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Updated Guidance on Election Changes to Include Calendar Year Plans

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Recently, the Treasury Department and Internal Revenue Service (“IRS”) finalized regulations to fix the “family glitch” and expanded Marketplace premium tax credits for employees’ family members when employer-sponsored coverage is not affordable. Simultaneously, the IRS issued Notice 2022-41, creating a new, permitted election change under the Section 125 cafeteria plan rules related to the “family glitch” fix. As originally published, the guidance was limited to non-calendar year cafeteria plans.

However, the IRS (quietly) updated Notice 2022-41 to remove the limiting language.

As a result, plan sponsors of calendar year (and non-calendar year) section 125 cafeteria plans are now permitted, but not required, to amend their section 125 plan document to allow plan participants to prospectively revoke a pre-tax election for family coverage under a group health plan to enable one or more family members to enroll in Marketplace coverage.

Employer Action

Now that the new permitted election change includes calendar year plans, applicable plan sponsors should consider whether to adopt this discretionary cafeteria plan provision allowing employees the opportunity to revoke prospective elections in response to the premium tax credits available on the Marketplace. Employers adopting this change should update their plan documents accordingly and communicate the change with participants.