

Flex Plan News

Benefits News for Administrators

August 2008

Update: Final Cafeteria Plan Regulations Due Soon

Last September, the IRS issued proposed final regulations governing cafeteria plans, which will replace the original proposed guidance issued in 1989. Since the release of the proposed regulations and the notice and comment period at the end of 2007, the industry has awaited the final regulations. Latest indication from the IRS is that they will be released in early Fall. With the lengthy delay, many experts anticipate that the effective date will be pushed back to January 2010 (originally 1/1/09). At minimum, we believe that the effective date for certain portions of the regulations, including revised non-discrimination testing rules, will be delayed.

The new regulations contain mostly favorable changes for premium-only flex plans and FSA plans. The new guidance reflects a full rewrite of the rules by the IRS, including the formalization of much informal guidance issued by IRS officials through the years. The good news is that for entities administering plans in compliance with prior formal and informal guidance (including ProBenefits clients), plans will not experience significant change with the new regulations. There are a few important additions, but there are no major surprises.

We will provide additional details about the final regulations in a special edition bulletin as soon as they are released. Until then, please contact ProBenefits attorney Jason Cogdill with any questions.

New HEART Act Legislation and Impact on Health FSAs

On May 22, Congress passed the Heroes Earnings Assistance and Relief Tax Act of 2008 ("Heroes Act" or "HEART Act"). The HEART Act primarily includes changes to the IRS Code that affect 401(k) plans. Relevant to flex plans, the Act allows the option of qualified distributions from Health FSAs for reservists called to duty. The Act amends the cafeteria plan rules to give employers the option of allowing a qualified distribution of all or a portion of the Health FSA balance of any reservist participant who is called to active duty for 180 or more days (or indefinitely). The provision applies to distributions made after the Act's enactment date.

The option for qualified reservist distributions is intended to provide a way for plans to help reservists avoid unwanted forfeitures under the "Use-or-Lose" rule, although some issues remain as to how the distributions would work. What we do know is that: (1) to qualify, the call to duty must be on or after May 22nd; (2) the amount of the distribution would be the cash balance on the day of the call to duty; and (3) the distribution would be paid to the participant from plan assets. How best to pay the distribution is to be decided.

Because this is an optional provision and because qualified distributions are unlikely for most plans, no immediate amendment to your SPD is necessary. If you have a situation arise such that a distribution may be applicable, let us know so that we can assist. Otherwise, if you have any questions about this topic, please contact us.

IRS Issues HSA "Grab Bag" Guidance

The Treasury Department and the IRS issued the long-awaited HSA "grab bag" guidance in IRS Notice 2008-59. The guidance consists of 42 Questions and Answers on a broad range of topics affecting HSAs. The grab bag

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guidance largely confirms earlier guidance, but there is also a significant amount of new information. For a full copy of the guidance, see: www.probenefits.com/Forms/notice200859.pdf.

HSA contributions are eligible for pre-tax treatment under a flex plan. If you have any questions about how that affects your plan, please let us know.

Election 2008: Healthcare Platforms of the Candidates

With the Presidential election twelve weeks away, healthcare remains a key issue and topic. If you are interested in reading more about the healthcare proposals of the two primary candidates, visit the links below.



John McCain: www.johnmccain.com/Informing/Issues/19ba2f1c-c03f-4ac2-8cd5-5cf2edb527cf.htm

Barack Obama: www.barackobama.com/issues/healthcare/

Is Your Company Maximizing the Benefit of Its FSA?

As the calendar year enrollment period approaches, now is a good time to analyze whether your company is maximizing its FSA benefit and tax savings. How is your FSA enrollment relative to number of eligible employees? Have you considered the Flex Debit Card? Would a change in Health FSA maximum be appropriate? Are you preparing to present the FSA effectively through presentations and/or materials during open enrollment?

Keep in mind that flex plan contributions provide tax savings for Employees and Employers. Employees typically save 30% or more on all dollars run through the plan on medical, dental, vision, or childcare expenses. Employers are exempt from the FICA match (7.65%) on all Employee contributions. If we can be of assistance, let us know.

FLEX FOCUS: Does COBRA apply to Health FSAs?

YES. Health FSAs are ‘group health plans’ that are subject to the federal COBRA statute and (for employees of fewer than 20, state continuation laws). As such, Health FSAs are essentially treated like health insurance plans for purposes of continuation coverage. The only full exemptions to COBRA are for churches and the federal government.

Health FSAs subject to COBRA must offer continuation coverage to “qualified beneficiaries” (terminated employees and eligible dependents) who lose health FSA coverage as a result of qualifying events. As with other COBRA continuation, if COBRA applies the employer must provide applicable COBRA notices to affected employees.

Importantly, many Health FSA plans (including the vast majority of plans administered by ProBenefits) qualify for an exception limiting the extent of the COBRA obligation. This exception is referred to as “**Limited COBRA.**”

What Is Limited COBRA?

Whereas plans that are subject to “full” COBRA are required to offer continuation coverage to all terminating participants for a period of up to 18 months, Limited COBRA significantly lessens the requirements for COBRA-eligible employers. Limited COBRA for Health FSAs has two basic components:

- (1) COBRA coverage only has to be offered to qualified beneficiaries who have underspent their accounts (more money contributed than reimbursed) as of the date of the qualifying event; and
- (2) For those who have underspent their accounts (more money contributed than reimbursed), COBRA coverage only must be through the end of the current plan year.

For more information, including a reference document with additional examples and explanations or a detailed COBRA info packet for employers self-administering COBRA, contact Jason Cogdill.

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