

Benefit Insights

Voluntary Benefit Programs and Flexible Benefit Plans: Two Vehicles for Offering Choice to Employees

The American work force today looks much different than it did just a few decades ago, and projections indicate that it will continue to change. According to the Department of Labor's Bureau of Labor Statistics (BLS), in the decade 2000-2010, the following changes will take place—

- While the median age of the work force will rise due to the aging of the baby boomers, the "youth labor force," defined as workers ages 16-24, will grow more rapidly than the overall labor force.
- Women's share of the labor force will increase, as will the participation rate of women in nearly all age groups.
- The Asian labor force will grow by 44%, the Hispanic labor force by 36%, the Black labor force by 21%, and the White labor force by 9%.

The growing diversity of the work force, along with increases in the number of dual-income households and single-parent households, can render one-size-fits-all benefit packages arcane. Inflexible benefit packages can force employees into benefit plans that they consider unnecessary. A married employee may not need the employer-sponsored medical plan if covered under a spouse's plan (but might appreciate the ability to contribute to a dependent care spending account). The 20-year-old single and childless employee may see no need for one-times-salary life insurance coverage (but might like a bit of tuition assistance).

As these examples illustrate, today's employees want--and need--choice. A survey conducted late last year by MetLife reflects this desire. Three in five employees surveyed expressed an interest in their employers offering a wider array of voluntary benefit products. Voluntary benefits, along with flexible benefit plans (also known as cafeteria plans), are two popular vehicles for offering choice to employees. This article briefly discusses the differences and similarities between the two.

Cafeteria plans, as described by the tax code, are a means for offering employees benefit choices in a tax-preferred way.

Qualified benefit choices in a cafeteria plan can include accident and health coverage (e.g., major medical, dental, vision), short- and long-term disability benefits, AD&D, group-term life, child or dependent care assistance, and adoption assistance. Employee-funded flexible spending accounts for health care expenses and dependent care expenses also are considered cafeteria plan benefits.

Typically, an employer pays some of the cost of the benefits offered through a cafeteria plan (just as it typically makes some contribution to employee health insurance), and employees pay their share with pre-tax dollars. Many times, the major impetus in implementing a cafeteria plan is to enable employees to take advantage of the tax break of pre-tax premium payments.

Voluntary benefit programs alone do not offer a tax-break, but they can encompass a wider array of benefit options, and do offer employees convenience and value. Typically, employees pay the entire premium for their benefit selections in a voluntary benefit program. However, because the benefits are offered in a group format, premiums are less than they would be for similar products in the individual market. Employees also save time not having to shop for products on their own and enjoy the convenience of paying for their selections through payroll deduction.

The possibilities for voluntary benefit offerings are almost endless, but current popular choices include group auto insurance, group homeowner's insurance, group legal, supplemental life coverage (including group universal products), long-term care, disability, vision, dental, and hearing. Other possibilities include pet insurance, mortgages and loans, relocation assistance, and discount purchasing programs.

As a broker of cafeteria and voluntary benefit programs we provide the communications packages and delivery vehicles necessary to support the programs. Thus, employees get the choice they need, while the sponsoring employer enjoys greater appreciation from its workers at little additional cost.

Welcome to Our Newsletter!

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On May 26, 2004 the Department of Labor (DOL) issued final COBRA regulations 29 CFR 2590 Health Care Continuation Coverage; Final Rule.

The Department of Labor's final regulation provides specific information confirming notice requirements, setting minimum standards for the timing and contents of the notices required and providing model notices. The final regulations apply to notice obligations arising on or after the first day of the first plan year beginning on or after November 26, 2004. Calendar year plans must comply January 1, 2005.

These regulations contain some significant changes from the proposed regulations of 2003. Some simplification exists. Of particular interest to employers sponsoring a COBRA eligible health plan are the changes in notice requirements for delivery and content, the responsibilities of COBRA eligible individuals (qualified beneficiaries), and the requirement of two additional notices.

The DOL News Release announcing the final regulations and other DOL items pertaining to the final regulations are available at <http://www.dol.gov/ebsa/>.

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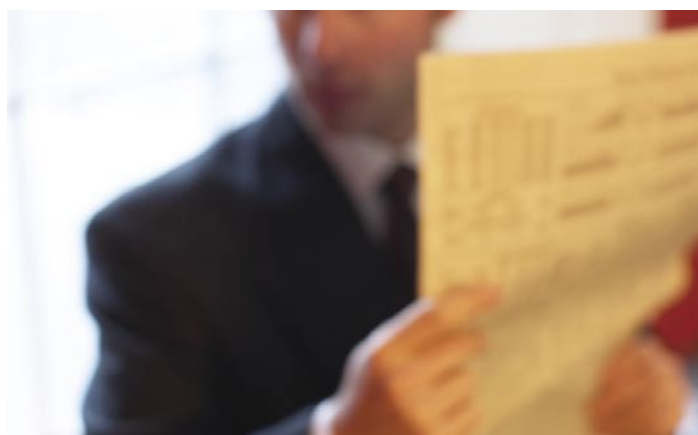
Protection for the 401(k) Plan Sponsor If Participants' Investment Choices Yield Poor Results

Over the last several years, the responsibility for financing one's retirement has increasingly shifted from employer to employee. According to the Bureau of Labor Statistics, over the 15-year period from 1985 to 2000, employees' primary retirement plan participation moved from defined benefit plans to defined contribution plans, such as 401(k) plans.

A key feature in most 401(k) plans is that participants make their own investment choices, from the set of options offered by the plan. That participants make their own investment choices might lead one to conclude that participants—and participants alone—are responsible for the consequences of these investment decisions. However, plan fiduciaries, such as the employer plan sponsor, are not automatically absolved of responsibility for a participant's investment decisions merely because the plan offered choices and participants made them. In order for a plan fiduciary to escape liability for losses resulting from a participant's investment decisions, the 401(k) plan must comply with ERISA Sec. 404(c).

What is a 404(c) plan? According to regulations issued by the Department of Labor, a 404(c) plan is one in which participants have the opportunity to exercise control over assets in their individual accounts, and the ability to choose how to direct those assets from a broad range of investment alternatives. The regulations spell out in detail how these two requirements are met, and compliance with each aspect is needed to secure the protection that 404(c) offers.

According to the regulations, participants are able to exercise control when they have the opportunity to give investment instructions to an identified fiduciary, and when they have the opportunity to obtain sufficient information to make investment decisions. "Sufficient information" includes a description of the investment alternatives; their objectives, risk/return, type, and diversification; and their fees, expenses, sales loads, etc. Participants must also receive an explanation of how to give investment instructions, and any limitations thereon. The regulations include specific requirements for plans that offer employer securities as an investment option.



According to the regulations, the "broad range of investment alternatives" must include at least three diversified investment options that enable a participant to materially affect the potential return and allow the participant to minimize the risk of large losses. While most 401(k) products today include more than this minimum number of investment options, the plan sponsor (perhaps with the assistance of an investment professional) still needs to determine whether the asset classes and styles of the offered funds satisfy the diversification, potential return, and risk minimization requirements.

It is important to note that ERISA Sec. 404(c) imposes no obligation on plan sponsors to offer investment advice to participants. Also, 404(c) protection is only available to the extent that a participant directs investment of his or her individual account. Sec. 404(c) also requires several communications to participants, including notice that the plan is intended to comply with 404(c), and that participants are responsible for the results of their investment decisions.

Recent events make a strong case for seeking 404(c) protection. The bear market of the early 2000s hit all investors, including 401(k) participants. Market gains that came easy in the 1990s faded quickly, and 401(k) balances plummeted. Corporate scandals have led to collapsing retirement plans at affected firms. Most recently, questionable trading activity within mutual funds has been in the news. All these events have focused attention on 401(k) investment performance, and the potential liability of plan fiduciaries for investment losses.

A word of caution is appropriate here. The relief that ERISA Sec. 404(c) provides plan fiduciaries is not absolute. Regardless of 404(c) compliance, the plan sponsor continues to have the duty to act prudently and solely in the interest of plan participants when selecting the investment options offered by the plan. Furthermore, both investment managers and their offerings must be monitored to ensure that they continue to be prudent choices. What 404(c) can protect plan fiduciaries from is the result of participants' poor asset allocation decisions.

An Overview of Savings Accounts Available to Complement Employer-Sponsored Insurance Plans

The past few years have seen the creation of several types of accounts that can be set up to save for and pay for health care expenses. The latest type of account, the health savings account (HSA), joins health reimbursement arrangements (HRAs), medical savings accounts (MSAs, or Archer MSAs), and flexible spending accounts (FSAs) in a virtual alphabet soup of tax-advantaged vehicles designed to reimburse individuals for health care expenses not covered by insurance.

Which of these, if any, is right for you and your employees? The following brief comparison highlights the similarities and differences on key points among HSAs, HRAs, MSAs and FSAs.

Who can have an account? Any employer can set up an HSA, HRA, or FSA for employees. However, HSAs are limited to individuals who are covered by a high-deductible health plan. And while HRAs do not have the high-deductible plan requirement, the consumer-driven health care model, of which HRAs are a key element, would pair an HRA with a high-deductible plan.

MSAs also require a high-deductible plan that meets certain requirements. Furthermore, only the self-employed and individuals working for a small employer (50 or fewer employees) are eligible for an MSA. FSA participation is limited to "employees," meaning that the self-employed, partners, and holders of more than 2% of the stock in a Subchapter S corporation cannot participate (although these businesses can establish FSAs for common law employees).



How are contributions made? The employer or the individual, or both, can make HSA contributions. Only the employer makes HRA contributions. Either the employer or employee, but not both, may make MSA contributions in any given year. Typically, only employees make FSA contributions. Contributions to all four types of accounts have tax advantages.

What are the limitations on the contribution amount? The annual contribution limit to an HSA is the lesser of the health plan deductible or \$2,600 for those with individual coverage and \$5,150 for those with family coverage (estimated for 2004 and adjusted annually). The maximum MSA contribution is 65% /75% of the insurance plan's deductible (single/family coverage). Limits on FSA and HRA contributions are set by plan design.

How are contributions held? A trust or custodial account is required for an HSA or MSA. HRAs and FSAs need not be



funded, and claims typically are paid from the employer's general assets.

Do amounts in the accounts accumulate? Are the accounts portable? HSAs and MSAs are IRA-like: amounts that are not withdrawn roll over each year, and the accounts are portable and can earn interest. HRA amounts also may carry over year to year; whether an individual continues to have access to the funds post-employment is a matter of plan design. Under current law, FSA balances remaining at the end of a plan year are forfeited.

What can the account pay for? With certain exceptions, all four types of accounts are designed to pay for medical expenses that are not reimbursed through an insurance plan. HSAs cannot pay for most types of insurance premiums, but certain types of health plan premiums are permitted: COBRA premiums; long-term care insurance premiums; premiums paid by Medicare-eligible individuals (other than those for Medigap policies); and premiums paid by individuals who are collecting unemployment compensation. HRAs generally cannot pay for expenses for long-term care services. FSAs cannot pay for any health insurance premiums or long-term care expenses.

What if the withdrawal is for non-medical expenses? Amounts withdrawn from an HSA or MSA for non-medical expenses are taxable and also are subject to a penalty. By law, HRAs and FSAs cannot pay for nonqualified—i.e., non-medical—expenses.

In a nutshell...HSAs are attractive because of their funding flexibility and portability. Though MSAs also have these characteristics, their availability is limited to small employers and the self-employed. Both types of accounts also require pairing with a high-deductible health plan. While HRAs and FSAs don't have the high-deductible-plan requirement, they do have other features that should be considered in light of the employer's goals in offering the arrangement. For example, the HRA is an employer-contribution-only vehicle, and FSA funds do not roll over year to year.

Many factors will go into determining which of these accounts would be a valuable addition to your employee benefits offerings. We can explain the details of each of these accounts, and help you assess which might be right for your workplace.

Online Enrollment Offers Employers and Employees Various Advantages

With the new millennium comes a new wave of Internet technology, surely to positively impact employers and employees alike with impressive advances in online employee benefit enrollment systems. Initially designed for large companies with 1,000-200,000 employees, these cutting-edge benefit communications systems now offer employers of all sizes a cost-effective, efficient way to provide employees with easy-to-access benefits information.

These Internet-based systems provide employees with around-the-clock access to enrollment assistance and employee benefit information. Employees can view customized reports with the quick click of a computer mouse, easily evaluating, selecting, and enrolling in their benefit plans. Employees previously enrolled may also have access to claims assistance, as well as online libraries of forms and benefits booklets.

Perhaps the best feature of online enrollment is that employees can log on to a customized web site at work or at home, or anywhere a web browser and Internet connection are available. Numerous studies have shown that employees are most likely to complete enrollments in the comfort of their own home after work hours.

Obviously, online enrollment increases employee involvement in the benefits process and will serve to increase employee understanding and appreciation of benefits offered. Most importantly though, employees get fast access to easy-to-understand benefit information and are allowed to take control of their involvement in the process, empowering them to make more informed decisions about benefits for themselves and their families.

Online enrollment offers additional benefits for participating businesses and human resource departments by eradicating employee data and election errors, serving to streamline the way human resources operates. With online enrollment, benefit plans can be managed by human resources without the mountains of confusing paperwork and will certainly reduce the barrage of phone calls from employees requesting forms and asking questions about their benefits.



Many insurance companies now offer online benefit enrollment options for businesses of varying sizes and provide the necessary education needed to ease employees into this new era of communications. Training shows them the obvious benefits and simplicity of the web-based system. In most cases, they will also work one-on-one with human resources representatives to ensure there is an informed person "on-site" able to explain the online enrollment process and to reassure employees during the short transitional phase. Online enrollment creates a truly win-win situation for employers and employees alike.

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