

New COBRA Rules!

In May of 2004, The Department of Labor (DOL) issued final regulations which are effective for plan years beginning on or after November 26, 2004. (Click [here](#) for a copy of the final regulations.)

Listed below are several noteworthy items found in the final regulations.

1) Model Notices – The DOL has issued safe-harbor model forms of the COBRA General (initial) notice and the COBRA election notice. It's important to note that use of the previous model notice no longer complies with the final regulations. (Click [here](#) for a copy of the DOL model general notice. Click [here](#) for a copy of the DOL model election notice.)



2) New Notice Requirements - The final regulations contain new notice requirements.

“Notice of Unavailability” – This provides that plan administrators must provide a notice of unavailability after denying COBRA.

“Termination Notice” – This notice must be sent “as soon as practicable following the administrator’s determination that continuation coverage shall terminate.”

The DOL has not issued model notices for the two new notice requirements.

3) Reasonable Procedures – If a plan does not establish and follow ‘reasonable procedures’ as required by the regulations, then qualified beneficiaries can give informal notices that will be binding on the plan. As an example, in absence of these procedures, a former employee could call the Human Resources Director requesting COBRA and this would be a binding election.

These are just a couple of the items found in the final regulations. If you are an employer required to offer COBRA, you should carefully

review the final regulations with your COBRA Administrator or other professional counsel.

ProBenefits is currently revising the model COBRA notices found on our website for the Medical FSA. We will also be sending out an amendment for the SPD to all of our clients for all plans renewing after November 26, 2004.

Calendar Year ReEnrollment Coming Soon

In the November issue of *Flex Plan News*, we will include an Order Form for Reenrollment Materials. As usual, there will be a brochure for distribution to eligible employees, containing reenrollment instructions and forms. We will also provide an update kit for you, the Benefit Administrator.

Your Questions Answered

Why would a participant in the Medical FSA want to continue their coverage under COBRA?

Coverage under the Medical FSA ceases upon termination of employment. A terminating employee with a positive balance in their Medical FSA may wish to elect and pay for COBRA on a post-tax basis in order to have continued access to their account for future expenses. The example below illustrates this point.

During the first five months of the plan year, Mike contributes \$500 to his Medical FSA (annual election of \$1,200). He terminates employment on May 30. Mike did not incur any medical expenses before he terminated. Unless he elects COBRA, Mike will forfeit the \$500 he contributed under the use-it-or-lose-it rule. But if Mike elects and pays for COBRA coverage and incurs \$1,200 in medical expenses before the end of the plan year, Mike can be reimbursed \$1,200.

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