

Prop. Reg. Section 1.125-1(a)(5)

Cafeteria plans; general rules.

(a) *Definitions.* The definitions set forth in this paragraph (a) apply for purposes of section 125 and the regulations.

(1) The term *cafeteria plan* means a separate written plan that complies with the requirements of section 125 and the regulations, that is maintained by an employer for the benefit of its employees and that is operated in compliance with the requirements of section 125 and the regulations. All participants in a cafeteria plan must be employees. A cafeteria plan must offer at least one permitted taxable benefit (as defined in paragraph (a)(2) of this section) and at least one qualified benefit (as defined in paragraph (a)(3) of this section). A cafeteria plan must not provide for deferral of compensation (except as specifically permitted in paragraph (o) of this section).

(2) The term *permitted taxable benefit* means cash and certain other taxable benefits treated as cash for purposes of section 125. For purposes of section 125, *cash* means cash compensation (including salary reduction), payments for annual leave, sick leave, or other paid time off and severance pay. A distribution from a trust described in section 401(a) is not cash for purposes of section 125. *Other taxable benefits treated as cash* for purposes of section 125 are:

(i) Property;

(ii) Benefits attributable to employer contributions that are currently taxable to the employee upon receipt by the employee; and

(iii) Benefits purchased with after-tax employee contributions, as described in paragraph (h) of this section.

(3) *Qualified benefit.* Except as otherwise provided in section 125(f) and paragraph (q) of this section, the term *qualified benefit* means any benefit attributable to employer contributions to the extent that such benefit is not currently taxable to the employee by reason of an express provision of the Internal Revenue Code (Code) and which does not defer compensation (except as provided in paragraph (o) of this section). The following benefits are qualified benefits that may be offered under a cafeteria plan and are excludible from employees' gross income when provided in accordance with the applicable provisions of the Code--

(A) Group-term life insurance on the life of an employee in an amount that is less than or equal to the \$ 50,000 excludible from gross income under section 79(a), but not combined with any permanent benefit within the meaning of § 1.79-0;

(B) An accident and health plan excludible from gross income under section 105 or 106, including self-insured medical reimbursement plans (such as health FSAs described in § 1.125-5);

(C) Premiums for COBRA continuation coverage (if excludible under section 106) under the accident and health plan of the employer sponsoring the cafeteria plan or premiums for COBRA

continuation coverage of an employee of the employer sponsoring the cafeteria plan under an accident and health plan sponsored by a different employer;

(D) An accidental death and dismemberment insurance policy (section 106);

(E) Long-term or short-term disability coverage (section 106);

(F) Dependent care assistance program (section 129);

(G) Adoption assistance (section 137);

(H) A qualified cash or deferred arrangement that is part of a profit-sharing plan or stock bonus plan, as described in paragraph (o)(3) of this section (section 401(k));

(I) Certain plans maintained by educational organizations (section 125(d)(2)(C) and paragraph (o)(3)(iii) of this section); and

(J) Contributions to Health Savings Accounts (HSAs) (sections 223 and 125(d)(2)(D)).

(4) *Dependent*. The term *dependent* generally means a dependent as defined in section 152. However, the definition of dependent is modified to conform with the underlying Code section for the qualified benefit. For example, for purposes of a benefit under section 105, the term dependent means a dependent as defined in section 152, determined without regard to section 152(b)(1), (b)(2) or (d)(1)(B).



(5) *Premium-only-plan*. A *premium-only-plan* is a cafeteria plan that offers as its sole benefit an election between cash (for example, salary) and payment of the employee share of the employer-provided accident and health insurance premium (excludible from the employee's gross income under section 106).

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