

TO: All Clients & Friends of FBMC

DATE: 08/21/07

FROM: Christina (Tina) Bischoff, *CFCI*
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RE: **New Proposed Regulations for Café Plans**

The much anticipated “new” proposed cafeteria plan regulations under Internal Revenue Code § 125 (the “New Proposed Regulations”) were released and recorded in the Federal Register on August 6, 2007. The New Proposed Regulations replace Code §§ 1.125-1 and -2 (the “Old Proposed Regulations”). A copy of the New Proposed Regulations is available at <http://edocket.access.gpo.gov/2007/pdf/E7-14827.pdf> .

The New Proposed Regulations will generally become effective for plan years beginning on or after **January 1, 2009**. Previously issued guidance, however, can be relied upon through the effective date of the final regulations.

In a future issue of FBMC’s *Quarterly Review*, we will go over these new rules in more detail.

NEW! One point of immediate interest in the New Proposed Regulations is how Group-Term Life coverage is taxed when offered under a cafeteria plan. Effective August 6, 2007, the amount to be included in income for pre-tax GTL coverage in excess of \$50,000 is to be taken from the Table I rates, *even if the salary reduction amount is greater*. How to make this change mid-stream isn’t addressed in the new rules but the IRS probably won’t object to having amounts included in income that are greater than the Table 1 rates until Employers can implement necessary system changes!

The New Proposed Regulations do **not** change:

- the “**use-lose**” rule for FSAs. (Note: The IRS has shortened “use-it-or-lose-it!”)
- the **uniform** coverage requirement for a health FSA.
- the impact of leaves of absence under the Family Medical Leave Act (“**FMLA**”) on cafeteria plan elections (Code § 1.125-3).
- the final regulations on **permissible mid-plan year election changes** (Code § 1.125-4).

FBMC attended the 2007 Annual Conference presented by the Employers Council on Flexible Compensation in Reno last week where the hot topic was the New Proposed Regulations. During a Q&A session presided by an IRS official who participated in the drafting of these new rules, we were strongly encouraged by him to submit to the IRS any questions and comments we may have regarding these new proposed rules. **For example, the new café plan rules don’t address how to handle mistakes.**

A public hearing on the new proposed rules is scheduled for Nov. 15, 2007; comments are due Nov. 5. The IRS must receive an outline of topics to be discussed at the hearing by Oct. 25, 2007.

prior to a hearing in November when the rules will be reviewed prior to finalization. To prepare for this hearing, the IRS is seeking comments from the public regarding administrative challenges faced by Employers when it comes to the cafeteria plan regulations. FBMC will be sending in our comments and questions in early October. If you’d like, we’d be glad to include yours in our communication. Just know there’s no guarantee that we’ll get an answer!



If you wish to send them directly to the IRS, you can use the Federal eRulemaking Portal at <http://www.regulations.gov/fdmspublic/component/main>. Comments must be received by October 25, 2007 for the November 15th hearing.

Attendance at this event will give us an opportunity to interact with the IRS officials who have the authority to represent the agencies regulating the café plan regulations.

The IRS will hold a public hearing on the New Proposed Regulations on Nov. 15, 2007 and will accept comments from interested parties and the general public as long as they're submitted by Nov. 5th. **If you have any comments or questions you'd like forwarded to the IRS**, just e-mail them to me at tbischoff@fbmc-benefits.com and I will add them to ours.

Additional Information

Please contact your Account Manager or the author of this Benefits Alert.

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