

Automatic Rollover Rules: Preserving Retirement Savings

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As part of the Economic Growth and Tax Relief Reconciliation Act of 2001 (“EGTRRA”), tax-qualified plans are now required to directly transfer mandatory distributions to individual retirement accounts (“IRA”) absent an affirmative election by the participant to distribute otherwise. In other words, plans must roll over cashed-out account balances between \$1,000 and \$5,000 to an IRA selected by the plan administrator unless (1) the participant elects to have his or her account balance rolled over to a different IRA or qualified plan or a taxable distribution; or (2) the plan chooses to eliminate the automatic distribution of these accounts.

In September 2004, the Department of Labor (“DOL”) issued final regulations requiring plans to comply with this requirement beginning with mandatory distributions made on or after March 28, 2005. The final regulations provide a safe harbor that outlines certain criteria relating to the plan fiduciary's selection of an IRA institution and investment options. The regulations also provide limits for IRA fees and require plan fiduciaries to enter into a written agreement with the IRA provider to ensure all safe harbor criteria are addressed. Notably, the DOL also released a class exemption permitting financial institutions that sponsor plans to set up IRAs in-house to handle their rollover requirements.

In December 2004, the Internal Revenue Service (“IRS”) issued guidance on the automatic rollover requirements effective for mandatory distributions made on or after March 28, 2005. Plans that provide for mandatory distributions have until the end of the first plan year ending on or after March 28, 2005 to adopt a good faith amendment reflecting the automatic rollover requirements. Thus, calendar year plans must adopt the good faith amendment no later than December 31, 2005. In the alternative, a plan may be amended to eliminate mandatory distributions in excess of \$1,000 without violating the anti-cutback rules. A plan that provides for mandatory distributions but has not yet developed sufficient administrative procedures may take advantage of a transition rule: until December 31, 2005, the plan will not be treated as failing to operate in accordance with its terms merely because it does not process mandatory distributions for which a participant failed to affirmatively elect another form of payment.

Since the automatic rollover requirements are effective March 28, 2005, plans should begin compliance efforts immediately. To discuss your options and the steps that must be taken to comply with the DOL final regulations and the IRS guidance with regard to the mandatory automatic rollover requirement, contact any of the attorneys in Holland & Hart's

Benefits Law Group.

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