

Prop. Reg. Section 1.125-1(c)

Cafeteria plans; general rules.

(c) *Written plan requirements* --(1) *General rule.* A cafeteria plan must contain in writing the information described in this paragraph (c), and depending on the qualified benefits offered in the plan, may also be required to contain additional information described in paragraphs (c)(2) and (c)(3) of this section. The cafeteria plan must be adopted and effective on or before the first day of the cafeteria plan year to which it relates. The terms of the plan must apply uniformly to all participants. The cafeteria plan document may be comprised of multiple documents. The written cafeteria plan must contain all of the following information--

(i) A specific description of each of the benefits available through the plan, including the periods during which the benefits are provided (the periods of coverage);

(ii) The plan's rules governing participation, and specifically requiring that all participants in the plan be employees;

(iii) The procedures governing employees' elections under the plan, including the period when elections may be made, 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 § 1.125-4 are included in the cafeteria plan;

(iv) The manner in which employer contributions may be made under the plan, (for example, through an employee's salary reduction election or by nonelective employer contributions (that is, flex-credits, as defined in paragraph (b) in § 1.125-5) or both);

(v) The maximum amount of employer contributions available to any employee through the plan, by stating:

(A) The maximum amount of elective contributions (*i.e.*, salary reduction) available to any employee through the plan, expressed as a maximum dollar amount or a maximum percentage of compensation or the method for determining the maximum dollar amount; and

(B) For contributions to section 401(k) plans, the maximum amount of elective contributions available to any employee through the plan, expressed as a maximum dollar amount or maximum percentage of compensation that may be contributed as elective contributions through the plan by employees.

(vi) The plan year of the cafeteria plan;

(vii) If the plan offers paid time off, the required ordering rule for use of nonelective and elective paid time off in paragraph (o)(4) of this section;

(viii) If the plan includes flexible spending arrangements (as defined in § 1.125-5(a)), the plan's provisions complying with any additional requirements for those FSAs (for example, the uniform coverage rule and the use-or-lose rules in paragraphs (d) and (c) in § 1.125-5);

(ix) If the plan includes a grace period, the plan's provisions complying with paragraph (e) of this section; and

(x) If the plan includes distributions from a health FSA to employees' HSAs, the plan's provisions complying with paragraph (n) in § 1.125-5.

(2) *Additional requirements under sections 105(h), 129, and 137.* A written plan is required for self-insured medical reimbursement plans (§ 1.105-11(b)(1)(i)), dependent care assistance programs (section 129(d)(1)), and adoption assistance (section 137(c)). Any of these plans or programs offered through a cafeteria plan that satisfies the written plan requirement in this paragraph (c) for the benefits under these plans and programs also satisfies the written plan requirements in § 1.105-11(b)(1)(i), section 129(d)(1), and section 137(c) (whichever is applicable). Alternatively, a self-insured medical reimbursement plan, a dependent care assistance program, or an adoption assistance program is permitted to satisfy the requirements in § 1.105-11(b)(1)(i), section 129(d)(1), or section 137(c) (whichever is applicable) through a separate written plan, and not as part of the written cafeteria plan.

(3) *Additional requirements under section 401(k).* See § 1.401(k)-1(e)(7) for additional requirements that must be satisfied in the written plan if the plan offers deferrals into a section 401(k) plan.

(4) *Cross-reference allowed.* In describing the benefits available through the cafeteria plan, the written cafeteria plan need not be self-contained. For example, the written cafeteria plan may incorporate by reference benefits offered through other *separate written plans*, such as a section 401(k) plan, or coverage under a dependent care assistance program (section 129), without describing in full the benefits established through these other plans. But, for example, if the cafeteria plan offers different maximum levels of coverage for dependent care assistance programs, the descriptions in the separate written plan must specify the available maximums.

(5) *Amendments to cafeteria plan.* Any amendment to the cafeteria plan must be in writing. A cafeteria plan is permitted to be amended at any time during a plan year. However, the amendment is only permitted to be effective for periods after the later of the adoption date or effective date of the amendment. For an amendment adding a new benefit, the cafeteria plan must pay or reimburse only those expenses for new benefits incurred after the later of the amendment's adoption date or effective date.

(6) *Failure to satisfy written plan requirements.* If there is no written cafeteria plan, or if the written plan fails to satisfy any of the requirements in this paragraph (c) (including cross-referenced requirements), the plan is not a cafeteria plan and an employee's election between taxable and nontaxable benefits results in gross income to the employee.

(7) *Operational failure --(i)* In general. If the cafeteria plan fails to operate according to its written plan or otherwise fails to operate in compliance with section 125 and the regulations, the plan is not a cafeteria plan and employees' elections between taxable and nontaxable benefits result in gross income to the employees.

(ii) *Failure to operate according to written cafeteria plan or section 125.* Examples of failures resulting in section 125 not applying to a plan include the following--

(A) Paying or reimbursing expenses for qualified benefits incurred before the later of the adoption date or effective date of the cafeteria plan, before the beginning of a period of coverage or before the later of the date of adoption or effective date of a plan amendment adding a new benefit;

(B) Offering benefits other than permitted taxable benefits and qualified benefits;

(C) Operating to defer compensation (except as permitted in paragraph (o) of this section);

- (D) Failing to comply with the uniform coverage rule in paragraph (d) in § 1.125-5;
 - (E) Failing to comply with the use-or-lose rule in paragraph (c) in § 1.125-5;
 - (F) Allowing employees to revoke elections or make new elections, except as provided in § 1.125-4 and paragraph (a) in § 1.125-2;
 - (G) Failing to comply with the substantiation requirements of § 1.125-6;
 - (H) Paying or reimbursing expenses in an FSA other than expenses expressly permitted in paragraph (h) in § 1.125-5;
 - (I) Allocating experience gains other than as expressly permitted in paragraph (o) in § 1.125-5;
 - (J) Failing to comply with the grace period rules in paragraph (e) of this section; or
 - (K) Failing to comply with the qualified HSA distribution rules in paragraph (n) in § 1.125-5.
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