

January 15, 2009

More than a year ago, the IRS published Proposed Cafeteria Plan Regulations that replaced a hodgepodge of regulations and other guidance dating back to the early 1980's. The Proposed Regulations had an effective date of the first day of plan years beginning on or after January 1, 2009. The thought was that Final Regulations would be issued sometime in 2009. This, of course, has not happened.

Thus, employers, plan administrators and sponsors are left in somewhat of a quandary. Did the Proposed Regulations truly take effect in January 2009 or was that effective date also merely proposed? Informal guidance has indicated the following:

Expect to see the Final Regulations sometime in early 2009; these regulations will likely have a January 1, 2010, effective date.

The January 1, 2009, effective date in the Proposed Regulations is not enforceable due to the lack of finalization. As indicated when the Proposed Regulations came out, plans are free to implement certain aspects of the Proposed Regulations until the Final Regulations are published. Examples include the revised rule on orthodontia reimbursements and 30-day retroactive new-hire enrollment.