

ASSOCIATED STUDENTS
SAN DIEGO STATE UNIVERSITY
FLEXIBLE SPENDING PLAN

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INTRODUCTION

What Is A Flexible Spending Plan?

A Flexible Spending Plan allows you to select from a "cafeteria" of benefits and to use tax-free dollars to purchase them. Thus, it provides you with the best of two worlds - the flexibility to purchase benefits that are most meaningful to your individual lifestyle and a kind of "pay raise" since the benefits are paid with pre-tax dollars.

The actual controlling provisions of our Plan are in the Plan Document which is available for your review in the Personnel Office of **Associated Students**. However, this booklet contains much of the text of that document and should provide you with answers to most of your benefit questions.

How Does the Plan Work?

Each year, **Associated Students** will authorize a specific amount of money ("Flexible Dollars") that you may use to pay for certain kinds of expenses (see listing below). Prior to the beginning of each Plan Year, you select amounts to be deducted from your paycheck on a regular basis and to be placed in Reserve Accounts to pay for the expenses you incur during the year. The amounts are deducted from your paycheck **before** taxes so, in effect, you have more take-home pay than if you pay the bills with after-tax dollars. Our Plan includes the following benefits:

IMPORTANT NOTICES

Forfeiture of Contributions

It is important to note that the IRS rulings regarding flexible spending plans requires that any Flexible Dollars that you allocate and don't "spend" during the Plan Year, **must be forfeited**. Therefore, it is important that you be conservative in estimating your expenditures for covered expenses and plan well in advance.

Social Security Reductions

Because you are enjoying the benefits of pre-tax savings on your Flexible Dollars, you are paying less into your FICA (Social Security) account. Your eventual benefits under Social Security may be reduced slightly at retirement. The Personnel Department can let you know how this might affect you personally.

Dependent Care Under Federal Income Tax

You will not be able to claim a Federal income tax credit for any dependent care expenses which are reimbursed under the Plan. In some cases, especially for employees in lower tax brackets or who have large amount of other tax deductions, it may be more advantageous to claim the tax credit for such expenses instead of electing to have those expenses reimbursed through the Plan. You should consult with your tax advisor if you believe this alternative may apply to you.

Tax Treatment Not Guaranteed

While it is the intention of the Plan Sponsor that nontaxable benefits shall be eligible for exclusion from your gross income, neither the Plan Sponsor, the Employer, the Fiduciaries or the Board of Directors in any way guarantee or insure that any of the benefits provided under the Plan will not be subject to income or other taxes. Furthermore, neither the Plan Sponsor, the Employer, the Fiduciaries or the Board of Directors shall be liable for any income or other taxes imposed upon you (the Employee), your spouse, your dependent, or any other person by reason of any benefits received under the Plan.

ELIGIBILITY AND EFFECTIVE DATES

Eligibility

In order to be eligible to participate in the Plan, an Employee must be a regular full-time Employee of the Employer, performing all customary duties of his occupation at his usual place of employment and regularly scheduled to work at least twenty (20) hours of work per week.

Election to Participate

Each Employee may elect to participate by completing and delivering to the Employer a Salary Reduction Agreement, a beneficiary designation and an election of benefits on the form(s) provided by the Employer, Plan Sponsor or Contract Administrator. Enrollment must be made prior to the beginning of a Plan Year, or within 31 days of Employee's becoming eligible, if initial eligibility occurs mid-year. Participation does not commence until enrollment is completed.

In general, if an Employee fails to enroll or elects not to enroll in the Plan when initially eligible, he may not participate in the Plan until the beginning of a new Plan Year.

Effective Date

Coverages under the Plan will become effective on the first of the month following the Employee's date of eligibility, subject to completion of the necessary enrollment forms.

Changes in Election

If an Employee has a qualified change in elections due to his spouse losing or gaining employment, addition or deletion of a dependent, divorce, marriage or legal separation of the Employee, or such other events as may be permitted by the Plan Sponsor and under regulations issued by the IRS, he may change the Salary Reduction Agreement with respect to the Plan Year. See "Qualified Changes in Elections" in the **Election of Benefits** section for additional information.

Annual Re-Election Period

At each Plan Year anniversary, an eligible Employee's prior elections will be deemed to continue without change, unless Employee completes a form to change his prior benefit elections. Participation in the Coverage ("Premium") Costs benefit is automatic, except to the extent that a coverage may be provided on a contributory basis (i.e. Employee-paid) and not subsidized by the Employer with Flexible Dollars.

TERMINATION OF PARTICIPATION

An Employee will cease to participate on the earliest of the following dates:

the date the Plan is terminated; or

the date the eligibility requirements are no longer met, except as participation may be extended below (see "Extension(s) of Coverage During Absence From Work").

Except to the extent he uses his **Continuation of Coverage Option (COBRA)**, an Employee's Reserve Account(s) will remain open for the remainder of the Plan Year in which termination occurs but ONLY for reimbursement of expenses incurred prior to Employee's termination date.

Revocation and Rehire

If an Employee terminates, revokes his elections, and is rehired within thirty (30) days and within the same Plan Year, he must resume his original benefit elections for the balance of the year.

If an Employee terminates, revokes his elections, and returns to work more than thirty (30) days after termination but within the same Plan Year, the Employer or Plan Sponsor may: (1) refuse to allow him to participate in the Plan until the beginning of a new Plan Year, (2) allow him to resume his original benefit elections for the balance of the year, or (2) allow him to make new elections. The Employer or Plan Sponsor will treat rehired Employees in a consistent manner.

NOTE: If, within the same Plan Year, an Employee terminates and returns to work following an FMLA leave (a leave taken in accordance with the Family and Medical Leave Act), he must be permitted to choose reinstatement of any of the following which may apply: (1) pre-tax handling of contributions for group health plan coverage(s), and (2) participation in the Health Care Expense Reimbursement benefit.

Extension of Coverage During Absence From Work With Pay

If an Employee fails to continue in active employment due to vacation, sick leave, temporary layoff, or approved leave of absence, the Employee will be permitted to continue Flexible Dollar contributions while receiving a regular paycheck from the Employer.

Extension of Coverage During Absence Without Pay

If an Employee is away from work on an approved leave taken in accordance with the Family and Medicare Leave Act of 1993 (FMLA) or during a period of duty in the Uniformed Services (see NOTE), the following options may be available with regard to the Coverage ("Premium") Costs and/or the Health Care Expense Reimbursement benefits. Actual available options are determined by the Plan Sponsor, subject to the RULES, below:

pre-payment option - an Employee may be permitted to pre-pay his or her contribution amounts before ceasing active work (i.e., he can have his Plan contributions deducted pre-tax from his final paycheck or paychecks) but such prepayment cannot extend beyond the end of the Plan Year in which the leave begins; or

pay-as-you-go option - an Employee may be permitted to continue to contribute to the Plan during his leave with after-tax dollars; or

catch up option - a "catch up" method may be permitted where the Employer and Employee agree in advance of the absence that this method will be used. The Employer then pays all contributions during the FMLA leave and these amounts are, in turn, paid by the Employee on a pre-tax basis when he returns from FMLA leave; or

waiver option - the Employer may waive (suspend) Employee contribution requirements during the period of absence.

If an Employee is away from work during an approved non-FMLA absence without pay, any of the above options may also be allowed, subject to the RULES, below.

RULES: The following rules will apply to the options offered to an Employee with regard to continuing the Plan's Coverage ("Premium") Costs and/or the Health Care Expense Reimbursement benefits:

the pre-pay option may not be the sole option offered to an Employee;

the catch-up option can be the sole option for an FMLA or active duty leave ONLY if the catch up option is the sole option offered to Employees on a non-FMLA leave;

if the Employer offers either the pre-pay or the catch-up option during an FMLA leave, it must also offer the pay-as-you-go option if it offers the pay-as-you-go option to Employees on a non-FMLA leave.

NOTE: The "Uniformed Services" means the Armed Forces, the Army National Guard, and the Air National Guard when engaged in active duty for training, in active duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President of the United States in time of war or emergency.

ELECTION OF BENEFITS

Benefits and Benefit Maximums

The benefits available under the Plan for a given Plan Year are as listed on the Plan Sponsor's "Selection of Benefits and Election Maximums" form which is completed by the Plan Sponsor prior to the beginning of each Plan Year. Each Employee who elects to participate completes his elections for a Plan Year on a Salary Reduction Agreement form.

The maximum Flexible Dollar amounts will be determined at the discretion of the Plan Sponsor prior to the commencement of each Plan Year and will be uniformly applicable to all Employees. All such amounts will be subject to review and final approval by the Board of Directors of the Plan Sponsor. The Employer reserves the right to reduce the amount of the Employee's Salary Reduction Agreement in order to assure compliance with the requirements of the Internal Revenue Code for favorable tax treatment.

NOTE: If an Employee enrolls other than at the beginning of a new Plan Year, his Salary Reduction Agreement election maximums will be prorated based on the number of months he is actually participating in the Plan.

ALSO, participation in benefits which involve the payment or reimbursement of premium or premium-type costs is contingent upon enrollment in such plans of coverage. An Employee who elects not to participate in a coverage or coverages will notify the Plan Sponsor on a form provided by the Plan Sponsor, Employer or Contract Administrator prior to the commencement of the Plan Year.

Irrevocable Election and Revocation of Election

All Employee elections are irrevocable for the Plan Year in which made and must be made before the benefits become currently available; provided, however, that an election may be revoked during the Plan Year if there is a Qualified Change in Elections (see below), but only to the extent of the unused benefits, only to elect new benefits consistent with the change, and only with the approval of the Plan Sponsor which need not be granted.

Qualified Changes in Elections

An Employee's elections may be revoked or changed during a Plan Year only if there is: (1) a qualified change in status, (2) a change in certain costs, or (3) a change in certain coverages that affects eligibility for coverage under an employer's plan. Any revocation or change must be made on account of and must be consistent with the change in status, costs or coverage. For these purposes, the following will apply:

Changes in Status - If an Employee experiences a change in status during a Plan Year, he may be permitted to make new elections for the remaining portion of the Plan Year. A "change in status" is a change in an Employee's eligibility for coverage under a qualified benefit plan sponsored by his Employer or another employer's plan due to at least one of the following:

an employee's gain or loss of a dependent by birth, death, adoption or placement for adoption of an Employee's dependent, or the change of an Employee's responsibility to provide health care coverage for a child who is the subject of a qualified medical child support order (QMCSO);

a change in marital status (e.g., marriage, divorce, legal separation or annulment, or the death of the Employee's spouse);

a change in the Employee's employment status or the employment status of the Employee's spouse or a dependent (e.g., commencement or termination of employment, reduction or increase in work hours, change from salaried to hourly, a strike or lock-out, commencement of or return from an unpaid leave of absence, change in worksite, etc.);

a change in an Employee's residency or the residency of an Employee's spouse or a

dependent;

a change in the status of one of the Employee's dependents under a plan's eligibility criteria (e.g., attainment of a specified maximum age, enrollment in or graduation from school or any similar circumstances);

status changes which would permit an Employee to make mid-year changes in his Employer-sponsored health coverages in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA: P.L. 104-191). Only a change of this type can be retroactive; or

such other changes as may be determined to be qualified in accordance with applicable Internal Revenue Service regulations as amended from time to time and which are approved and allowed by the Plan Sponsor.

Changes in Costs - If the cost of a health plan shall significantly increase during a Plan Year, as determined by the Employer, and another health plan with similar coverage is available under the Plan, an Employee may elect to either pay the increase in premium or revoke his elections and, in lieu thereof, enroll under the alternative health plan.

An election change with respect to the Dependent Care Expense Reimbursement benefit may be permitted due to a cost change imposed by a dependent care provider who is not an Employee's close relative (by blood, marriage or adoption).

NOTES: If the cost of a qualified benefits plan increases or decreases during a Plan Year, affecting Employees' premiums for such benefit plan, the Plan may automatically make a prospective adjustment, on a reasonable and consistent basis, in the affected Employees' pre-tax premiums.

Health Care Expense Reimbursement elections may not be changed.

Changes in Coverage - If the coverage under a health plan should be significantly curtailed for all plan participants or terminated during a Plan Year and another health plan with similar coverage is available under the Plan, an Employee may elect to revoke his elections and, in lieu thereof, enroll under the alternative health plan.

If benefits or coverages are added to this Plan, an affected Employee may elect the new option or a replacement for a cancelled option and make corresponding election changes with respect to other options providing similar coverage. Health Care Expense Reimbursement elections, however, may not be changed.

If coverages change under a cafeteria plan sponsored by the employer of an Employee's spouse, former spouse or dependent that results from such family member's - (1) permissible election change, or (2) new election during an open enrollment period - the Employee may change his Plan elections consistent with such changes. Health Care Expense Reimbursement elections, however, may not be changed.

If there is a change in Medicare or Medicaid entitlement by an Employee (or by the Employee's spouse or dependent), an Employee may change his Plan elections consistent with such change.

An Employee who experiences a change as identified above must complete a new Salary Reduction Agreement and submit it to the Plan Sponsor within thirty (30) days of the status change (e.g., within thirty (30) days of the birth of a child, etc.). Benefit change(s), if approved, will be effective at such time as the Plan Administrator shall prescribe, but not earlier than the first pay period beginning after the Plan Administrator is notified, in writing, of the change in status, except as may be expressly permitted for changes requested pursuant to the Health Insurance Portability and Accountability Act (HIPAA).

Annual Modification of Election of Benefits

An Employee may change his benefits elected for a subsequent Plan Year by completing a new election of benefits and Salary Reduction Agreement prior to the first day of the Plan Year for which such new election of benefits is to become effective. The Plan Sponsor will hold an open enrollment period late in each Plan Year for the subsequent Plan Year to assist Employees in making any changes.

BENEFITS

To the extent allowed by the Plan Sponsor's "Selection of Benefits and Election Maximums" for the Plan Year, an Employee may apply his Flexible Dollars toward any of the following benefits:

Coverage ("Premium") Costs

Flexible Dollars may be used for premium payments for coverage during the Plan Year under the Employer's welfare benefit plans. Premium payments will be made directly by the Employer to the plan(s). Benefits will be payable pursuant to the terms of the respective coverages (policies, etc.).

NOTE: Only the costs of coverages of such type which the Plan Sponsor offers pursuant to this Plan will be eligible for this benefit.

Health Care Expense Reimbursement

Flexible Dollars may be used for reimbursement of those expenses of the Employee or an Dependent which would be reimbursed under the Employer's health care coverage(s) but for the effect of a deductible amount requirement, a coinsurance provision, or a dollar limitation on the amount of the reimbursement allowable. In addition, other health-related expenses, as defined in Code Section 213, may be reimbursed to the extent that they are not otherwise reimbursable. This includes expenses of family members who are not covered under the Employer's group health plan but who meet this Plan's definition of a "Dependent."

To be eligible for reimbursement, health care expenses must be incurred (but not necessarily billed or paid) during the Plan Year and the period of Employee's participation in the Plan. The following (not a complete listing), illustrates examples of expenses which may be claimed as part of the Plan:

- Abortion, legal
- Acupuncture
- Alcoholism treatment
- Ambulance hire
- Artificial limbs
- Birth control pills
- Braces
- Braille - books and magazines
- Chemical dependency therapy
- Chiropractors
- Christian Science practitioner's fees
- Co-Insurance
- Crutches
- Deductible(s)
- Dental fees
- Dentures
- Diagnostic fees
- Doctors' fees:
 - anesthesiologists
 - chiropractors
 - chiropractors
 - dermatologists
 - gynecologists
 - neurologists
 - obstetricians
 - ophthalmologists
 - osteopaths
 - pediatricians
 - podiatrists
 - psychiatrists
 - surgeons
- Eyeglasses, contacts, including examination fee (when medically necessary)
- Guide dog for blind or deaf person

Handicapped persons special schools
Hair transplants
Hearing devices and batteries
Home improvements motivated by medical consideration
Hospital bills
Laboratory fees
Lead base paint removal (for children with lead poisoning)
Life fee to retirement home for medical care
Medical information plan
Nurses' fees (including nurses' board and Social Security tax where paid by taxpayer)
Nursing home care (when medically necessary)
Obstetrical expenses
Operations
Oxygen
Prescription medicine and Insulin
Psychiatric care
Psychologist fees
Routine physicals and other non-diagnostic services or treatments
Smoking Cessation Programs
Special communication equipment for the deaf
Sterilization fees
Therapy treatments
Transplant donor expenses
Transportation expenses primarily for rendition of medical service (i.e., railroad fare to hospital or to recuperation home, cab fare in obstetrical cases)
Tuition at special school for handicapped
Tuition fee (part), if college or private school furnishes breakdown of medical charges
Wheelchair
X-rays

NOTE: Any expense which is claimed as a Federal income tax deduction is NOT eligible for reimbursement with Flexible Dollars.

Dependent Care Assistance

Flexible Dollars may be used for the reimbursement of Dependent Care Assistance Expenses which are actually incurred during the Plan Year to care for a Qualifying Child Dependent or a Qualifying Individual AND which enable the Employee to be gainfully employed. If the Employee is married, the spouse must also work, must be a full-time student at a qualified educational institution during each of five calendar months during the taxable year, or must be physically or mentally incapable of caring for himself or herself.

If such expenses are incurred for services provided outside the Employee's household by a Dependent Care Center (as defined in Code Section 21(b)(2)(d)), they will be deemed to meet the requirements of this paragraph only if the care is provided to a Qualifying Child Dependent or a Qualifying Individual who regularly spends at least eight hours in the Employee's home and such center meets all applicable laws and regulations of the appropriate state or unit of local government.

Amounts paid or incurred by an Employee will not be Dependent Care Assistance Expenses within the meaning of this subsection if such amounts are paid to an individual with respect to whom, for the Plan Year, a deduction is allowable under Code Section 151 (c) to such Employee or the spouse of such Employee, or a person who is a child of such Employee (within the meaning of Code Section 151(c)(3)) and who is under the age of 19 at the close of the Calendar Year.

In the case of an Employee who is married, the Plan Sponsor reserves the right to require that the Employee provide a statement of his/her spouse's Earned Income for participation in the Dependent Care Assistance program or at the time of any claim. The Plan Sponsor may also require Employees to submit such other information which the Plan Sponsor deems necessary or desirable to implement the Dependent Care Assistance program.

With each Explanation of Benefits (i.e., each EOB or claim transaction) that is issued to a Plan Participant, the Contract Administrator will include a running history of payments-to-date

and the account balance.

NOTE: An Employee may not receive Dependent Care Assistance in any Plan Year in excess of the lesser of (i) Employee's Earned Income for the Plan Year or (ii) the Earned Income of Employee's spouse for the Plan Year, with marital status determined at the close of the taxable year. For purposes of this subsection, an Employee's spouse who is either a Student or incapable of caring for himself, will be deemed to have Earned Income as provided for in Code Section 21(d)(2).

For the purposes of this benefit, the following terms will have the meanings shown below:

Dependent Care Assistance - The provisions of the Plan which constitute a dependent care assistance program within the meaning of Code Section 129.

Dependent Care Assistance Expenses - Household services and expenses for the care of a Qualifying Individual within the meaning of Code Section 21(b)(2) which are performed to enable an Employee to remain gainfully employed and which are performed (i) in the home of the Employee; (ii) outside the home of the Employee for the care of a Dependent of the Employee under the age of 13; (iii) outside the home of the Employee for a Qualifying Individual who regularly spends at least eight (8) hours a day in the Employee's home; or (iv) outside the home of an Employee for the care of a Qualifying Individual in a Dependent Care Center.

Services may not be rendered by (i) a dependent of the Employee or (ii) a dependent of Employee's spouse or (iii) a child, within the meaning of Code Section 151 (c)(3), under the age of 19 at the close of the taxable year.

Dependent Care Center - As provided by Code Section 21(b)(2)(C) and (D): a facility which (i) complies with all applicable laws and regulations of the state and town, city or village in which it is located; (ii) provides care for more than six (6) individuals (other than individuals who reside at the facility); and (iii) receives a fee, payment or grant for providing services for any of the individuals (regardless of whether such facility is operated for profit).

Qualifying Child Dependent - A dependent of the Employee who is under age 13 and with respect to whom the Employee is entitled to a deduction under Code Section 151(c).

Qualifying Individual - (1) Any relative or household member supported by the Employee (receiving over 50% of support) who is physically or mentally incapable of self-support; and, (2) a spouse who is physically or mentally incapable of self-support.

ADDITIONAL PROVISIONS

Beneficiary Designation

Each Employee shall designate upon such forms as may be provided for that purpose by the Plan Sponsor or Contract Administrator, a beneficiary or beneficiaries who are to receive, in the event of his death, payment of a reimbursement to which he is entitled under the Plan. The designation of a beneficiary will not be effective for any purpose unless and until it has been filed with the Plan Sponsor. In the event that an Employee fails to designate a beneficiary in the specified manner, or if for any reason such designation is legally ineffective or if such beneficiary predeceases the Employee or dies simultaneously with him, then, for the purposes of the Plan, distribution will be made by the Plan to the Employee's spouse (if any). If there is no spouse, at the discretion of the Plan the benefits will be paid to either (1) any one or more of the persons comprising the group consisting of the Employee's descendants, the Employee's parents, or the Employee's heirs-at-law, and the Plan may pay the entire benefit to any member of such group or apportion such benefit among any two or more of them in such shares as the Fiduciaries, in their sole discretion, shall determine, or (2) the estate of such deceased Employee. In the event the Fiduciaries do not so direct any such payments, the Fiduciaries may elect to have a court of applicable jurisdiction determine to whom a payment or payments will be paid.

In the event that an Employee is survived by a spouse, payment will be made to another beneficiary only in the event the surviving spouse consents in writing to the payment to the other beneficiary and such election is witnessed by either a notary public or a Plan Fiduciary.

Non-Discrimination

It is intended that the Plan will comply with all Federal tax law requirements necessary to obtain the tax benefits of a cafeteria (Section 125) plan, including the requirements that the Plan not discriminate in favor of certain "key employees" or "highly compensated employees." Therefore, the salary reduction amounts available to "key employees" and "highly compensated employees" may be limited or reduced to assure compliance and non-discrimination. See also "Exclusion from Income" below.

For these purposes, a Highly Compensated Employee and Key Employee are defined as follows:

Highly Compensated Employee - An Employee who is treated as a "highly compensated participant" under Code Section 125(c) and who is:

an individual having 5% or more ownership of the Employer during the Plan Year or the preceding Plan Year; or

an Employee with compensation for the preceding Plan Year in excess of \$80,000 (adjusted for inflation in \$5,000 increments). However, the Employer may elect, on a year-by-year basis, to include in this category only employees who were in the top 20% of employees ranked by compensation in the prior year.

Key Employee - An Employee who is a "key employee" within the meaning of Code Section 416(i)(1). A key employee is any Employee who, at any time during the Plan Year or any of the four (4) preceding Plan Years is:

an officer of the Employer having an annual compensation greater than 50% of the amount in effect under Section 415(b)(1)(A) of the Code for any such Plan Year, provided however that no more than fifty (50) Employees, or if lesser, the greater of three (3) employees or ten percent (10%) of the employees, will be treated as officers; or

one of the ten (10) Employees having annual compensation from the Employer of more than the limitation in effect under Section 415(c)(1)(A) of the Code and owning, or considered as owning within the meaning of Code Section 318, as amended, the largest interests in the Employer, provided that, if two (2) Employees have the same interest in the Employer, the Employee having the greater annual compensation from the Employer will be treated as having a larger interest; or

a more than five percent (5%) owner of the Employer, as defined in Section 416(i)(1)(B)(i) of the Code; or

a more than one percent (1%) owner of the Employer, having an annual compensation from the Employer of more than \$150,000.00, as defined in Section 416(i)(1)(B)(ii) of the Code.

Effect of Mistake

In the event of a mistake as to the eligibility or participation of an Employee, or the allocations made to the account(s) of any Employee, or the amount of distributions made or to be made to an Employee or other person, the Plan Sponsor will, to the extent it deems possible, cause to be allocated or cause to be withheld or accelerated, or otherwise make adjustment of, such amounts as will in its judgment accord to such Employee or other person the credits to the account or distributions to which he is properly entitled under the Plan.

Exclusion from Income

It is the intention of the Plan Sponsor that nontaxable benefits will be eligible for exclusion from the gross income of the Employee, as provided in Code Section 125, and all provisions of the Plan will be construed in a manner consistent with that intent.

HOWEVER, neither the Plan Sponsor, the Employer, the Fiduciaries nor the Board of Directors in any way guarantee or insure that any of the benefits provided under the Plan will not be subject to income or other taxes. Furthermore, neither the Plan Sponsor, the Employer, the Fiduciaries nor the Board of Directors will be liable for any income or other taxes imposed upon an Employee, spouse, dependent, or any other person by reason of any benefits received under the Plan.

CLAIMS PROCEDURES

Filing a Claim

To file a claim for reimbursement from his Reserve Account(s), an Employee must complete a claim form. Claims forms are available [online](#) from the Employer, Plan Sponsor or Contract Administrator. The Employee will also be required to furnish such documents, evidence, data or information in support of his claim (bills, the Employee's cancelled check, or other proof of payment, etc.) as the Plan Sponsor or Contract Administrator considers necessary or desirable.

Claims for reimbursement for Health Care Expenses MUST be accompanied by a written statement from an independent third party stating that the medical expense was incurred and its amount. Usually, the provider's itemized bill will suffice. Additionally, the Employee must provide a written statement that the medical expense has not been reimbursed and is not reimbursable under any other health plan and will not be claimed as a Federal income tax deduction.

Claims for expenses related to a Plan Year must be submitted not later than the 90th day after the end of the Plan Year. Claims should be forwarded to:

eba&m

Employee Benefits Administration & Management Corp.

P. O. Box 5079

Westlake Village, CA 91359

Failure to submit claims during the period established by this section will deprive an Employee of benefits to which he might otherwise be entitled.

Payment of Claims

Payment of covered claims will be made directly to the Employee, or to the designated beneficiary in the case of the Employee's death.

All Plan reimbursements will be subject to the following limitations:

the maximum amount of reimbursement will not exceed the lesser of: (i) the amount of benefit allowed by the appropriate section of the Code, or (ii) the amount elected by the Employee on the election of benefits and Salary Reduction Agreement form(s);

reimbursement will be made only in the event and to the extent that such reimbursement or payment (i) is not provided for under any insurance policy, whether the premium on such policy is paid by the Employer or the individual Employee, (ii) is not provided for or reimbursable under any other plan or policy, and (iii) will not be claimed as a deduction for Federal income tax purposes.

reimbursement for Dependent Care Expenses will not exceed the amount available in the Reserve Account at the time of reimbursement.

Claims Denials and Appeal Procedures

If the Contract Administrator or the Plan Sponsor determines that a claim should be wholly or partially denied, the Claimant will be given written notification of such denial. This notice will include:

the reason(s) for the denial;

specific reference to the Plan provision(s) on which the denial is based.

A Claimant may request a review of his claim, provided such request is filed in writing to the Contract Administrator (at the address shown above) within 60 days after the date his claim is denied.

At such time as the Claimant requests a review of the denied claim, he may review any

pertinent documents and should submit issues and comments in writing.

The Plan Sponsor will make a decision with regard to such claim not later than 60 days after the receipt of the request for review, unless special circumstances require an extension of time. If such an extension is required, written notice of the extension will be furnished to the Claimant prior to the termination of the initial 60-day period. The extension notice will explain the special circumstances requiring an extension and the date the Plan Sponsor expects to render the final decision.

The decision on review will be in writing, will include the specific reason(s) for the decision and will reference the pertinent provisions on which the decision is based.

NOTE: If the Claimant is not satisfied with the decision on the first review, a written request for a second review may be submitted to the Plan Sponsor within sixty (60) days of the first decision. The request should state in clear and concise terms the reason for disagreement with the way the claim was processed. When the written request is received, the claim will be reviewed again and the results of this review will be furnished, in writing, to the Employee within sixty (60) days in most cases but in no event more than 120 days.

DEFINITIONS

When capitalized within, the following items will have the meanings shown below.

Board of Directors - The Board of Directors of the Plan Sponsor.

Calendar Year - The period of time commencing at 12:01 A.M. on January 1 of each year and ending at 12:01 A.M. on the next succeeding January 1. Each succeeding like period will be considered a new Calendar Year.

Claimant - Any Covered Person on whose behalf a claim is submitted for benefits under the Plan.

Code - The Internal Revenue Code of 1986, as amended, and the regulations thereunder.

Contract Administrator - A company which performs all functions reasonably related to the general management, supervision and administration of the Plan in accordance with the terms and conditions of an administration agreement between the Contract Administrator and the Plan Sponsor.

Covered Person - A covered Employee or a Qualified Beneficiary under COBRA. See **Eligibility and Effective Dates** and **Continuation of Coverage Option (COBRA)** sections for further information.

Dependent - Any individual with respect to whom, for the taxable year, a deduction is allowable under Code Section 152 for Employee or Employee's spouse.

Earned Income - As provided in Code Section 32(c)(2), all income derived from wages, salaries, tips, other employee compensation and earnings from self-employment (within the meaning of Code Section 1402(a)); but not including any amounts paid or incurred (i) as a pension or annuity, or (ii) by the Employer for Dependent Care Assistance to the Employee.

Employee - see **Eligibility and Effective Dates** section(s).

Employer(s) - The Employer or Employers participating in the Plan as stated in the **General Plan Information** section.

Fiduciary - A Fiduciary of the Plan is any person who has binding power to make decisions regarding Plan policies, interpretations, practices or procedures. A Fiduciary will thus include, but not be limited to, the Plan Administrator, officers and directors of the Plan Sponsor, investment committee members and Plan trustees, if any.

Flexible Dollars - Those dollar amounts which an Employee may allocate to obtain benefits.

Flexible Spending Coverages - The benefits as described herein.

Plan - The entity which provides the benefits described by the Plan Document, its amendments and addendums. The name of the Plan is shown in the **General Plan Information** section.

Plan Administrator - see "Plan Sponsor."

Plan Document - A formal document which describes the plan of benefits and the provisions under which such benefits will be paid to Covered Persons, including any amendments.

Plan Sponsor - The entity sponsoring this Plan. The Plan Sponsor may also be referred to as the Plan Administrator. See **General Plan Information** section for further information.

Plan Year - see **General Plan Information** section.

Reserve Account - An individual account established by the Plan Sponsor and in the name of

the Employee, for the purpose of accounting for Flexible Dollars allocated to and benefits paid under the Plan. A Reserve Account is not an interest-bearing account.

Separate accounting will be performed for each benefit elected by an Employee. Amounts attributed to one benefit cannot be transferred, in any manner, to another benefit.

Salary Reduction Agreement - A Salary Reduction Agreement is an agreement between an Employee and the Employer under which the Employer reduces the Employee's current salary and the Employer contributes the amount of the reduction to the Plan on behalf of the Employee, as a before-tax contribution.

The Salary Reduction Agreement will be in a form which permits the Employer to reduce the Employee's current salary and contribute the amount of the reduction to the Plan on behalf of the Employee. The Salary Reduction Agreement will apply only to amounts of the Employee's pay that have not been actually or constructively received as of the date of the Salary Reduction Agreement. Any amounts so elected will not become currently available to the Employee.

Each Employee may make a Salary Reduction Agreement which will reduce his salary by an amount equal to that necessary to provide for the types of benefits elected under the Plan. The amount of the salary reduction elected by the Employee will be deemed to be an Employer contribution for purposes of the Code.

The Salary Reduction Agreement will be irrevocable during the Plan Year except as provided in "Changes in Election" in the **Eligibility and Effective Date** section.

Student - As provided in Code Section 21(e)(7), an individual who, during each of five calendar months during the taxable year, is a full-time student at an educational organization which normally maintains a regular facility and curriculum and normally has a regularly enrolled body of students in attendance at the place where its educational activities are regularly carried on, as provided in Code Section 21(e)(8) and 170(b)(1)(A)(ii).

GENERAL PLAN INFORMATION

Name of Plan: **Associated Students
San Diego State University
Flexible Spending Plan**

Plan Sponsor: **Associated Students**
Address: Business Office
Aztec Center
San Diego State University
San Diego, CA 92182-7800

Business Phone Number: (619) 594-6487

Participating Employer(s): **Associated Students**

Plan Sponsor ID No. (EIN): **95-6042622**

Plan Number: **592**

Plan Year: **January 1 through December 31**

Named Fiduciary: **Associated Students**
Address: Business Office
Aztec Center
San Diego State University
San Diego, CA 92182-7800

(See also definition of "Fiduciary")

Designated Legal Agent: **Associated Students**
Address: Business Office
Aztec Center
San Diego State University
San Diego, CA 92182-7800

(Legal process may be served upon the Plan Sponsor or a Fiduciary)

Contract Administrator: **eba&m
Employee Benefits Admin.
& Management Corporation**
Street Address: 875 Westlake Blvd., Suite 101
Westlake Village, CA 91361
Mailing Address: P. O. Box 5079
Westlake Village, CA 91359
Phone: (800) 776-1545

Funding - Sources and Uses

Sources of Funds

Contributions for the Flexible Spending Coverages will be provided by the Employer on behalf of an Employee through the election of benefits and Salary Reduction Agreements. The annual election amount(s) to be deposited to Reserve Accounts will be deducted from the Employee's salary in equal amounts per pay period.

All contributions must be used within the Plan Year during which the contributions were made or they will be forfeited by the Employee to the Plan.

Uses of Funds

The contributions will be applied to provide the benefits under the Flexible Spending

Coverages. Unused (forfeited) contributions may not be carried forward by the Employee in any manner to a subsequent Plan Year. The Plan Sponsor in its sole discretion, however, may use forfeited amounts to: (1) pay administrative expenses; (2) reduce Reserve Account contributions for the following Plan Year; (3) increase amounts available to pay claims from Reserve Accounts in future years; or (4) provide a rebate to Plan participants, in which case funds must be allocated on a reasonable and consistent basis and cannot be allocated based on claims experience.

Administrative Provisions

Administration

The benefits of the Plan are administered by a Contract Administrator under the terms and conditions of administration agreement(s) between the Plan Sponsor and Contract Administrator.

Amendment or Termination of the Plan

The Plan Sponsor expects the Plan to be permanent, but since future conditions affecting the Plan Sponsor or Employer(s) cannot be anticipated or foreseen, the Plan Sponsor must necessarily and does hereby reserve the right to terminate, suspend, withdraw, amend or modify the Plan in whole or in part at any time.

With the exception of forfeited amounts, Plan funds will not at any time be used for or diverted to purposes other than for the exclusive benefit of Employees or their beneficiaries, and no amendment will divest any person of his interest therein, except as may be required by the Internal Revenue Service or other governmental authority, or give any person any assignable or exchangeable interest or any right or thing of exchangeable value in advance of the time distribution is to be made to such person, except as otherwise permitted by law.

NOTE: Any termination, suspension, withdrawal, amendment or modification will be done in writing, and by resolution of a majority of the Plan Sponsor's Board of Directors.

Annual Statements

If required by law, the Plan Sponsor will furnish to each Employee within a reasonable period of time following the close of a Plan Year, a written statement showing the amounts paid or expenses incurred by the Plan Sponsor for Plan benefits during the prior Plan Year.

Anticipation, Alienation, Sale or Transfer

No benefit payable under the provisions of the Plan will be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, and any attempt so to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge will be void; nor will such benefit be in any manner liable for or subject to the debts, contracts, liabilities, engagements, or torts of, or claims against, any Employee or beneficiary, including claims of creditors, claims for alimony or support, and any like or unlike claims.

Discrepancies

In the event that there may be a discrepancy between the booklet(s) provided to Employees (the "Summary Plan Description") and the Plan Document, the Plan Document will prevail.

Entire Contract

The Plan Document, any amendments and addendums, the individual applications, if any, and Salary Reduction Agreements of Covered Persons will constitute the entire contract between the parties.

Facility of Payment

Every person receiving or claiming benefits under the Plan will be presumed to be mentally and physically competent and of age. However, in the event the Plan determines that the Employee is incompetent or incapable of executing a valid receipt and no guardian has been appointed, or in the event the Employee has not provided the Plan with an address at which he

can be located for payment, the Plan may, during the lifetime of the Employee, pay any amount otherwise payable to the Employee, to the husband or wife or relative by blood of the Employee, or to any other person or institution determined by the Plan to be equitably entitled thereto.

If a guardian, conservator or other person legally vested with the care of the estate of any person receiving or claiming benefits under the Plan is appointed by a court of competent jurisdiction, payments will be made to such guardian or conservator or other person, provided that proper proof of appointment is furnished in a form and manner suitable to the Fiduciaries. To the extent permitted by law, any such payment so made will be a complete discharge of any liability therefor under the Plan.

Fiduciary Responsibility, Authority and Discretion

Fiduciaries shall discharge their duties under the Plan solely in the interest of the Employees and their beneficiaries and for the exclusive purpose of providing benefits to Employees and their beneficiaries and defraying the reasonable expenses of administering the Plan.

The Fiduciaries shall administer the Plan and shall have the authority to exercise the powers and discretion conferred on them by the Plan and shall have such other powers and authorities necessary or proper for the administration of the Plan as will be determined from time to time by the Plan Sponsor.

In carrying out their responsibilities under the Plan, Fiduciaries may adopt such rules and procedures for the administration of the Plan as they shall consider advisable and shall have discretionary authority to interpret the terms of the Plan and Plan Document and to determine eligibility for and entitlement to Plan benefits in accordance with the terms of the Plan. Any interpretation or determination made pursuant to such discretionary authority shall be given full force and effect, unless it can be shown that the interpretation or determination was arbitrary and capricious.

The Fiduciaries may employ such agents, attorneys, accountants, investment advisors or other persons (who also may be employed by the Employer) as in their opinion may be desirable for the administration of the Plan, and may pay any such person reasonable compensation. The Fiduciaries may delegate to any agent, attorney, accountant or other person selected by them, any power or duty vested in, imposed upon, or granted to them by the Plan.

Force Majeure

Should the performance of any act required by the Plan be prevented or delayed by reason of any act of God, strike, lock-out, labor troubles, restrictive governmental laws or regulations, or any other cause beyond a party's control, the time for the performance of the act will be extended for a period equivalent to the period of delay, and non-performance of the act during the period of delay will be excused. In such an event, however, all parties will use reasonable efforts to perform their respective obligations under the Plan.

Gender and Number

Except when otherwise indicated by the context, any masculine terminology will also include the feminine and any term in the singular will also include the plural.

Illegality of Particular Provision

The illegality of any particular provision of the Plan Document will not affect the other provisions, but the Plan Document will be construed in all respects as if such invalid provision were omitted.

Indemnification

To the extent permitted by law, Employees of the Employer, the Fiduciaries, and all agents and representatives of the Fiduciaries, will be indemnified by the Plan Sponsor and saved harmless against any claims and conduct relating to the administration of the Plan except claims arising from gross negligence, willful neglect, or willful misconduct. The Plan Sponsor reserves the right to select and approve counsel and also the right to take the lead in any action in which it may be liable as an indemnitor.

Legal Actions

No Employee or other beneficiary will have any right or claim to benefits from the Plan, except as specified herein. Any dispute as to benefits under this Plan will be resolved by the Plan Sponsor under and pursuant to the Plan Document. No action may be brought for benefits provided by the Plan or an amendment or modification thereof, or to enforce any right thereunder, until after the claim has been submitted to and determined by the Plan and then action may only be brought within one year after the date of such decision.

Right of Recovery

Whenever any benefit payments have been made by the Plan in excess of the maximum amount required under the terms of the Plan Document, the Plan will have the right to recover all such excess amounts from any persons, insurance companies or other payees, and the Employee shall make a good faith attempt to assist the Contract Administrator in such recovery.

The Plan Sponsor may, in its sole discretion, pay benefits for expenses covered hereunder pending a determination of whether or not such care or services are covered hereunder. Such payment will not affect or waive any exclusion, and to the extent such care or services have been provided, the Plan will be entitled to recoup and recover the amount paid therefor from the Covered Person or the provider of service in the event it is determined that such care or services are not covered hereunder.

Rights Against the Plan Sponsor

Neither the establishment of the Plan, nor any modification thereof, nor any distributions hereunder, will be construed as giving to any Employee or any person any legal or equitable rights against the Plan Sponsor, its shareholders, directors, or officers, or as giving any person the right to be retained in the employ of the Employer.

Titles or Headings

Where titles or headings precede explanatory text throughout the Plan Document, such titles or headings are intended for reference only. They are not intended and will not be construed to be a substantive part of the Plan Document and will not affect the validity, construction or effect of the Plan Document provisions.

Unclaimed Accounts

If the Plan is unable, within two years after any amount becomes due and payable from a Reserve Account to an Employee or beneficiary, to make payment because the identity or whereabouts of such person cannot be ascertained, the Plan Sponsor may mail a notice by registered mail to the last known address of such person outlining the action described in this section to be taken unless such person makes written reply to the Plan Sponsor within 60 days from the mailing of such notice. The Plan Sponsor may direct that such amount and all further benefits with respect to such person will be discontinued and all liability for the payment will terminate; however, in the event of the subsequent reappearance of the Employee or beneficiary prior to termination of the Plan, the benefits which were due and payable and which such person missed will be paid in a single sum.

STATEMENT OF RIGHTS OF EMPLOYEES

A participant in this Plan is entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974 (ERISA). The rights are:

to examine, without charge, at the Contract Administrator's office or at the Plan Sponsor's office, all Plan documents, insurance contracts, and copies of all documents filed by the Plan with the U.S. Dept. of Labor, such as annual reports and Plan descriptions;

to obtain copies of all Plan documents and other Plan information upon written request to the Plan Sponsor or the Contract Administrator. A reasonable charge may be made for the copies;

to receive a summary of the Plan's annual financial report to the extent required by ERISA;

to file suit in a Federal court if any materials requested are not received within 30 days of the request unless notified that the materials were not sent because of matters beyond the control of the Plan Sponsor or Contract Administrator.

In addition to creating rights for Plan participants, ERISA imposes duties upon the people who are responsible for the operation of the Plan (the Fiduciaries). Fiduciaries have a duty to operate the Plan prudently and in the interest of Plan participants and beneficiaries.

No one, including the Employer, may fire a Plan participant or discriminate against him to prevent him from obtaining a welfare benefit or exercising rights under ERISA.

If a participant is improperly denied a welfare benefit in whole or in part, he has the right to file suit in a Federal or State court. If Plan Fiduciaries are misusing the Plan's money, he will have the right to file suit in a Federal court or request assistance from the U.S. Department of Labor. If successful in such lawsuit, the court may, if it so decides, require the other party to pay his legal costs, including attorney's fees.

Any questions about this Statement of Rights under ERISA should be brought to the attention of the Employer, the Contract Administrator or the nearest Area Office of U.S. Labor-Management Services Administration, Department of Labor.

CONTINUATION OF COVERAGE OPTION (COBRA)

In order to comply with the Consolidated Omnibus Budget Reconciliation Act of 1985, during any Plan Year during which the Employer has more than twenty (20) Employees, a Continuation of Coverage Option will be available when health care coverages under the Plan would otherwise terminate. This provision is intended to comply with that law, and, if it is found to be incomplete or in conflict in any way with the law and its amendments, the law will prevail.

NOTE: The COBRA option is also intended to comply with the Health Insurance Portability and Accountability act of 1996. If this provision is found to be incomplete or in conflict in any way with that law and its amendments, the law will prevail.

Definitions

Qualified Beneficiary - An Employee who was participating in the Plan on the date preceding the date on which the Qualifying Event occurred.

Qualifying Event - Any one of the following which would result in the loss of coverage under the Plan:

- the termination of the covered Employee (other than by the Employee's gross misconduct);
- reduction in a covered Employee's hours of employment to an ineligible status.

Notification

Employer must notify Employee of Continuation of Coverage rights in event of Employee's termination or reduction of hours. Notice mailed to the Qualified Beneficiary's last known address will be considered adequate. Notification must be made to Qualified Beneficiaries within 14 days of Employer's notice of the occurrence of Qualifying Event.

Election and Election Period

Continuation of Coverage may be elected during the period beginning on the date coverage would otherwise terminate due to a Qualifying Event and ending on the later of the following:

- sixty (60) days after coverage ends due to a Qualifying Event;
- sixty (60) days after the Qualified Beneficiary receives notice of the Continuation of Coverage Option rights.

Effective Date of Coverage

Continuation of Coverage, if elected within the period allowed for such election, is effective retroactively to the date coverage would otherwise have terminated due to the Qualifying Event and Qualified Beneficiary will be retroactively charged for coverage accordingly.

Level of Benefits

Continuation of Coverage hereunder will be equivalent to coverage provided to a similarly situated person to whom a Qualifying Event has not occurred. If coverage is modified to similarly situated Employees, the same modification will apply to Qualified Beneficiaries.

Cost of Continuation of Coverage

The cost of coverage may be paid in monthly installments and such cost will not exceed 102% of the cost of coverage, during the same period, for a similarly situated Covered Person to whom a Qualifying Event has not occurred. The additional 2% charge is to cover administrative costs and is not added to Reserve Account balances. Retroactive payments must be paid by the Qualified Beneficiary to the Plan within 45 days of election of Continuation of Coverage hereunder.

NOTE: In most instances, COBRA contributions will have to be paid with after-tax dollars.

Termination of Continuation of Coverage

Coverage under this provision will terminate on the occurrence of the earlier of:

the end of eighteen (18) months if the Qualifying Event is employment termination or reduction of hours to non-eligible status. HOWEVER, a Qualified Beneficiary who is determined under Title II or Title XVI of the Social Security Act to have been disabled at the time of termination or within the 60 days thereafter (i.e., at the time of the Qualifying Event or at any time during the first 60 days of COBRA coverage) may notify the Plan Sponsor of such disablement before the end of the 18-month period and extend the continued coverage for 11 months (i.e., from 18 to 29 months) or until the Qualified Beneficiary is no longer disabled, if earlier. The cost of such extended coverage may be 150% of the active Employees' cost for months 19 through 29.

the termination of all Employer-provided group health plans;

the failure to make timely premium payments to the Plan (coverage may be terminated if the beneficiary is more than 30 days delinquent in paying his/her contributions);

the date the Qualified Beneficiary becomes covered under any other group health plan as a result of employment, re-employment or remarriage, which does not contain any exclusion or limitation with respect to any pre-existing condition of such beneficiary; or

the date the Qualified Beneficiary becomes entitled to Medicare benefits.

NOTES