
BENEFITS ALERT 2007- 06

TO: All Clients & Friends of FBMC

DATE: 08/21/07

FROM: Christina (Tina) Bischoff, *CFCI*
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RE: **New Proposed Regulations for Café Plans**

The much anticipated “new” proposed cafeteria plan regulations under Internal Revenue Code § 125 (the “New Proposed Regulations”) were released and recorded in the Federal Register on August 6, 2007. The New Proposed Regulations replace Code §§ 1.125-1 and -2 (the “Old Proposed Regulations”). A copy of the New Proposed Regulations is available at <http://edocket.access.gpo.gov/2007/pdf/E7-14827.pdf> .

Most of the previously issued guidance, to the extent it differs from this new guidance, can remain in effect through the effective date of the final regulations, which will generally become effective for plan years beginning **on or after January 1, 2009**.

Some highlights of the New Proposed Regulations include:

- effective **August 6, 2007**, the amount to be included in income for pre-tax Group Term Life coverage in excess of \$50,000 is to be taken from the Table I rate, even if the salary reduction amount is greater. **NEW!**
- additional guidance on the cafeteria plan nondiscrimination rules. **NEW!**
- *clarification* that a Health FSA may reimburse a participant for orthodontia services before the services are provided, but only to the extent the employee has actually made the payments in advance of the services in order to receive the services.

The New Proposed Regulations do not change:

- the existing use-lose-it rule applicable to all FSAs.
- the Health FSA uniform coverage requirement.
- the existing Code § 1.125-3 final regulations regarding the impact of leaves of absence under the Family Medical Leave Act (“FMLA”) on cafeteria plan elections.
- the existing Code § 1.125-4 final regulations on permissible mid-plan year election changes.

The feature article in FBMC’s October issue of the *Quarterly Review* will review and comment on these new rules in detail.

For now, FBMC will be attending the 2007 Annual Conference presented by the Employers Council on Flexible Compensation in Reno, Nevada, from 8/14-8/17. Attendance at this event will give us an opportunity to interact with the IRS officials who have the authority to represent the agencies regulating the café plan regulations.

The IRS will hold a public hearing on the New Proposed Regulations on Nov. 15, 2007 and will accept comments from interested parties and the general public as long as they’re submitted by Nov. 5th. **If you have any comments or questions you’d like forwarded to the IRS**, just e-mail them to me at tbischoff@fbmc-benefits.com and I will add them to ours.

Additional Information

Please contact your Account Manager or the author of this Benefits Alert.