

BENEFITS ALERT 2006-1

To	All Clients & Friends of FBMC	Date	01/20/06
From	Tina Bischoff, <i>CFCI</i> Compliance Officer 850-425-6200 X2450 tbischoff@fbmc-benefits.com		
Re	The Gulf Opportunity Zone Act of 2005		

For purposes of Dependent Care FSAs (and the Dependent Care Tax Credit) as well as Health Savings Accounts (HSAs), a welcomed, last minute technical correction was made in 2005 by the 16th Congress to the uniform definition of an eligible “dependent” as established by The Working Families Tax Relief Act of 2004 (WFTRA)

The Gulf Opportunity Zone Act of 2005, containing the WFTRA Technical Correction as well as various other corrections to prior legislation, was signed into law by President Bush on December 21, 2005.

The new law is effective retroactively to taxable years beginning after December 31, 2004.

Dependent Care FSAs and DCTC. Under the technical correction, the group of qualifying persons for employment-related expenses has been expanded to include individuals who may also (i) be a dependent of a Code § 152 dependent of another taxpayer, (ii) be married and file a joint return with another taxpayer, and (iii) have gross income that equals or exceeds the applicable tax exemption limit for dependents (\$3,200 in 2005).

For cafeteria plan sponsors, this means that they now have the option of adopting for their Dependent Care FSA plans the technical correction to WFTRA’s uniform definition of a “dependent.” In other words, the definition of dependent for their Dependent Care FSA plans may now be expanded to also include those persons who are defined as a dependent for health plan purposes under WFTRA.

This means, for example, that if a Dependent Care FSA participant’s parent is mentally and/or physically incapable of self-care, lives with the participant for more than half of the taxable year, spends at least 8 hours per day in the participant’s home, receives more than half of their support from the participant during the tax year, and has gross income equal to or greater than the exemption amount for dependents (\$3,200 in 2005), the employment-related expenses incurred for parent’s custodial care will now be eligible for reimbursement.

HSAs. The enactment of the GO Zone Act enables individuals with HSAs to now pay qualified medical expenses on a tax-free basis to a broader definition of dependents. Caution: Though a child of divorced or legally separated parents is still a dependent of both parents for health purposes (including health FSAs), only one of the parents can claim the child under an HSA.

What’s Next?

At this point, employers offering Dependent Care FSA plans under their cafeteria plans should assess whether to adopt the revised, broader definition of a dependent under the GO Zone Act or to keep the more definition of a dependent as initially established by WFTRA.

Employers should also consider whether (and how) to communicate this new dependent definition to employees.

FBMC will provide more detailed information on this new development in its January 31st issue of the *Quarterly Review*.