sample Form 5500 with a filled-in 2011 Form 5500. A guide to the filled-in sample form provides background information about the document. See Section XXXIV for a discussion of Form 5500 and other reporting requirements for cafeteria plans, health FSAs, and DCAPs.

**Substantive Changes to the Appendix:**

- **Tab 10—Miscellaneous Documents**
  - Updated TOC
  - Updated Sample Filled-In Form 5500
- **Tab 11—Miscellaneous**
  - Updated Table of Limits

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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 resources in the country. But here at EBIA we’re not satisfied. We are constantly striving to make the manual even better. In upcoming editions, look forward to complete coverage of all legal developments affecting cafeteria plans, and to our further analysis of existing law, with 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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