

CLIENT ALERT

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IMPORTANT INFORMATION ABOUT SECTION 125 PREMIUM ONLY PLANS

Anytime you allow employees to pay for their benefit contributions on a pre-tax basis you are offering a Premium Only Plan (POP) under Section 125 of the Internal Revenue Code (IRC).

While this is an accounting issue and we are not an accounting firm, we are discovering that many employers are not in compliance as defined by the IRS. Many clients had the proper documentation at one time, but through changes in HR staff or for other reasons, the documents have been lost or misplaced or need updating. We highly recommend that if you have any concerns as to whether or not you are fully compliant that you discuss this with your corporate accountant.

The IRS is very clear that Premium Only Plans must meet certain criteria:

- Ø There must be a Plan Document which describes the POP Plan
- Ø There must be a Summary Plan description that is provided to each eligible employee
- Ø There must be an irrevocable election form
- Ø There must be a resolution to offer a Section 125 plan
- Ø Only eligible employees (as defined by the IRS) may participate (*)
- Ø The plan may not discriminate in favor of highly compensated or key employees

We have clients that have worked with two vendors to supply the Plan Document, SPDs and the Election Form. Their charge for this service is comparable. You may choose to use one of these vendors or your accountant/payroll company may have a recommendation.

AmeriFlex - Provides the documents via e-mail in PDF format. The production of these documents usually takes less than 24 hours. (www.flex125.com)

Core Documents - Provides one hard copy of the documents. The information is mailed and usually takes about two weeks. (www.coredocuments.com)

With both companies, copying and distributing the information to your employees is your responsibility.

(*)As a general rule, people who are considered by the Internal Revenue Service to be "self-employed" cannot participate in Section 125 plans, although employees of self-employed may participate. Examples of what is considered self-employed are:

- Ø Sole proprietors of sole proprietorships
- Ø Partners of partnerships
- Ø Members of LLCs ("member" is the usual term for an LLC owner)
- Ø More-than-2%-shareholders of S-Corporations (Stock owned by the owner's spouse, children, grandchildren and/or parents are treated as if owned by the member). Spouses, Children, grandchildren and/or parents of "more than 2% shareholders cannot participate in an S Corporation's Section 125 Plan even if they are considered bona fide employees. The employees of an S Corporation are eligible.

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This e-mail is informational only and not meant as legal or accounting advice nor is it meant to advise you of your entire obligations IRC Section 125. If you would like more information please contact your CHB Group account manager or discuss this with your corporate accountant.