This rule was filed as DFA Rule 84-2.

TITLE 2 PUBLIC FINANCE
CHAPTER 20 ACCOUNTING BY GOVERNMENTAL ENTITIES
PART 4 GOVERNING THE AWARD OF PAYROLL DEDUCTION CODES AND DESIGNATION AND IMPLEMENTATION OF QUALIFIED EMPLOYEE BENEFIT PROGRAMS

2.20.4.1 ISSUING AGENCY: Department of Finance and Administration.
[Recompiled 10/01/01]

2.20.4.2 SCOPE: This rule governs the circumstances under which payroll deductions may be permitted and the method by which vendors, state employees or risk management may initiate requests for a payroll deduction code and by which the department of finance and administration shall process those requests.
[Recompiled 10/01/01]

2.20.4.3 STATUTORY AUTHORITY:
A. Section 10-7-2 NMSA 1978 provides that state employees "shall receive their salaries or wages for services rendered in accordance with regulations issued by the department of finance and administration", placing on the department of finance and administration the responsibility for determining when discretionary payroll deductions may be permitted.
B. Subsection E of Section 9-6-5 NMSA 1978 permits the department of finance and administration to "adopt such reasonable and procedural rules and regulations as may be necessary to carry out the duties of the department."
C. Subsection C of Section 9-6-5 NMSA 1978 authorizes the department of finance and administration to apply for and receive any public or private funds available to the department to carry out its programs, duties or services.
[Recompiled 10/01/01]

2.20.4.4 DURATION: [RESERVED]
[Recompiled 10/01/01]

2.20.4.5 EFFECTIVE DATE: [Filed December 20, 1989]
[Recompiled 10/01/01]

2.20.4.6 OBJECTIVE: The purpose of this rule is to benefit state employees by providing payroll deduction codes for only those high quality employee benefit programs that the group buying power of the large number of state employees and the availability of payment by payroll deduction can obtain at substantial economic savings.
[Recompiled 10/01/01]

2.20.4.7 DEFINITIONS:
A. "Open and switch enrollment period" is an annual six-week period during which state employees may enroll in a specific qualified employee benefit program or may switch from enrollment in such a program offered by one qualified vendor to that offered by a different qualified vendor.
B. "Payroll deduction code" is a computer code under which a portion of a state employee's salary is automatically diverted from the employee to an account for the entity holding the code.
C. "Qualified employee benefit program" means a program offered by a qualified vendor to state employees:
(1) which requires a payroll deduction of a stable dollar amount (a change in price during an open and switch enrollment period is permitted) for an unlimited duration (subject to employee cancellation);
(2) which offers employees a benefit not provided, or not provided in sufficient amount or with adequate specifications, by an existing, state-sponsored program;
(3) which is determined by risk management to offer significant benefit for the cost; and
(4) which offers a benefit to employees at substantial savings over what an individual employee could obtain without the benefit of the group-rate savings available through a payroll deduction plan.
D. "Qualified vendor" means a person or business entity:

(1) which offers a qualified employee benefit program;

(2) which maintains 100 or more state employees enrolled in the program;

(3) which is registered and in good standing with the requisite New Mexico business regulatory agency (e.g., the superintendent of insurance);

(4) which has, and agrees to maintain, a physical and permanent commercial office and staff in New Mexico readily accessible to employees it is servicing; and

(5) which is willing to abide by rules and regulations promulgated by the department of finance and administration concerning the operation of payroll deduction plans.

E. "Risk management" means the risk management division of the general services department.

F. "Secretary" means secretary of finance and administration.

[Recompiled 10/01/01]

2.20.4.8 PERMITTED PAYROLL DEDUCTIONS:

A. Payroll deduction codes shall be allowed for the following purposes:

(1) those required by law (state and federal taxes, FICA);

(2) state-sponsored and required insurance programs where the state shares the cost of the program;

(3) PERA, ERB or other state-sponsored retirement programs mandated by statute;

(4) deferred compensation programs under Chapter 10, Article 7A NMSA 1978;

(5) union dues as permitted by state personnel board rules and regulations;

(6) all financial institutions approved by the department of finance and administration;

(7) charities approved by the department of finance and administration;

(8) qualified employee benefit programs approved by risk management;

(9) vanpool associations approved by the department of finance and administration;

(10) savings bond programs;

(11) exceptional or emergency circumstances which require special consideration and are approved by the department of finance and administration on a case-by-case basis.

B. In order to pay for the ongoing administrative costs of administrating payroll deductions for qualified employee benefit programs, the department of finance and administration shall retain three percent from the total deductions made for each qualified employee benefit program under a payroll deduction code each pay period. In order to offset the costs to risk management of evaluating programs of vendors applying for payroll deduction codes, the department of finance and administration shall charge an application fee of five hundred dollars ($500) to each vendor proposing a program, which fee shall be forwarded to the risk management division of the general services department.

C. Employee benefit programs which had payroll deduction codes prior to the adoption of this rule may not enroll additional state employees unless they fully comply with this rule.

[Recompiled 10/01/01]

2.20.4.9 PROCEDURE FOR ESTABLISHING QUALIFIED EMPLOYEE BENEFIT PROGRAMS FOR PAYROLL DEDUCTION PURPOSES:

A. A qualified employee benefit program may be initiated by three means:

(1) by vendor request;

(2) by state employee request; and

(3) by risk management initiation.

B. Any vendor wishing to have an employee benefit program considered for implementation shall provide to risk management detailed specifications regarding the program, an application fee and any such additional information as may be requested by risk management.

C. Any twenty-five (25) state employees may suggest to risk management an employee benefit program that they would like to see implemented.

D. Risk management, upon request of a vendor, upon request of state employees or on its own initiative, shall investigate each proposed employee benefit program to determine:

(1) whether such a program would offer a unique benefit to state employees not already adequately provided through existing employee benefit programs;

(2) whether the program would provide significant benefit to state employees for the cost indicated;

(3) whether the estimated cost to state employees for the program represents a substantial savings over what an individual state employee could obtain on his or her own without the benefit of the group rate obtained from providing a payroll deduction plan to the vendor;

(4) whether the program will require a deduction of a stable dollar amount (except for an annual price change) for a period of unlimited duration (subject to employee cancellation); and

(5) for employee benefit programs suggested by state employees or risk management, whether any qualified vendors (except for the minimum enrollment requirement) are available who are willing to provide the suggested services.

E. In determining whether a proposed program meets the criteria of for qualified employee benefit program set forth in Subsection D, above, the vendor shall supply a copy of its most recent audited financial statement, a company wide five-year loss experience report, if appropriate, illustrating premiums collected, claims paid and reserves allocated for each year of the five-year period for the type of policy coverage involved and any other information requested by risk management.

F. If risk management determines that the suggested employee benefit program offers unique, quality benefits at substantial savings to employees, it shall conduct a survey of a representative sample of state employees to determine the extent of employee interest.

G. If a minimum of 750 employees are statistically determined to be interested in a program and if the program meets the other criteria in this section, risk management shall certify the program as a qualified employee benefit program. Upon certification, the secretary shall direct the program's implementation as provided in Section 6 [now 2.20.4.10 NMAC].

[Recompiled 10/01/01]

2.20.4.10 IMPLEMENTATION OF A QUALIFIED EMPLOYEE BENEFIT PROGRAM:

A. Upon certification of a qualified employee benefit program, risk management shall implement the program in the following manner. Risk management shall draw up specifications for the qualified employee benefit program and publish notice of request for proposals through regular state bidding procedures. Upon receipt of proposals with application fees, risk management shall review each proposal, confirm that it meets the criteria and specifications for the qualified employee benefit program and that the vendor is a qualified vendor (except for the minimum enrollment qualification). Risk management shall then select one or more qualified vendors. Risk management may either appoint the single vendor offering the program at the lowest price to be the exclusive vendor of that program under contract for up to three years, or may authorize several vendors offering the best versions of the program to solicit business from state employees during the open and switch enrollment period. If several vendors are authorized, risk management may require each vendor to cooperate in preparation of a comparison of benefits offered by the several vendors of the program.

B. If risk management contracts with an exclusive vendor, the contract shall be rebid by risk management at the end of the term. Risk management shall require as a condition of all bids that any new vendor agree to take over automatically all state employees then enrolled in the program.

C. If risk management authorizes several vendors, those who enroll 100 or more state employees during open or switch enrollment periods shall receive a payroll deduction code. Employees who have enrolled in the program with a vendor who does not meet this minimum enrollment requirement so as to qualify for a payroll deduction code, shall have an immediate opportunity following the open and switch enrollment period which results in elimination of that vendor to switch enrollment to a qualified vendor.

D. Each year thereafter, before the annual open and switch enrollment period, risk management shall review the programs offered by all previously authorized qualified vendors to ensure that their programs continue to meet the criteria set forth in Section 5 (D) [now Subsection D of Section 2.20.4.9 NMAC] above, except the minimum employee enrollment requirement. Any additional vendor may submit a proposal with application fee to risk management at any time before the annual open and switch enrollment period for each program. Risk management shall determine whether the vendor is qualified and whether the proposal meets the standards for the qualified employee benefit program in question; risk management may authorize new qualified vendors to participate in the succeeding enrollment period. At the end of the open and switch enrollment period, any vendor which does not have the minimum enrollment requirement shall lose its payroll deduction code.

[Recompiled 10/01/01]

2.20.4.11 SOLICITATION OF STATE EMPLOYEES BY VENDORS OF QUALIFIED EMPLOYEE BENEFIT PROGRAMS:

A. Upon certification that a proposed program is a qualified employee benefit program as provided in Section 5 [now 2.20.4.9 NMAC] and upon selection of qualified vendors as provided in Section 6 [now 2.20.4.10 NMAC], risk management shall specify an annual open and switch enrollment period of six (6) weeks for that program.

B. Vendors may prepare packets of information (fliers, brochures, etc.) for distribution to employees of each agency by the agency personnel officer. The information should specify how employees can contact vendors or their agents. When multiple vendors are soliciting state employees' business for any given employee benefit program, personnel officers should attempt, insofar as possible, to distribute information from all vendors at the same time during the first week of the open and switch enrollment period to facilitate the comparison of programs.

C. Should an agency head deem appropriate, he or she may authorize a meeting of those employees of the agency who so desire with all of the vendors offering a qualified employee benefit program for an explanation of the programs and answering of questions. Agency heads are requested to hold these meetings during the lunch hour or other times which will be nondisruptive of employees' working hours. Such authorization shall be in writing and addressed to each of the qualified vendors. Risk management shall be notified of these meetings and is encouraged to send knowledgeable representatives.

D. Other than the meetings arranged in Subsection C above, vendors and their agents shall not be permitted to contact employees during working hours or at the place of employment.

[Recompiled 10/01/01]

2.20.4.12 TERMINATION OF PROGRAMS: If the secretary determines at any time that any qualified employee benefit program places a burden on the department of finance and administration and risk management which is not offset by a corresponding benefit to state employees, the secretary shall have the right to terminate all payroll deduction codes previously granted to vendors for that qualified employee benefit program under this rule upon giving six (6) months written notice to each vendor. Qualified vendors and state employees shall not gain a vested right to use of payroll deduction codes.

[Recompiled 10/01/01]

HISTORY of Part 2.20.4 NMAC:

Pre-NMAC History. The material in this Part was derived from that previously filed with the State Records Center and Archives:

DFA Rule No. 84-2, Governing The Awarding of Payroll Deduction Codes and Designation and Implementation of Qualified Employee Benefit Programs, 8-31-84.

DFA Rule No. 84-2, Amendment No. 1, Governing The Awarding of Payroll Deduction Codes and Designation and Implementation of Qualified Employee Benefit Programs, 12-20-89.

History of Repealed Material: [RESERVED]