

Broker Update

Benefits Updates For Broker Clients

July 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. Indication from the IRS is that they will be released in late summer. The regulations will be effective for plan years beginning 1/1/2009. Some industry experts anticipate that certain aspects of the guidance (including changes to discrimination testing requirements) may not go into effect until January 2010.

The new regulations contain mostly favorable changes for premium-only flex plans, FSA plans, and flex credit plans. The new guidance reflects a full, simplified rewrite of the rules by the IRS, including the formalization of much informal guidance issued by IRS officials through the years. The good news for employers, advisors, and administrators is that for those 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 as soon as they are released. Until then, please contact ProBenefits attorney Jason Cogdill with any questions (Jason's contact info is located on page 2).

IRS Issues Long-Awaited HSA "Grab Bag" Guidance

On June 25, 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 guidance largely confirms earlier guidance, but there is also a significant amount of new information. For a full copy of the new guidance, see: www.probenefits.com/Forms/notice200859.pdf.

Hot Topic: Considerations for Adding HDHP & HSA Option Mid Plan Year

Coordination of benefits issues related to FSA & HSA participation can be very complex. If you are advising any plans that are considering adopting an HSA plan during the FSA plan year, there may be some eligibility and coordination issues to address. We will attempt to provide as much guidance and assistance as we are able, but the nature of these issues is such that companies and advisors should fully research and analyze all legal and tax implications of the proposed plan design prior to implementation of the HSA option.

If you have any questions about this topic or would like some reference information to help you advise your client, please contact us. We have excellent reference information on this topic, including a "*Considerations for FSA Plans Adopting HSAs*" document that is particularly helpful for employers.

The good news is that FSAs can work effectively with HSA options. See the Q&A on Page 2 for more details.

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New HEART Act Legislation and Impact on Flex Plans

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 benefits under 401(k) plans. In addition, Health FSAs and group health plans may be affected by provisions of the Act.

The primary item of interest for flex plans is that that 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-it-or-lose-it" rule, although some issues remain as to how the distributions would work.

Because this is an optional provision for employers and because qualified distributions are unlikely for most plans, no immediate amendments to plan SPDs are necessary. We will be advising clients of the new law and their options. If you have any questions about this topic, please contact us.

Compliance and Technical Support for Brokers

As part of our broker services, our in-house benefits attorney, Jason Cogdill, is available to assist you with technical and compliance issues for welfare benefit plans. Jason is experienced with compliance and administrative issues relating to FSA/HRA/HSA plans as well as ERISA and other important benefit topics. Jason routinely assists brokers and clients with technical issues, and he is a frequent seminar presenter on subjects related to benefit plans. In addition, Jason handles compliance services other than plan administration, in case that may be a need for any of your clients. You may contact Jason at (888) 722-8382, ext. 132, direct dial (336) 714-8012, email Jason@ProBenefits.com.

Your Question Answered: "Do FSA Plans Work In Conjunction with HSA & HDHP Plans?"

Yes. In fact, FSA components enhance an HDHP plan design in several valuable ways. While there are eligibility restrictions that prevent individuals from participating in general-purpose Health FSAs at the same time as HSA accounts, FSA plans still work very effectively with HDHP and HSA plans. First, HDHP plans still need the 125 plan as a vehicle for pre-tax premiums (including HSA pre-tax payroll contributions). Second, the FSA option can assist employees with cash flow concerns and allow employees to save additional tax money on qualified expenses. Third, the Dependent Care FSA remains a significant benefit to employees and tax-saving tool to employees and employers. Fourth, the Limited FSA (for dental/vision expenses) is an excellent tool to assist HSA account holders them with tax-saving strategies. Finally, as studies are confirming, some employees will forego the HSA account option, and the general-purpose Health FSA remains an effective alternative for them.

For more information on this topic, including reference materials to share with clients, contact us.