

January 7, 2009

PROPOSED CAFETERIA PLAN REGULATIONS TO BECOME FINAL IN 2009

On Aug. 3, 2007, the IRS issued proposed cafeteria plan regulations. The proposed regulations were designed to preserve existing regulations, while adding numerous clarifications related to statutory changes and administrative guidance. The proposed regulations were set to become effective Jan. 1, 2009; however, the Internal Revenue Service has yet to finalize them. Comments by Treasury officials indicate that the final regulations will be issued during the early months of 2009 and will have an effective date of Jan. 1, 2010. While we recommend that employers wait for the release of the final regulations to finalize plan documents, employers should review their current plan documents in anticipation of the release of the final regulations, and should be prepared in advance to make the necessary modifications that will ensure compliance Jan. 1, 2010. We do not anticipate that the effective date will be delayed any further, so employers are encouraged to take proactive measures as soon as possible. An employer's failure to comply with the final regulations may endanger the favorable tax treatment related to their cafeteria benefit plans.

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