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Benefits e-News: A new value added service from Robinson & Cole LLP

In July, 2000, Robinson & Cole launched e-News, an electronic newsletter reporting recent developments in Labor, Employment and Benefits law. Due to the overwhelming success of e-News, last month Robinson & Cole launched Benefits e-News, a monthly electronic newsletter reporting on recent changes in the law affecting employee benefits and other developments affecting plan sponsors and their employees.

Benefits e-News also provides web links to the Internal Revenue Service, the United States Department of Labor, the United States Department of Health and Human Services HIPAA web site, and the Pension Benefit Guaranty Corporation. You can navigate Benefits e-News just like you have navigated previous issues of e-News. To access a web link, position your cursor on the link and click your mouse. To return to Benefits e-News, click the back button on your browser.

We hope that you find Benefits e-News to be informational and helpful. If you know of others who would like to receive this online newsletter (or if you would like to discontinue receiving Benefits e-News), please click here and send us an email message. If there are certain topics that you would like covered in future issues, please let us know.

IRS Issues Proposed Regulations Regarding Section 204(h) Notices

The IRS has released proposed regulations governing the issuance of Section 204(h) notices to participants adversely affected by plan amendments which could significantly reduce future benefit accruals, including early retirement subsidies. Prior to the issuance of the regulations, plans were expected to issue notices that explained the impact of the amendment upon affected participants within a reasonable time before the effective date of the amendment. The proposed regulations set forth specific time frames for providing notice to adversely affected participants.

Generally, the regulations require that the 204(h) notice must be provided 45 days prior to the effective date of the amendment in question. If the amendment is part of a merger and

only affects an early retirement program or retirement-type subsidy and does not reduce the future rate of benefit accruals, 30 days notice is required. If the amendment is a result of a business merger or acquisition, and the plan in question is a small pension plan (fewer than 100 participants), 15 days notice is required. The notice must describe the plan provision prior to the amendment and after amendment in a manner understood by the average participant, and must state the effective date of the change. If it would be difficult to appreciate the impact from a description of the change, or if the amendment changes the plan to a cash-balance plan or results in a wear-away, the regulations require that the notice contain illustrative examples. The regulations provide examples of what information a notice should contain under various sets of circumstances.

DOL Expands Permitted Use of Technology to Communicate Plan Information

The DOL has published final regulations expanding the permitted use of electronic technology to distribute benefit plan information to participants and beneficiaries. Plan sponsors have struggled with old DOL guidance due to improvements in technology since proposed regulations were issued in 1999. The final regulations provide a safe harbor for plan sponsors to provide plan documents via email, on a corporate website, on a CD-Rom, or using other technology. Since the guidance is merely a safe harbor, plan sponsors are not required to comply. However, plan sponsors that choose to comply will be assured that the electronic delivery will be an acceptable delivery method. Guidance in the proposed regulations regarding the electronic transmittal of plan disclosure documents was limited to Summary Plan Descriptions, Summary of Material Modifications, and Summary Annual Reports. Under the final regulations, the documents that can be provided through electronic means has been expanded to encompass all plan disclosure documents required under Title I of ERISA, including Summary Plan Descriptions, Summary of Material Modifications, Summary Annual Reports, individual benefit statements, plan investment information (including ERISA 404(c) notices), QDRO notifications, plan loan information, COBRA notices, and HIPAA Certificates of Creditable Coverage.

The proposed regulations protected electronic delivery only to participants who had a computer with a printer at their desk. The expanded safe harbor permits the electronic distribution of documents beyond the worksite if consent is given and can thus be used for retirees, beneficiaries, and plan participants who do not have access to a computer at their worksite. In the case of a participant who is currently an employee, plan information can be provided electronically if the employee has access to a computer at a location where the employee is reasonably expected to perform his or her duties and for whom access to the employer's system is an integral part of those duties. The regulations make it clear that mere access to a computer kiosk at a common area is not satisfactory for this purpose. For employees for whom access to the employer's system is not an integral part of his or her duties and for participants who are not currently employees, the individual must provide an address for delivery of the documents and affirmatively consent to electronic disclosure in a manner that demonstrates such individual's ability to access the document electronically. The plan sponsor must provide such individuals with a clear statement explaining the documents to which the consent will apply; that the consent may be withdrawn at any time;

the procedures for such a withdrawal and for updating their electronic address; that a paper copy of the document may be requested and whether there will be any charge; and any hardware or software requirements. The plan administrator must ensure that the system for furnishing documents results in the actual receipt of the transmitted documents by using a return receipt reply or notice of failed delivery reply on an electronic mail system or by conducting surveys to confirm the receipt of transmitted information. All documents that are transmitted electronically must include a notice explaining the document's significance and informing the recipient of their right to request and receive a paper copy of the document. This notice must be provided at the time that the document is furnished electronically.

Additionally, the regulations permit plan sponsors to satisfy ERISA's record retention requirements electronically if a reliable system is maintained. Plan administrators are required to retain plan related records for six years and must maintain records for individual employees sufficient to determine benefits. This information can now be stored electronically and plan sponsors can dispose of original paper records after they have been transferred to an electronic recordkeeping system. The new regulations are effective October 9, 2002.

IRS Issues Long-Awaited Section 457 Plan Proposed Regulations

New proposed regulations regarding Section 457 plans represent the most extensive guidance issued on such plans in almost 20 years. The proposed regulations make several significant changes in addition to incorporating new provisions applicable to Section 457 plans as a result of EGTRRA.

Perhaps most notably, the proposed regulations allow loans from state and local government Section 457 plans. However, loans from Section 457 plans of tax-exempt employers are still not permitted. The regulations would also allow the deferral of sick pay, vacation pay or backpay to a Section 457 plan if an agreement is in place permitting such deferrals to the plan prior to the month in which they occur. Such deferrals may constitute the employee’s entire deferral up to the applicable limit. Also, the regulations include a provision clarifying that plan-to-plan transfers between two governmental plans, or two tax-exempt employer plans, do not violate the Section 457 distribution requirements. The proposed regulations also clarify that although coordination of limits between 401(k) plans, 403(b) annuities, and 457 plans is no longer required, coordination will still be used to determine if an individual is eligible to make a Section 457 plan catch-up in the three years prior to retirement for all years prior to 2002. The regulations also effectively eliminate the ability of tax-exempt entities to offer stock options to executive employees.

Minimum Required Distribution Regulations Finalized

The IRS has finalized the minimum required distribution regulations that it proposed over a year ago. The final rules retain most of the new distribution rules that had been proposed,

but provide some clarification and simplification regarding application of the rules. A new uniform table for determining lifetime distributions was released to reflect current life expectancy. The new table will result in smaller required distributions.

Spanish Language Safe Harbor Rollover Notice

The IRS has released a Spanish language version of the Safe Harbor Rollover Notice. EGTRRA requires that plans provide participants receiving eligible rollover distributions with an expanded notice describing the tax consequences of various actions that may be taken with respect to the distribution. The Safe Harbor Rollover Notice meets these requirements, and may be revised to remove provisions that do not apply to the plan using the Notice.

Massachusetts Provides Guidance Regarding Elective Deferral Limits

The Massachusetts Department of Revenue issued a Technical Information Release regarding the exclusion amounts for elective deferrals to qualified retirement plans for 2002. Massachusetts is one of the few states that has not adopted (or is in the process of adopting) the new elective deferrals limits set by EGTRRA, and continues to determine taxable income under the Internal Revenue Code as it existed on January 1, 1998. At the current time, there is no movement in Massachusetts to adopt the provisions of EGTRRA. As a result, individuals who are subject to the Massachusetts personal income tax may have greater taxable income under Massachusetts' law than they will under federal law under certain circumstances.

The Massachusetts elective deferral limits for 2002 are: $6,500 for SIMPLE IRAs; $11,000 for state and local government Section 457 plans; the lesser of $9,000 or 33 1/3% of compensation for all 457 plans other than state and local government plans; $11,000 for 403(b) annuities; and $11,000 for 401(k) plans. Massachusetts will not recognize "catch-up" contributions in excess of these limits as excludable from income. Although several of these limits mirror the federal limits for 2002, a gap will appear and widen between the Massachusetts and federal limits as the progressive limit increases implemented by EGTRRA take effect each year through 2005, and as the catch-up contribution limit increases from the current limit of $1,000 to $5,000 in 2005.

You May Be Subject to the HIPAA Privacy Rules Even If You Think You're Not

If your business, tax exempt institution, or governmental body self-funds its health plan, offers a health care spending account or provides on-site medical care to its employees, your organization likely will need to comply with the

HIPAA Privacy Rules, regardless of whether you are in the health care business. The Privacy Rules apply to “hybrid entities,” which are organizations that have at least one health care component. Organizations that self-fund their health plans or that provide medical care to employees on-site have covered health care components and are hybrid entities whether or not they are involved in the health care industry. Hybrid entities must ensure that their covered components comply with the Privacy Rules by restricting the use and disclosure of protected health information (PHI) from covered components to other components of the organization. For instance, an employee who works in an organization’s benefits department and receives PHI in connection with the administration of a benefits plan may not freely share that information with others in the organization, such as the human resources department. In small organizations where one person wears numerous hats, such as benefits administrator and human resources administrator, this separation may be unavoidable. In these cases, organizations must follow specific procedures to prevent improper use of PHI. A hybrid entity may have varying obligations under the Privacy Rules, depending on the size of the organization and the types of activities it performs. If you think your organization may be a hybrid entity, you promptly need to analyze your operations carefully to determine whether the HIPAA Privacy Rules apply to any aspect of your organization. The deadline for compliance with the Privacy Rules is April 14, 2003.

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