



Benefits Briefing

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In an effort to keep you informed of regulation issues and new developments, we will be sending quarterly issues of our newsletter, **Benefits Briefing**. If there are HR contacts at your company who would benefit from this, please give us their names and email addresses, and we will add them to the distribution list.

New Section 125 Regulations Issued

On Monday, August 6, 2007 the IRS issued New Proposed Internal Revenue Code Section 125 Regulations and withdrew previously issued Proposed Regulations. The New Proposed Regulations are generally effective for plan years beginning on or after January 1, 2009, but may be relied upon now. Please click [here](#) to view the Federal Register containing the full text of the Proposed Regulations.

IRS officials participated in the Employers Council on Flexible Compensation's 20th Annual Administrators Symposium on August 17, 2007 to discuss the new regs. Members were pleased that the new regulations were in a more user friendly format and consolidated regulations and guidance issued over the past 23 years. Consensus of the members was that there were no real surprises and that additional guidance or clarifications were still needed in several areas, including nondiscrimination testing and reimbursement for individual health insurance premiums.

The new Regulations codified several positions previously expressed by the IRS and confirmed procedures Tri-Star has been recommending and/or following, including:

- FSA reimbursements for Orthodontia may be based upon the payment schedule for the procedure

- Default elections are allowed for new employees or current employees who fail to make timely elections
- Plans may wait until the end of the Grace Period to allocate expenses to the prior year
- A 30 day retroactive enrollment for new hires is permissible
- Plan sponsors may place limitations on eligibility and eligible expenses for FSAs (Limited Purpose FSAs)

The Regs also reaffirm the IRS's positions on:

- Election Change Rules
- "Use-it-or-lose-it" provisions
- Uniform coverage rules for the Health Care FSA
- ALL claims must be substantiated
- Incorporate the previously issued rules for debit card administration included in Rev. Rul. 2003-43, Notice 2006-69 and Notice 2007-02

It is important for all Plan Sponsors to review the Plan Documents and administrative procedures in light of these new regulations. Operational Defects in a Plan may disqualify the plan. If a plan is disqualified it may result in all salary reduction amounts for all plan participants being treated as taxable income. Possible "Operational Defects" include:

- Offering benefits other than qualified benefits in the plan
- Paying expenses incurred before adoption or effective date of the plan
- Failure to comply with the Uniform Coverage rule
- Failure to comply with the Use-it-or-lose-it provisions
- Failure to comply with claims substantiation requirements
- Failure to comply with the change in election rules

Comments may be submitted to the IRS by November 5, 2007 and a hearing on the regulations is scheduled for November 15, 2007. We will continue to update you on the developments.

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State Mandates Requiring Employers to Offer Cafeteria Plans

A growing number of states are passing laws requiring employers to adopt at least Premium Only Section 125 Plans (POPs) including Missouri, Massachusetts, Connecticut and Rhode Island. A brief summary of each state's requirements are as follows:

- **Missouri** requires employers who provide health insurance benefits to provide a premium only cafeteria plan to allow the premiums to be paid with pre-tax dollars. In addition, small employers whose employees are eligible for health coverage under the employer's plan, but retain individually underwritten health plans, may provide defined contributions (equal for all plans) through a cafeteria plan. These provisions are effective January 1, 2008.
- **Massachusetts** employers under the Mass Health Care Reform Law must adopt and maintain a Plan that satisfies both Section 125 of the Internal Revenue Code and regulations established by the Commonwealth Connector (the Health Connector). Those employers with 11 or more "Full-Time Equivalent" are required to provide a plan that must be, at a minimum, a POP that allows employees (certain classes of employees may be excluded) to pay for or contribute to the cost of health care coverage on a pre-tax basis. Employers are not required to contribute to the cost of health care coverage options available under the Plan. This requirement went into effect July 1, 2007. A copy of the Plan must be filed with the Health Connector.
- **Connecticut** requires any employer who provides health insurance benefits, any part of which is paid through payroll deduction, to provide a cafeteria plan to allow the premium deductions to be paid on a pre-tax basis (no minimum number of employees stipulated). The requirement is effective October 1, 2007.
- **Rhode Island** employers that average more than 25 employees during six months of the year are required to provide a cafeteria plan for employees through which employees and their dependents may purchase health insurance. Employers are not required to pay for health insurance or to contribute to the cafeteria plan. Employers must comply by July 1, 2009. Rules and regulations not yet issued from the state could require changes for plan documents.

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Debit Card List of IIAS Discount Store and Supermarket Vendors Grows

The list of discount stores and supermarkets who have publicly announced that they are implementing the process and system standards collectively referred to as *Industry Standard IIAS* (Inventory Information Approval System) has grown to over 40. National chains like Albertsons, Kroger, OSCO, Target and Safeway have joined Wal-mart, Walgreen, and Sam's Clubs and will be implementing IIAS by January 1, 2008.

IIAS validates (no further substantiation required by the card holder) the eligibility of transactions at the point of sale as eligible Section 213(d) expenses based upon "inventory control information" at the merchant level. IRS Notice 2007-2 requires that IIAS must be implemented in grocery and discount stores on 1/1/2008 for benefit debit cards to be used and by 1/1/2009 in traditional pharmacies.

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IRS Publication Links

With tax season upon us we wanted to provide you with some handy links to IRS Publications that may help you and your employees. We hope they are helpful to you.

[IRS Publication 502 \(Health Care\)](#)

[IRS Publication 503 \(Dependent Care\)](#)

[IRS Publication 969 \(HSAs and Other Tax-Favored Health Plans\)](#)

[IRS Publication 968 \(Adoption\)](#)

[Other IRS Publications](#)

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