

Benefits Alert 2005-4

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Re	ECFC Conference Highlights		

FBMC staff just returned from the 18th Annual Flexible Benefit Administrators' Symposium sponsored by the Employers Council on Flexible Compensation (ECFC).

In addition to an excellent slate of industry speakers to discuss policy and practice issues, Harry Beker, IRS Branch Chief and Beth Purcell, Assistant IRS Branch Chief, Health and Welfare Division, Office of Associate Chief Counsel, were on the agenda to present the new Treasury business plan and to answer questions.

We got a sneak preview of the IRS thinking on some of the issues that will be addressed within the guidance and/or the new regulations. For the most part the end results will be favorable to employers and to employees.

Most of what we heard was a repeat of recent teleconferences with the IRS; however, a few **surprises** were in store when the discussion turned to the Card. The IRS is looking at relaxing "where" the card can be used – for example, at a grocery store or retail store as long as further specificity can be obtained by using a department or SKU number. They are also considering multiple co-pay amounts and a *de minimus* dollar amount whereby **pay and chase** is not required. Harry Beker was firm that sampling is not permitted and is not on the table for consideration despite the claims from some Card vendors to the contrary; nor is employee self-certification as some administrators are allowing. Alternatives for administrators and plan sponsors to use to collect outstanding transaction amounts will also be provided as part of the new guidance. The IRS recognizes the difficulties inherent in pay and chase, payback through payroll and converting outstanding amounts to taxable income. All benefit administrators and plan sponsors are looking for some relief - at least those of us who are following the rules.

Some other items on the business plan of interest to benefit administrators and plan sponsors:

- Rewrite of the regulations under §21 to clarify some of the dangling DCAP issues, such as a final determination related to kindergarten expenses, how to establish "incidental" items, and addressing DCAP expenses while on sick leave.
- New proposed regs under §152 to correct some of the unintended consequences of implementing standard dependent definitions, specifically: correcting the gross income issue for non-health plans, addressing the non-resident child and adult relative exclusions.
- Further clarification of the grace period and the impact upon HSAs and DCAP plans. Beth Purcell mentioned that the guidance will include various plan designs that can be adopted that will permit HSA eligibility with FSA participation.
- New regulations addressing comparability with HSA programs are already at the Federal Register and will be released shortly. Of the 50-page document, 30 pages are in Q&A format. An explanation is provided of how and when §125 rules apply.
- We have a new date of spring 2006 for the long-awaited Final Regulations under §125. Beth Purcell (a no nonsense task master according to Beker) is taking the lead on finalizing this project.

Stay tuned . . .

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