

Notice 2022-41: IRS Expands Mid-Year Cafeteria Plan Change Opportunities to Address “Family Glitch”

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On October 11, 2022, the IRS and the Treasury Department released [final regulations](#) relating to premium tax credit eligibility for families, along with companion cafeteria plan guidance in [Notice 2022-41](#). The final regulations are expected to extend eligibility for premium tax credits to some dependents who were previously ineligible for the credits.

As a result of this expansion, employees who previously elected family coverage under their employer’s health plan may want to change their elections mid-year to enroll in Marketplace coverage and take advantage of the premium tax credits for which family members are newly eligible. They can do this in two ways: (1) Revoking the employee’s family coverage election so the employee and any family members may enroll in Marketplace coverage instead, or (2) revoking the employee’s family coverage election so the employee’s family members may enroll in Marketplace coverage (with the employee remaining covered under the employer-sponsored plan).

The problem is that under the cafeteria plan rules, the employee is not permitted to change his family coverage election mid-year so that the employee’s family members may enroll in a Marketplace plan. This is where IRS Notice 2022-41 comes in. The notice expands the cafeteria plan “change in status” rules to permit employees to do precisely that—to prospectively revoke family coverage elections so that family members may enroll instead in Marketplace coverage. Starting January 1, 2023, a **non-calendar** year cafeteria plan may permit an employee to revoke prospectively an election for family coverage so that the employee’s family members can enroll in ACA marketplace coverage if:

- One or more of the employee’s family members are eligible to enroll in Marketplace coverage during a special enrollment period or during Marketplace annual open enrollment, **and**

- The revocation of the employee’s family coverage election corresponds with the intended enrollment of the family member in the Marketplace plan. If the employee does not also enroll in Marketplace coverage, the employee must elect self-only coverage (or family coverage including any already-covered family members) under the group health plan.

For those who think this all sounds awfully familiar—yes, back in 2014, the IRS released similar guidance in [Notice 2014-55](#) that expanded the change in status rules to permit employees to revoke elections for job-based coverage to enroll in Marketplace coverage under certain circumstances. However, Notice 2014-55 did not permit the revocation of an employee’s election for *family* coverage when the employee’s family members—and not the employee—become eligible to enroll in Marketplace coverage during a special enrollment period or Marketplace annual enrollment. Notice 2022-41 fills in this gap.

Employer Action Items

Employers are not required to adopt these new permitted election changes. Employers that wish to allow employees to make these coverage election changes will need to amend their cafeteria plans to do so. The deadline to adopt the amendment is the last day of the plan year in which the new permitted election changes are allowed. However, for plan years beginning in 2023, the employer has until the last day of the 2024 plan year to amend the plan.

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- **Jennifer Rigterink**
Senior Counsel