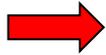


Prop. Reg. Section 1.125-1(r)(1)

Cafeteria plans; general rules.

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(r) *Employer contributions to a cafeteria plan --(1) Salary reduction-in general.* The term *employer contributions* means amounts that are not currently available (after taking section 125 into account) to the employee but are specified in the cafeteria plan as amounts that an employee may use for the purpose of electing benefits through the plan. A plan may provide that employer contributions may be made, in whole or in part, pursuant to employees' elections to reduce their compensation or to forgo increases in compensation and to have such amounts contributed, as employer contributions, by the employer on their behalf. See also § 1.125-5 (flexible spending arrangements). Also, a cafeteria plan is permitted to require employees to elect to pay the employees' share of any qualified benefit through salary reduction and not with after-tax employee contributions. A cafeteria plan is also permitted to pay reasonable cafeteria plan administrative fees through salary reduction amounts, and these salary reduction amounts are excludible from an employee's gross income.

(2) *Salary reduction as employer contribution.* Salary reduction contributions are employer contributions. An employee's salary reduction election is an election to receive a contribution by the employer in lieu of salary or other compensation that is not currently available to the employee as of the effective date of the election and that does not subsequently become currently available to the employee.

(3) *Employer flex-credits.* A cafeteria plan may also provide that the employer contributions will or may be made on behalf of employees equal to (or up to) specified amounts (or specified percentages of compensation) and that such nonelective contributions are available to employees for the election of benefits through the plan.

(4) *Elective contributions to a section 401(k) plan.* See § 1.401(k)-1 for general rules relating to contributions to section 401(k) plans.

(s) *Effective/applicability date.* It is proposed that these regulations apply on and after plan years beginning on or after January 1, 2009, except that the rule in paragraph (k)(2)(i)(B) of this section is effective as of the date the proposed regulations are published in the **Federal Register**.

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