



Compliance Bulletin

IRS Guidance on Cafeteria Plan Elections and Other Benefits for Same-sex Spouses

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Quick Facts

IRS Notice 2014-1 provides guidance on the participation of same-sex spouses in certain employee benefit plans. It addresses:

- Mid-year election changes for cafeteria plans

- Health FSA reimbursements
- Contribution limits for HSAs and dependent care FSAs

IRS Notice 2014-1 addresses how the Supreme Court's ruling on same-sex marriages affects cafeteria plans, flexible spending accounts and health savings accounts.

On Dec. 16, 2013, the Internal Revenue Service (IRS) released [Notice 2014-1](#) (Notice) to provide guidance on employee benefit plan elections for same-sex spouses following the U.S. Supreme Court's ruling on the Defense of Marriage Act (DOMA). The Notice addresses how the Supreme Court's ruling affects the participation of same-sex spouses in **cafeteria plans, flexible spending accounts (FSAs) and health savings accounts (HSAs)**.

DOMA Decision

On June 26, 2013, in *U.S. v. Windsor*, the Supreme Court struck down the section of DOMA that prohibited the recognition of same-sex marriages for purposes of federal law. The Court ruled that same-sex couples who are legally married under state law are entitled to equal treatment under federal law with regard to income taxes and federal benefits.

IRS Tax Guidance

After the Court's ruling, the IRS started issuing guidance on the decision's impact on federal tax laws.

- In [Revenue Ruling 2013-17](#), the IRS announced that same-sex couples who are legally married in states (or foreign jurisdictions) that recognize their marriage

will be treated as married for federal tax purposes, regardless of where the couple lives.

- In [Notice 2013-61](#), the IRS described special administrative procedures that employers may use to correct overpayments of employment taxes for 2013 and prior years with respect to same-sex spouse benefits.

The IRS provided additional tax information in a set of [frequently asked questions](#) for married same-sex couples.

The Notice, which is set up in a question and answer (Q&A) format, provides additional guidance on the tax treatment of certain types of employee benefit arrangements.

Cafeteria Plans

Prior to the Supreme Court's DOMA ruling, employees' same-sex spouses were not allowed to receive tax-free health care coverage through an employer's cafeteria plan. Employees who elected coverage for their same-sex spouses through an employer-sponsored health plan were required to pay for the coverage on an after-tax basis.



Election Changes

After the Court's ruling, an employee's same-sex spouse may receive benefits through an employer's cafeteria plan. The ruling raised questions for employers about whether employees could make changes to their cafeteria plan elections based on the new rights under the tax code.

To answer these questions, the Notice provides the following guidance on permissible mid-year election changes:

- A cafeteria plan may permit a participant who marries a same-sex spouse after the date of the Court's decision (June 26, 2013) to make a mid-year election change due to a change in legal marital status.
- A cafeteria plan may permit a participant who was married to a same-sex spouse as of June 26, 2013, to make a mid-year election change as if the participant experienced a change in legal marital status.

Tax Implications

The Notice also addresses when an employer must begin to treat the after-tax amount that an employee pays for a same-sex spouse's coverage under the employer's health plan as a pre-tax salary reduction. An employer that, before the end of the cafeteria plan year including Dec. 16, 2013, **receives notice** that an employee participating in the cafeteria plan is married to the individual receiving health coverage must begin treating the amount that the employee pays for the spousal coverage as a pre-tax salary reduction under the plan. This must happen no later than the later of:

- The date that a change in legal marital status would be required to be reflected for income tax withholding purposes under section 3402 of the Internal Revenue Code; or
- A reasonable period of time after Dec. 16, 2013.

For this purpose, an employee may provide notice of his or her marriage by making an election under the employer's cafeteria plan to pay for the employee cost of spousal coverage through salary reduction or by filing a revised Form W-4 representing that the employee is married.

Also, the amount the employee pays for the same-sex spouse will be excluded from the employee's income, even if the employer reports the amounts as taxable income and wages to the employee. This rule applies for the plan year that includes Dec. 16, 2013, and any years that remain open under the period of limitations, which is typically three years.

FSA Reimbursements

A cafeteria plan may permit a participant's FSA, including a health, dependent care or adoption assistance FSA, to reimburse covered expenses of the participant's same-sex spouse (or the same-sex spouse's dependent). To be eligible for reimbursement, the expenses must have been incurred during a period beginning on a date that is no earlier than:

- The beginning of the cafeteria plan year that includes June 26, 2013; or
- The date of marriage, if later.

The same-sex spouse may be treated as covered by the FSA (even if the participant had initially elected coverage under a self-only FSA) during that period.

For example, a cafeteria plan with a calendar year plan year may permit a participant's FSA to reimburse covered expenses of the participant's same-sex spouse or the same-sex spouse's dependent that were incurred during a period beginning on any date that is on or after Jan. 1, 2013 (or the participant's date of marriage if later).

Contribution Limits—HSAs

The Notice confirms that a same-sex married couple is subject to the joint deduction limit for contributions to an HSA. The maximum annual



deductible contribution to one or more HSAs for a married couple either of whom elects family coverage under a HDHP is \$6,450 for the 2013 taxable year (\$6,550 for 2014). This deduction limit applies to same-sex married couples who are treated as married for federal tax purposes with respect to a taxable year (that is, couples who remain married as of the last day of the taxable year), including the 2013 taxable year.

If the combined HSA contributions elected by two same-sex spouses exceed the HSA contribution limit for a married couple, contributions for one or both of the spouses may be reduced for the remaining portion of the tax year in order to avoid exceeding the applicable contribution limit.

To the extent that the combined contributions to the HSAs of the married couple exceed the applicable contribution limit, any excess may be distributed from the HSAs of one or both spouses no later than the tax return due date for the spouses. Any excess contributions that remain undistributed as of the due date for the filing of the spouse's tax return (including extensions) will be subject to excise taxes.

Contribution Limits—Dependent Care FSA

The Notice also confirms that a same-sex married couple is subject to the exclusion limit for contributions to a dependent care FSA. The maximum annual contribution to one or more dependent care FSAs for a married couple is \$5,000. This limit applies to same-sex married couples who are treated as married for federal tax purposes with respect to a taxable year (that is, couples who remain married as of the last day of the taxable year), including the 2013 taxable year.

Also, if the combined dependent care FSA contributions elected by the same-sex spouses exceed the applicable contribution limit for a married couple, contributions for one or both of the spouses may be reduced for the remaining portion of the tax year in order to avoid exceeding the applicable contribution limit. To the extent that the combined

contributions to the dependent care FSAs of the married couple exceed the applicable contribution limit, the amount of excess contributions will be includable in the spouses' gross income.

