

## **Section 125 Cafeteria Plan Compliance Checklist**

**Please use the information below to determine if your Cafeteria Plan is in compliance with Section 125 of the IRS Code.**

- Written, signed Plan document. This document details the benefits offered pre-tax under the Plan, requirements for eligibility, participation, termination of employment, and other required language.
- Summary Plan Document. This must be provided to ALL eligible employees and new hires, as they become eligible for the Plan. The SPD has specific required language, including name and address of Plan Administrator, person to contact in the event of questions or complaints concerning benefits under the Plan, etc. It must be written in such a way that the average employee can read and understand it.
- Form 5500 (C/R if under 100 participants). This form must be filed each year with the Internal Revenue Service for a “fringe benefit plan” under Section 6039(d) of the IRS code.
- Irrevocable election forms. These must be signed by the employees electing to participate in pre-tax benefits, explaining to them that they are reducing their contribution to Social Security by the small amount of the premiums they are electing to pay tax-free. The employees must not be allowed to make changes to the plan benefit elections during a Plan Year, unless they have what is known as a “qualified status change”. Qualified status changes include marriage, divorce, birth, etc.
- Non-discrimination testing. There must be testing performed at least one time per Plan year as required under IRS Code Section 125. This testing is called “non-discrimination testing”, and ensures that the Plan stays in compliance with the requirements of the Code. These tests, along with the requirements listed above, should all be maintained in an “audit file” in the client’s office, in the event of a future IRS audit on your Plan.