On August 6, 2007, the Internal Revenue Service ("IRS") issued new proposed regulations for cafeteria plans pursuant to Section 125 of the Internal Revenue Code ("IRC"). These new regulations replace earlier proposed regulations and guidance issued since Section 125 was enacted in 1978. While the general effective date of these new proposed regulations is January 1, 2009, the IRS stated that plans can rely on these proposed regulations in the interim.

The proposed regulations address the following five areas:

**Cafeteria Plans in General**
- The IRS clarified that IRC Section 125 is the exclusive means by which an employer can offer employees a choice between taxable and nontaxable benefits without that choice resulting in the inclusion of the benefit in the employee’s gross income.
- A cafeteria plan must be in writing. Certain provisions must be included. (e.g. eligibility rules, election procedures, employer contributions, and the maximum amount of elective contributions.) The cafeteria plan document must also specifically state that participation is limited to employees only (spouses and dependents may benefit under the coverage provided to an employee).
- Cafeteria plans are permitted to be amended at any time during the plan year. However, the amendment is only permitted to be effective for periods after the later of its adoption or the effective date of the amendment.
- Regarding group term life insurance exceeding $50,000, employees must include in their gross income the Table I cost of excess coverage (minus the employee’s related after-tax contributions, if any). Note that this Table I rule is currently effective.
- Nonqualified benefits may not be offered through a cafeteria plan.

**Election Rules**
- Cafeteria plan elections cannot last more than 12 months (however, provisions by which elections automatically renew are allowed).
- Employees must be allowed to prospectively elect, revoke or change their salary reduction amounts for Health Savings Account ("HSA") contributions on at least a monthly basis.
- The proposed regulations permit automatic election rules for new and current employees.
- New employees may be allowed 30 days after their date of hire to make elections for coverage that may be effective retroactive to their date of hire. The reduction must come from salary not yet currently available.

**Flexible Spending Accounts ("FSAs")**
- Claims under an FSA must be reimbursed at least monthly, subject to a minimum claim threshold (i.e. $50) before reimbursement.
- The “uniform coverage rule” continues to apply to FSAs, but is inapplicable to dependent care FSAs or adoption assistance FSAs. That is, a participant has a right to full reimbursement at any time based on his total deferral elected.
- Health FSAs may limit eligibility to employees who participate in one or more of the employer’s health plans.
- FSAs can only reimburse qualifying expenses incurred during the period of coverage.
- A Health FSA may (but is not required) reimburse advance orthodontia payments, if advance payments are required to receive the services.
- "Use it or lose it" still applies.
Substantiation Rules
- All claims under cafeteria plans must be substantiated prior to the claim being reimbursed.
- The new proposed regulations adopt the “spend-down” feature for dependent care FSAs, which means that expenses incurred after an employee’s termination can be reimbursed for the remainder of the plan year.

Non-discrimination Rules
- The definitions of “highly compensated individual” or “highly compensated participant” are consistent with the IRC Section 414(q) definition of “highly compensated employee.”
- The nondiscrimination in eligibility test requires that the classification of eligible employees must be reasonable and that the eligible group must either pass the “safe harbor” or the “facts and circumstances” test of IRC Section 410(b) (applicable to qualified plans).
- The proposed regulations clarify that in order to satisfy the nondiscrimination “contributions and benefits test,” not only must each similarly situated participant be given an equal opportunity to elect qualified benefits, but highly compensated participants must not disproportionately elect qualified benefits. A new “objective test” is also established for determining whether highly compensated participants have disproportionately elected qualified benefits.
- A new safe-harbor is created for premium-only plans that satisfy certain minimum requirements, and further guidance is provided on the safe-harbor for cafeteria plans that provide health benefits.

These new proposed regulations are sure to have a significant impact on the design and operation of cafeteria plans. Existing cafeteria plans should be reviewed in advance, and employers should begin to consider changes they need to make to conform to the new rules.

The Detroit Ignition understands our unique role in the community and the importance of our relationships with local organizations. With the partnership of local organizations and surrounding communities, we look to promote the sport of soccer at all levels while providing unique and enjoyable experiences.

Since the club’s establishment, the Ignition has reached out to over 500,000 people through its grassroots campaign. This includes appearances at a large number of area soccer tournaments, camps, schools and hospitals to ensure the Ignition’s presence and commitment is realized in the community.

Please contact the Detroit Ignition Communications Department at (248) 304-2855 to get the team involved with your community organization or event (www.detroitignition.com).