

The Internal Revenue Service is providing the following sample plan to assist employers in establishing a qualified educational assistance program under section 127 of the Internal Revenue Code (Code). The sample plan is intended to satisfy the requirements of section 127 of the Code and the underlying Treasury Regulations. An employer, in its discretion, may modify the sample plan and include additional plan provisions, provided that the requirements of section 127 of the Code and the underlying Treasury Regulations continue to be satisfied.

[SAMPLE]
EDUCATIONAL ASSISTANCE PROGRAM

The [Employer Name] Educational Assistance Program (Plan) is intended to be a qualified educational assistance program under section 127 of the Internal Revenue Code (Code). The purpose of this Plan is to provide Educational Assistance to Eligible Employees of [Employer Name] (Employer). Section 127 of the Code provides that the gross income of an employee does not include amounts paid or expenses incurred by the employer for educational assistance to the employee (up to \$5,250 per calendar year) if the assistance is furnished pursuant to an educational assistance program under section 127 of the Code.

I. DEFINITIONS

- A. "Code" means the Internal Revenue Code of 1986, as amended.
- B. "Education" means education as defined in Treasury Regulation § 1.127-2(c)(4). "Education" means any form of instruction or training that improves or develops the capabilities of an individual. "Education" is not limited to courses that are job-related or part of a degree program. Education paid for or provided under this Plan may be furnished directly by the Employer, either alone or in conjunction with other employers, or through a third party such as an Educational Institution.
- C. "Educational Assistance" means educational assistance as defined in section 127(c)(1) of the Code and Treasury Regulation § 1.127-2(c). "Educational Assistance" includes the payment by the Employer of expenses incurred by or on behalf of an Eligible Employee for Education of the Eligible Employee or the provision by the Employer of Education to an Eligible Employee. Expenses for Educational Assistance include, but are not limited to, tuition, fees, and similar payments, and books, supplies, and equipment. "Educational Assistance" includes the provision, by the Employer, of courses of instruction for an Eligible Employee (including books, supplies, and equipment), but does not include payment for, or the provision of, tools or supplies (other than textbooks) that the Eligible Employee may retain after completing a course of instruction, or meals, lodging or transportation. "Educational Assistance" also does not include any payment for, or the provision of any benefits with respect to, any

course or other Education involving sports, games, or hobbies, unless such Education involves the business of the Employer or is required as part of a degree program. In the case of payments made before January 1, 2026, "Educational Assistance" also means the payment by the Employer, whether paid to an Eligible Employee or to a lender, of principal or interest on any Qualified Education Loan incurred by the Eligible Employee for the Education of the Eligible Employee. The types of Educational Assistance covered by this Plan are specified in Section II.B. of this Plan.

- D. "Educational Institution" means a school maintaining a regular faculty and established curriculum, and having an organized body of students in attendance as defined in Treasury Regulation § 1.151-3. It includes primary and secondary schools, colleges, universities, normal schools, technical schools, mechanical schools, and similar institutions (including some vocational schools and postsecondary educational institutions), but does not include noneducational institutions, on-the-job training, correspondence schools, and night schools.
- E. "Eligible Educational Institution" means any college, university, vocational school, or other postsecondary educational institution as defined in sections 221(d)(2) and 25A(f)(2) of the Code that is (1) described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088) as in effect on August 5, 1997, (generally all accredited public, nonprofit, and proprietary postsecondary institutions); and (2) participating in a federal financial aid program under title IV of the Higher Education Act of 1965 or is certified by the Department of Education as eligible to participate in such a program but chooses not to participate.
- F. "Eligible Employee" means an employee who is currently employed by the Employer and may also include an employee as defined in Treasury Regulation § 1.127-2(h)(1) (a retired, disabled, or laid-off employee; a current employee who is on leave, as for example, in the Armed Forces of the United States; or an individual who is self-employed within the meaning of section 401(c)(1) of the Code). Eligible Employees covered under this Plan are specified in Section III of this Plan.
- G. "Employer" means [Employer Name].
- H. "Limitation Class" means the limitation class as defined in Treasury Regulation § 1.127-2(f)(2), which consists of:
 - i. *Shareholders*. Individuals who, on any day of the Program Year, own more than 5% of the total number of shares of outstanding stock of the Employer;

- ii. *Owners*. In the case of an employer's trade or business that is not incorporated, individuals who, on any day of the Program Year, own more than 5% of the capital or profits interest in the Employer; and
 - iii. *Spouses or dependents*. Individuals who are spouses or dependents of shareholders or owners described above. For purposes of determining stock ownership, the attribution rules described in Treasury Regulation § 1.127-2(h)(4) apply. The regulations prescribed under section 414(c) of the Code are applicable in determining an individual's interest in the capital or profits of an unincorporated trade or business.
- I. "Plan" means the [Employer Name] Educational Assistance Program.
 - J. "Plan Year" means the 12-month period beginning January 1 and ending on December 31.
 - K. "Program Year" means the Plan Year and applies for purposes of Treasury Regulation § 1.127-2(f).
 - L. "Qualified Education Loan" means a loan, as defined in section 221(d)(1) of the Code, that is for education at an Eligible Educational Institution.

II. EDUCATIONAL ASSISTANCE

- A. The benefits provided under this Plan consist solely of the types of Educational Assistance specified in Section II.B. and are limited to \$5,250 per Eligible Employee per calendar year. If an Eligible Employee receives Educational Assistance under this Plan that exceeds \$5,250 in a calendar year, the excess amount shall be subject to federal income tax and applicable federal employment taxes, unless the Educational Assistance qualifies as a working condition fringe benefit under section 132 of the Code or is excludable under another section of the Code.
- B. This Plan provides the following types of Educational Assistance:
 - i. [Tuition, fees, and similar payments, and books, supplies, and equipment (except for those the Eligible Employee may retain after completing a course of instruction (other than textbooks) specifically excluded in the definition of "Educational Assistance" in Section I.C.) to an Eligible Employee];
 - ii. [The payment by the Employer, whether paid to an Eligible Employee or to a lender, of principal or interest on any Qualified Education Loan incurred by the Eligible Employee for the Education of the Eligible Employee]; and

- iii. [The provision, by the Employer, of courses of instruction for an Eligible Employee (including books, supplies, and equipment (except for those the Eligible Employee may retain after completing a course of instruction (other than textbooks) specifically excluded in the definition of “Educational Assistance” in Section I.C.))].
- C. The \$5,250 annual limit applies to amounts paid and expenses incurred by the Employer during a calendar year. If an Eligible Employee seeks reimbursement for expenses incurred, the expenses must be paid by the Eligible Employee in the same calendar year for which reimbursement is made by the Employer, and the expenses must not have been incurred prior to employment (however, the Employer may make payments of principal and interest on Qualified Education Loans that were incurred by the Eligible Employee in prior calendar years and prior to employment). “Unused” amounts of the \$5,250 annual limit cannot be carried forward to subsequent years.
- D. Requests from Eligible Employees to receive Educational Assistance under the Plan must be submitted in accordance with the following procedures: [Insert the Employer’s procedures].

III. ELIGIBILITY

- A. The Eligible Employees covered under this Plan include the following:
 - i. Employees currently employed by the Employer;
 - ii. [Retired, disabled, or laid-off employees];
 - iii. [A current employee who is on leave, as for example, in the Armed Forces of the United States]; and
 - iv. [An individual who is self-employed within the meaning of section 401(c)(1) of the Code].
- B. [This Plan includes the following additional conditions for eligibility:]
 - i. [An employee’s participation in the Plan begins on [[#] of months after the date of hire]]; and
 - ii. [Part-time employees are eligible for [pro-rated benefits]].

IV. EXCLUSIVE BENEFIT

This Plan provides Educational Assistance for the exclusive benefit of Eligible

Employees. Spouses and dependents of an Eligible Employee may not participate in this Plan, unless the spouse or dependent is also an Eligible Employee.

V. SUBSTANTIATION

An Eligible Employee receiving payments under this Plan must provide substantiation to the Employer of expenses incurred.

VI. NON-DISCRIMINATION

- A. This Plan shall not discriminate in favor highly compensated employees (as defined in section 414(q) of the Code) of the Employer, and the Plan shall comply with the requirements of section 127(b)(2) and (3) of the Code and Treasury Regulation §§ 1.127-2(e) and (f).
- B. This Plan shall not be considered discriminatory under Treasury Regulation § 1.127-2(e) merely because: (i) Different types of Educational Assistance available under the Plan are utilized to a greater degree by Eligible Employees with respect to whom discrimination is prohibited than by other Eligible Employees, or (ii) Conditions are required or considered in determining the availability of benefits with respect to a course of study for which benefits are otherwise available, including, but not limited to, successful completion of the course or attaining a particular course grade.
- C. No more than 5% of the amounts paid or incurred by the Employer for Educational Assistance benefits during the Program Year are provided to the Limitation Class.

VII. PROHIBITED CHOICES

This Plan does not by its terms provide, and may not be operated to provide, Eligible Employees with a choice between Educational Assistance and other remuneration includible in gross income. However, this Plan is not precluded from being part of a more comprehensive employer plan that provides a choice of nontaxable benefits to employees.

VIII. NOTICE

The Employer shall provide each Eligible Employee with reasonable notice of the availability and terms of this Plan. [This Plan shall be made available for review by Eligible Employees on the Employer's Human Resources website.] [An Eligible Employee shall receive a paper copy of this Plan upon written request.]

IX. FUNDING

The Employer will pay Educational Assistance benefits from its general assets.

X. MISCELLANEOUS

A. The Employer may amend or terminate this Plan at any time, provided that any amendment or termination shall not affect the right of Eligible Employees to claim Education Assistance for which they qualified prior to such amendment or termination.

B. This Plan shall be construed and enforced according to the laws of the State of [State Name], to the extent not preempted by federal law.

XI. EFFECTIVE DATE

This Plan is effective as of [the date signed below].

Employer Signature

Date