

Flex Plan News

Benefits News for Administrators

October 2007

New IRS Regulations For Flex Plans

The IRS recently issued new proposed regulations governing Section 125 flexible benefit plans. The new regulations, which await almost certain final approval in Washington, contain mostly favorable changes for premium-only flex plans, Flexible Spending Accounts, and flex credit plans.

The regulations replace the original guidance issued in 1989. The new guidance primarily includes the formalization of substantial informal guidance issued by the IRS over the years. The good news for employers is that plans already in compliance with prior formal and informal guidance will not experience any significant changes after the new regulations. There are a few important additions, but there are no major surprises that affect the operation of compliant flex plans. ProBenefits will provide further information regarding the new regulations, but no immediate changes for your flex plan are needed.

The regulations are effective for plan years beginning 1/1/09, but employers may rely on them immediately.

Highlights of the New Guidance include:

- (1) For Health FSAs, continuation of both the "Use-It-Or-Lose-It" rule and the Universal Coverage rule ("Annualization").
- (2) Clarification on the IRS' strict rules prohibiting deferred compensation through cafeteria plans. The regulations include some newly recognized exceptions, including:
 - Plans which include dental or vision insurance plans with 2-year lock-in provisions do not violate the deferred compensation rule and may be included in a cafeteria plan;
 - For Health FSAs, there is a new limited exception for reimbursement of prepayments for qualified orthodontia expenses (*see below) and durable medical equipment. Where eligible, these expenses may be reimbursed even though services may be partially rendered in future plan years.
- (3) Instruction on how to conduct required non-discrimination testing of cafeteria plans. The regulations also include a new "Safe Harbor" provision for premium-only plans that meet certain qualifications.
- (4) Clarification that premiums for Long-Term Care insurance policies remain non-qualified benefits that may not be pre-taxed through a cafeteria plan or reimbursed through a Health FSA.
- (5) Clarification on election rules, including an allowed 30-day election window for new hires in plans that allow immediate eligibility to participate.

For a full text copy of the guidance, visit: <http://www.ProBenefits.com/compliance/125regs.pdf>.

If you have any questions or want more information regarding the new regulations, contact Jason Cogdill at toll-free 888-722-8382, ext. 132; direct dial 336-714-8012; or Jason@ProBenefits.com.

New Procedure for Orthodontia Reimbursement

Good news for Health FSA plans and participants: IRS rules regarding reimbursement for orthodontia expenses are now more simple and convenient. As part of the new IRS cafeteria plan regulations, Health FSA participants can now be reimbursed for advance payments for orthodontia services. Whereas in the past IRS rules have prohibited reimbursement for such prepayments (including one-time lump sum payments), the new regulations allow a Health FSA participant to be reimbursed for orthodontia services before the services are provided, as long as the employee has actually made the payment in advance of the service in order to receive the service. Based on the new rule, ProBenefits has revised its orthodontia policy effective October 15.

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Where the employee is prepaying for services, the date of service is deemed to be the date of payment. This is an exception to the general rule for FSAs, which holds reimbursement is based on the date of service rather than the date of payment.

Example: Employer sponsors a calendar year Health FSA with a maximum amount of \$3600. Employee elects \$3000 for the 2008 plan year. Employee's dependent requires orthodontia treatment, which will occur over a two-year period in 2008 and 2009. On March 1, 2008, Employee pays the orthodontia expenses in full with a lump sum payment of \$2500.

Under the new rule, Employee may submit documentation for the orthodontia payment and be reimbursed up to \$2500 from his 2008 Health FSA balance. Even though all services are not yet incurred, the new rule deems the service to be incurred at the time of payment, allowing immediate reimbursement.

Note: If Employee had \$1000 in his 2008 FSA instead of \$3000, he could be reimbursed only \$1000 for the advance orthodontia expenses. He would not be able to be reimbursed for any additional portion of the prepayment in the 2009 plan year, because the payment (and deemed service) was in 2008. Participants with low Health FSA elections or with low plan maximums should carefully consider this as they make elections and schedule orthodontia payment/treatment.

Flex Debit Card Update: Improved IIAS For 2008

Recent changes in the law and card technology have made the Flex Debit Card more efficient and effective for participants and plans. The Inventory Information Approval System ("IIAS") continues to provide additional locations where eligible expenses can be auto-adjudicated. When a participant swipes the Debit Card at a participating merchant, the system automatically validates eligible items purchased at the point of sale. No further documentation is needed from the participant for these transactions. Effective 1/1/2008, approximately 40 merchants will utilize the IIAS system, with many more to soon follow. Some of the merchants joining Wal-Mart and Walgreens will be Harris Teeter, Kroger, and Target. For a complete listing of merchants with the IIAS please visit our website: www.ProBenefits.com/Debit/IIAS.html.

Since the Debit Card is convenient for participants and also helps employers boost participation, we anticipate many new merchants joining during 2008. If you have any questions or would like more information on the Flex Debit Card, contact your ProBenefits administrator. Also, you may visit us on the web at www.ProBenefits.com.

FSA Group Meetings for Renewing Cases

If participation in your company's FSA plan is low and employees could benefit from an effective presentation to employees, contact us about a potential on-site group meeting. ProBenefits presenters are available to conduct reenrollment meetings for existing clients upon request. Our research indicates that FSA employee reenrollment meetings can have a significant impact on increasing participation. Of course, increased participation is a "win-win" for employers, since with every additional participant there is an increase in employer tax savings in addition to the tax savings for the participant.

We highly recommend on-site reenrollment meetings for groups with low overall participation (less than 20%) and/or groups in which the level of general education and awareness of flex plan benefits needs a boost.

Flex Q&A: When does a terminated employee's FSA participation end?

According to IRS rules, an employee's participation in an FSA ends immediately upon termination of employment. For a Health FSA (except where COBRA applies and is elected by the participant), the participant can only be reimbursed for services incurred up to the date of termination. The participant has 90 days from the date of termination to submit eligible claims for reimbursement.

In a Dependent Care FSA, participation ends at termination and the claim runout period is 90 days. However, a unique feature of the Dependent Care FSA is "spenddown," which allows a participant with a positive balance in the account at termination to be reimbursed for eligible dependent care incurred before or after termination. Spenddown claims may be incurred after the termination date as long as they are within the 90-day period.

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