

Regulatory Update

In 2004, there were a number of regulatory and legal changes to Code Section 125 cafeteria plans and flexible spending accounts that require changes to your flexible benefit plan documentation. For instance, the DOL issued final COBRA notice and disclosure regulations and Congress revised the definition of "dependent" for health plan (including URM) and Dependent Day Care Assistance Plan purposes. We have attached an amendment package that facilitates making the changes to the documents needed to incorporate these new rules and regulations. NOTE: the COBRA and dependent definition changes are required changes.

The following is a summary of the regulatory and legal changes that necessitate plan amendments.

COBRA

In May of 2004, the DOL issued final notice and disclosure regulations. The regulations primarily impact your COBRA notices; however, the regulations do have an impact on the language in your URM Summary Plan Description ("SPD"). Specifically, group health plans (including the URM) must contain "reasonable" procedures for qualified beneficiaries to provide notice of a qualifying event (e.g. divorce, child ceasing to be a dependent, a second qualifying event where applicable) and those procedures must be described in the Plan's Summary Plan Description ("SPD"). For procedures to be considered "reasonable", the procedures (and therefore the SPD) must identify the individual or entity designed to receive such notices and specify the means by which notice must be given. In addition, the procedures must identify the documentation and/or information that the plan deems necessary in order to provide continuation coverage. Failure to have "reasonable" procedures and to describe those procedures in the SPD could result in notice being deemed received when it is provided to those within the company that do not handle COBRA administration, which could result in the plan furnishing its required election notice late or not at all.

The COBRA regulations are effective on the first day of the plan year that begins on or after November 26, 2004. Therefore, if your URM operates on a calendar plan year, the effective date of the new COBRA rules is January 1, 2005.

In the attached amendment package, we have provided a Summary of Material Modifications that revises the URM SPD to clarify that written notice of certain qualifying events must be provided to the "COBRA Administrator" and we have also provided a placeholder for you to identify the specific "COBRA Administrator" (whether it be an internal Human Resources office or officer or a third party). It is essential that you specifically identify the COBRA Administrator for the URM by title or office if it is an internal person.

<![if !vml]><![endif]>Changes in Definition of Dependent

Congress recently enacted the Working Families Tax Relief Act of 2004 ("WFTRA"), which provides a uniform definition of "child" for several tax purposes (dependent exemption under Code Section 151, child tax credit under Code Section 24, the earned income credit

under Code Section 32, and the child care credit under Code Section 21). Consequently, the definition of "dependent" under Code Section 152 and the definition of "qualifying individual" under Code Section 21 have been revised. This may affect taxation and benefit eligibility for medical and dependent care plans.

Generally, for health plans, Code Section 105 (as amended) excludes from an employee's gross income health plan reimbursements for medical expenses incurred by the employee and the employee's dependents as defined generally by Code Section 152, with a special rule for children of divorced parents. Under the new rules, most individuals who could receive excludable health coverage before the change can continue to receive excludable health coverage, due in part to conforming amendments made by WFTRA to Code Section 105 and conforming amendments made by the IRS to the regulations under Code Section 106 through Notice 2004-79. Specifically, the newly imposed income limitation for qualifying relatives (\$3200 for 2005) does not apply for health plan purposes nor does the rule that dependents cannot have "dependents," and that married dependents who file a joint return with their spouse cannot be a dependent of another person.

The only significant change for health plan purposes relates to "children" (son, daughter, grandchildren, brother, sister, niece, nephew) of the employee who will be under age 19 during the year (or 24 if a full time student). In the past, such a child was a dependent of the employee/parent who provided over half of the child's support generally without regard to where the child resided. After WFTRA, such a child is a dependent of the person with whom the child has the same principal place of abode for more than half the year without regard to whether that person provides support for the child. In other words, the support requirement for such children has been replaced with a residence requirement. This change could impact the taxability of coverage for "children" of employees who don't reside with the employee even though the employee provides over half of the child's support. Note that there is a special rule in the case of children of divorced parents. In that case, if a child of divorced parents resides with one of the parents and receives over half of his support from his parents, then the child is considered a dependent of both parents regardless of who claims the child as a dependent on his/her tax return. Note that the support requirement still exists for any child who will be age 19 during the year or older (or 24 or older if a full time student).

The changes to the definition of "qualifying individual" under Section 21, which impact Section 129 dependent care flexible spending accounts, appear to be slightly more significant. First, the "head of household" requirement was eliminated, which opens the door for working parents who do not maintain a household (e.g., an employee who lives with his or her parents) to receive tax free reimbursement for child care. Second, expenses for care of an adult disabled dependent with income over the exemption amount

-2-

<![if !vml]><![endif]>in Code Section 151 (\$3200 in 2005) may not qualify for tax free reimbursement. A proposed "Technical Correction" has been introduced in Congress to eliminate the income limitation.

A final area of concern relates to election changes under Section 125 cafeteria plans.

The change in status rules under Section 125 assume changes in dependent status under Section 152. Under the new dependent definition, certain individuals may receive excludable coverage under the special rules applicable under Section 105 and 106. Presumably, the IRS regulations will be modified to reflect changes in eligibility for excludable coverage under Section 105 and not continue to be tied into Section 152's dependent definition (informal comments from IRS officials indicate that it is reasonable to utilize the definition of "dependent" for the underlying benefit).

The following is a brief general action plan regarding your URM and DDC. You should consult with your legal and/or tax advisor to determine the specific action plan that is appropriate for you and to identify the impact the new rules may have on your other benefit plans.

_____ *URM Action Steps:*

Many URMs, define a covered "dependent" broadly as an individual who meets the requirements of Code Section 152. As indicated above, a reference to Code Section 152 would not include the conforming amendments made to Code Section 105 for health plan purposes. Thus, unless you wish to be unnecessarily restrictive (e.g., an individual who would otherwise be a qualifying relative but have income over the Code Section 151 exemption amount will not qualify as a Code Section 152 dependent but would qualify as a Code Dependent for health plan purposes under Code Section 105 and 106), a plan amendment and a Summary of Material Modifications (SMM) is required. Even with the amendment, the child under the age of 19/24 who lives with a non-parent relative who was considered a dependent of the non-custodial employee in 2004 because the employee provided the child with over half of his/her support will not be considered a Code dependent for health plan purposes for 2005. Participants should be notified of the potential impact of the new rule and that expenses for such a child will not be covered under the plan. You will need to decide whether to allow election changes as a result of the new rules, taking into consideration that election changes after the Plan Year has begun may only be made as a result of a qualifying change in status event and the impact of the new rules does not result in a change in status event.

_____ *DDC Action Steps:*

The language relating to the definition of a qualifying individual has changed and so revisions to your plan language are necessary. As indicated above, although there are language changes, there appears to be only one significant substantive change in the definition of "qualifying individual"~a disabled adult dependent who has gross income in excess of the exemption amount (\$3200 for 2005) will not qualify as a "qualifying

<![if !vml]><![endif]>individual" [Note that an individual who otherwise satisfies the definition of a "qualifying child" but for the age limits is still considered a "qualifying child" (and thus is not subject to the income limitations for qualifying relatives) if the individual is disabled]. There is currently a technical correction bill before Congress that will eliminate the income limitation for dependent care plan purposes; however, that bill has not yet been passed and there is currently no certainty that it will. Not unlike URMs, you must decide whether to allow participants to change elections if they previously planned to cover an adult dependent who has income equal to or in excess of \$3200 in 2005. If the Technical Corrections bill is passed in 2005, there are indications it will be retroactive to the beginning of the calendar year.

The WFTRA changes to the definition of dependent are effective January 1, 2005. Plan documents and procedures must be reviewed to ensure compliance with the new requirements.

In the attached amendment package, we have provided a sample amendment and SMM that revise the definition of dependent for the Flexible Benefits Plan, the URM and the DDC.

-4-

**SAMPLE FLEXIBLE BENEFITS PLAN AMENDMENT
AND SUMMARY OF MATERIAL MODIFICATIONS
FOR 2005 PLAN YEARS**

Caution: The attached sample amendment and Summary of Material Modifications provides sample language to effectuate changes made by the Working Families Tax Relief Act of 2004 to the definition of "dependent", changes made by final COBRA regulations issued by the Department of Labor. This amendment package may not apply to your particular factual situation and is provided solely for illustrative purposes.

It should not be used "as is". Consult with your legal advisor to adapt this approach to your specific plan.

- 1 -

RESOLUTION NO 91-05

ACTIONS TAKEN AND RESOLUTIONS ADOPTED BY CONSENT
OF THE BOARD OF DIRECTORS OF
The West Mifflin Sanitary Sewer Municipal Authority

The undersigned, being all of the members of the Board of Directors of the West Mifflin Sanitary Sewer Municipal Authority (the "Employer"), hereby adopt the following resolutions by unanimous consent

and direct that this Consent Resolution be entered in the minute books of the Employer.

WHEREAS, the Employer adopted the Flexible Benefits Plan (the "Plan"), a Code Section 125 Cafeteria Plan, so that its eligible employees who elected to participate could pay their share of certain qualified benefits identified in the Plan with pre-tax salary reductions; and

WHEREAS, the Employer adopted an Unreimbursed Medical Plan (the "URM") and a Dependent Care Expense Reimbursement Plan ("DDC") so that its eligible employees who elected to participate could receive tax-free reimbursement for certain eligible expenses; and

WHEREAS, the Employer desires to amend the Plan, the URM, and the DDC to revise the definition of "Dependent" as set forth in the attached amendment and Summary of Material Modifications; and

NOW, THEREFORE, BE IT RESOLVED that the Board of Directors hereby adopts the attached amendments effective as of the dates set forth in the attached amendments;

RESOLVED, this 5th day of May 2005.

ATTEST: Leah Mangino, Secretary

WEST MIFFLIN SANITARY SEWER MUNICIPAL AUTHORITY: George Miklos, Chairman

AMENDMENT TO THE FLEXIBLE BENEFITS PLAN

This Amendment to the Flexible Benefits Plan (the "Plan"), is adopted by the West Mifflin Sanitary Sewer Municipal Authority (the "Employer"), effective as of the dates set forth herein;

NOW, THEREFORE, effective January 1, 2005, the Plan is amended as follows:

A. Section 1.09 is deleted in its entirety and replaced with the following new Section 1.09:

1.09 "Dependent" means any individual who is a tax dependent of the Participant as defined generally in Code Section 152; however, for health plan purposes, a Dependent shall be defined as set forth in Code Section 105(b) and for DDC purposes (if offered under the Plan), a Dependent shall also be defined as in Code Section 21(e)(5) (i.e., dependent of the custodial parent as defined in Code Section 152(e)).

B. Section 1.29 is deleted in its entirety and replaced with the following new Section 1.29:

1.29 "Qualifying Individual" means an individual defined as a "Qualifying Individual" in the Summary Plan Description:

West Mifflin Sanitary Sewer Municipal Authority:
By: George Miklos, Chairman

SUMMARY OF MATERIAL MODIFICATIONS TO THE FLEXIBLE BENEFIT PLAN

SUMMARY PLAN DESCRIPTION

/. The Flexible Benefits Plan SPD: The following summarizes important changes to your Flexible Benefits Plan (the "Plan"). The following summary should be kept with your Summary Plan Description (SPD) for future reference. If you have any questions regarding the changes summarized in this Summary of Material Modifications, you should contact [insert appropriate contact].

A. Effective January 1, 2005, the following should be added to Q.3. of the Flexible Benefits Plan SPD:

Only coverage for an Employee and the Employee's "dependents" may be paid for under this Plan. A "dependent" is defined generally as an individual who would be considered the Employee's spouse under the federal income tax code or the Employee's tax dependents as defined in Code Section 152; however, for purposes of health benefits and Dependent Care Reimbursement ("DDC") benefits offered under the Plan, a dependent is defined (i) for health plan purposes, as set forth in Code Section 105(b) and (ii) for DDC purposes, as any person who meets the requirements to be a "qualifying individual" as defined in the DDC component SPD.

//. Appendix I to the SPD: Medical Care and Dependent Care Reimbursement Plan Summary Description

The following summarizes important changes to Medical Care Reimbursement Plan ("URM") and the Dependant Care Reimbursement Plan ("DDC") and should be kept with Appendix I to the Summary Plan Description (SPD) for future reference. If you have any questions regarding the changes summarized in this Summary of Material Modifications, you should contact [insert appropriate contact].

A. Effective January 1, 2005, Q-2 of Appendix I is revised as follows:

Once you become a Participant, your "Eligible Dependents" also become covered. For purposes of the URM, Eligible Dependents are the following:

- (i) Your legal Spouse (as determined by state law to the extent consistent with the Federal Defense of Marriage Act) and (ii) any other individuals who would qualify as a tax Dependent under Code Section 105(b).

B. Effective January 1, 2005, the second bullet for DDC under Q-9 of the Appendix I is revised as follows:

Services are incurred for a "Qualifying Individual." A Qualifying Individual is:

1. An individual age 12 or under who is a "qualifying child" of the Employee as defined in Code Section 152(a)(I). Generally speaking, a "qualifying child" is child (including a brother, sister, step sibling) of the Employee or a descendant of such child (e.g. a niece, nephew, grandchild) who shares the same principal place of abode with you

for more than half the year and does not provide over half of his/her support. In addition, a child of an Employee who is also a Code Section 152 dependent of another individual cannot be a qualifying individual; or

2. a Spouse or other tax Dependent (as defined in Code Section 152) who is physically or mentally incapable of caring for himself or herself and who has the same principal place of abode as you for more than half of the year.

There is a special rule for children of divorced parents. A child is the qualifying individual of the "custodial" parent as defined by Code Section 152(e).

C. Effective January 1, 2005, the Notice Requirements and the Election Procedures and Deadlines Section of Q-18 is deleted in its entirety and replaced with the following new Notice Requirements and Election Procedures and Deadlines Section:

Notice Requirements

You or your covered Dependents (including your Spouse) must notify the COBRA Administrator identified in the Plan Information Summary in writing of a divorce, legal separation, or a child losing dependent status under the Plan within 60 days of the later of the date of the event or the date on which coverage is lost because of the event. Your written notice must identify the qualifying event, the date the qualifying event occurred, and the qualified beneficiaries impacted by the qualifying event. When the COBRA Administrator is notified that one of these events has occurred, the Plan Administrator will in turn notify you that you have the right to choose continuation coverage by sending you the appropriate election forms. Notice to an employee's Spouse is treated as notice to any covered dependents who reside with the Spouse. You may be required to provide additional documentation (e.g. copy of the divorce decree).

An employee or covered dependent is responsible for notifying the COBRA Administrator if he or she becomes covered under another group health plan.

Election Procedures and Deadlines

Each qualified beneficiary is entitled to make a separate election for continuation coverage under the Plan if they are not otherwise covered as a result of another Qualified Beneficiary's election. In order to elect continuation coverage, you must complete the Election Form(s) within 60 days from the date you would lose coverage for one of the reasons described above or the date you are sent notice of your right to elect continuation coverage, whichever is later and mail it to the COBRA Administrator identified in the Plan Information Summary. Failure to return the Election Form within the 60-day period will be considered a waiver of your continuation coverage rights.

///. Plan Information Summary to the SPD

The following summarizes important changes to Plan Information Summary and should be kept with your Summary Plan Description (SPD) for future reference. If you have any questions regarding the changes summarized in this Summary of Material Modifications, you should contact James P. Hannan, General Manager.

Effective immediately, the Plan Information Summary is revised to add the following information:

Who is the COBRA Administrator for the URM?

RESOLVED, this 5th day of MAY 2005.

ATTEST: Leah Mangino, Secretary

WEST MIFFLIN SANITARY SEWER MUNICIPAL AUTHORITY: George Miklos, Chariman