

UPCOMING CHANGES TO CAFETERIA PLANS; WHAT YOU NEED TO KNOW TO PREPARE

The U.S. Treasury is scheduled to publish revised Section 125 Cafeteria Plan regulations in January 2009. The proposed updated regulations were published in August of 2007. Most experts feel that the proposed regulations can be relied on as they expect few modifications before the final regulations become effective.

It is important to be sure your cafeteria plan is in compliance prior to January 1, 2009. One infraction disqualifies the entire plan.

Review the list below to ensure you will be prepared. Proposed regulations section 1.125-1(c)(1) requires the cafeteria plan document to contain the following information:

1. A specific designation of each of the benefits available through the plan, including the periods during which the benefits are provided (i.e., the period of coverage, which is typically the plan year).
2. The plan's rules governing participation, and specifically requiring that all participants in the plan be employees.
3. The procedures governing employees' elections under the plan, including the periods with respect to which elections are effective, and providing that elections are irrevocable, except to the extent that the optional change-in-status rules in the regulations are included in the plan.
4. The manner in which employer contributions may be made under the plan (for example, through an employee's salary reduction election or by non-elective employer contributions (that is, flexible credits) or both).
5. The maximum amount of employer contributions available to any employee through the plan (either as a dollar amount or a percentage of compensation or the method for determining the maximum).
6. The plan year of the cafeteria plan.
7. If the plan offers paid time off, the required "ordering rule" for use of non-elective and elective paid time off as required by the regulations.
8. If the plan includes flexible spending arrangements (FSA), the plan's provisions complying with any additional requirements for those FSAs (e.g., the uniform coverage rule applicable to health care FSAs and the "use-it-or-lose-it" rules applicable to all FSAs).
9. If the plan includes a grace period, the plan's provisions complying with the regulations applicable to grace periods.
10. If the plan permits transfers (rare) from a health care FSA to employee's Health Savings Account (HSAs), the plan's provisions complying with the regulations applicable to such transfers.
11. If the plan allows for contributions to Section 401(k) plans, the maximum amount that can be so contributed.
12. Language linking the FSA plan documents to the main cafeteria plan document, if they are separate documents.

For IRS examples of operational failures, please call Steven Honeycutt at (336) 291-1105.

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