

On Employee Benefits

AUTOMATIC DISTRIBUTION IN EXCESS OF \$1,000 NOT PERMITTED EFFECTIVE MARCH 28, 2005

Your retirement plan most likely contains a provision that requires the plan to automatically distribute amounts of five thousand dollars (\$5000) or less when a participant terminates employment before normal retirement age. The Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") has imposed new requirements on these retirement plans that provide for mandatory distributions of amounts equal to five thousand dollars (\$5000) or less. These new requirements are effective for mandatory distributions made **on and after March 28, 2005**. In addition, please be aware that your plan must be amended to reflect these changes on or before the last day of the plan year ending on or after March 28, 2005 (for calendar year plans, this deadline would be **on or before December 31, 2005**).

Under the new requirements set forth by the Internal Revenue Service and the Department of Labor, on and after March 28, 2005, mandatory distributions in excess of one thousand dollars (\$1,000) but equal to or less than five thousand dollars (\$5,000) must be automatically rolled over into an individual retirement account ("IRA"), unless the participant affirmatively elects otherwise. In other words, unless you have an election from

a terminated participant to the contrary, the plan sponsor will now be responsible for establishing an automatic rollover program. This program should comply with burdensome Department of Labor regulations, and should fulfill fiduciary duties with respect to both the selection of the IRA provider and the selection of acceptable investments for the distribution.

There is more than one way to comply with the new requirements. In fact, there are at least three, and they are as follows:

1. You can avoid the new automatic rollover requirements by not allowing mandatory distributions at all on or after March 28, 2005.
2. You can avoid the new automatic rollover requirements by not allowing mandatory distributions in excess of one thousand dollars (\$1,000) on or after March 28, 2005 (while still allowing mandatory distributions of one thousand dollars (\$1,000) or less).
3. You can choose to comply with the new automatic rollover requirements for mandatory distributions on or after March 28, 2005.

We recommend that clients take the second approach, i.e., you should avoid the

new automatic rollover requirements by not allowing mandatory distributions in excess of one thousand dollars (\$1,000) on and after March 28, 2005. We realize that every plan is unique, and if you want your plan to comply with the new automatic rollover requirements, please contact your Employee Benefit Plan specialist at the Firm for more information about how to do so.

REGARDLESS OF WHICH APPROACH YOU DECIDE TO ADOPT FOR YOUR PLAN, THE PLAN MUST BE AMENDED TO REFLECT THE RECENT LAW CHANGES.

Walter & Haverfield's employee benefits practice represents both large and small employers, multi-employer funds, 100% employee-owned ESOPs, governmental agencies, and individuals. Its nationally prominent lawyers have broad experience with all kinds of employee benefit plans, including retirement plans, 401(k) plans, employee stock ownership plans, and welfare benefit plans.

For more information on these or other employee benefits issues, please contact one of our Employee Benefits lawyers:

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The information in this newsletter is a summary of often complex legal issues and may not cover all the 'fine points' related to a specific situation or court jurisdiction. Accordingly, it is not intended to be legal advice, which should always be obtained in consultation with an attorney.

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