HOLLAND&HART.
BENEFITS LAW GROUP

News Alert

January 20, 2009

Holland & Hart is the largest law firm in the Rocky Mountains, providing a complete range of legal services to a diverse group of commercial and individual clients.

The firm offers an extensive network of legal talent and resources equipped to assist businesses in every stage of development, and in all facets of the law.

For more information, visit the Holland & Hart web site at www.hollandhart.com.

Responding to Employee Benefits Provisions of the Worker, Retiree and Employer Recovery Act of 2008

The recently passed Worker, Retiree and Employer Recovery Act of 2008 (the "Act") contains important changes for qualified plans. These changes are intended to provide relief to plan sponsors and participants for plan funding shortfalls and account reductions caused by the economic downturn. This Benefits Alert describes some of the changes under the Act and what actions, if any, should be taken.

DEFINED CONTRIBUTION PLANS

2009 RMD Waiver. Generally, participants are required to begin taking minimum distributions ("RMDs") by April 1 of the year after reaching age 70½, and continue every year thereafter In addition, RMDs to beneficiaries generally must begin by the end of the calendar year following the year of the participant's death and continue until the benefit is fully distributed by the 5th calendar year following the year during which the participant died. The Act provides a one year suspension of these RMD requirements. Specifically, for 2009 only, defined contribution plans, governmental 457(b) plans and individual retirement plans are not required to make RMDs. Distributions that would otherwise be RMDs in 2009 are eligible to be rolled over. However, the Act provides that the direct rollover notice and the 20% income tax withholding requirement are not required to apply to such distributions. RMDs for 2008 were not suspended so if a participant first turned 70½ in 2008 and is owed her first RMD for 2008 by April 1, 2009, the RMD is still due.

> **Action**: Plan sponsors should review their plans to determine if an amendment is needed to address this change. Amendments must be adopted on or before the last day of the plan year beginning on or after January 1, 2011. For a calendar year plan, the plan must be amended on or before December 31, 2011. Plan sponsors may want to review and possibly revise distribution notices.

Rollover to Roth IRA. Effective for distributions made after December 31, 2007, the Act provides that the income limits do not apply to rollovers from a designated Roth account in a 401(k) or 403(b) plan to a Roth IRA.

> **Action**: Distribution notices should be updated.

Gap Period Income. Effective for plan years beginning after December 31, 2007, the distribution of excess elective deferrals are only required to include the income allocable to such excess through the end of the year for which the deferral was made, not through the distribution date as provided in regulations.

> **Action**: Plan sponsors should review their plans to determine if an amendment is needed to address this change. Amendments must be adopted on or before the last day of the 2009 plan year.

EACA. The Act repealed the requirement that an eligible automatic contribution arrangement ("EACA") invest default contributions in a qualified default investment arrangement ("QDIA") in accordance with the regulations enacted by the Department of Labor. Even though an EACA is not required to invest default contributions in a QDIA, plan sponsors may want the default investment to be a QDIA for other reasons.

> **Action**: Plan sponsors with EACAs should consider whether they wish to change the default investment to an investment that is not a QDIA, and if a change is desired, they must review their plans to determine if an amendment is needed to address this change. Amendments must be adopted on or before the last day of the 2009 plan year if retroactive application to the first day of the plan year is desired.

DEFINED BENEFIT PLANS

Funding Shortfall. The Act provides that single-employer pension plans that fall below the set target funding percentage for a particular year (92% for 2008; 94% for 2009; 96% for 2010) will only be required to fund up to the specified funding percentage for that year instead of 100%. For example, if a plan was funded at 91% for 2008, the funding shortfall for 2008 would be 1% and the plan would need to fund to 94% in 2009, rather than 100%.

> **Action**: Discuss with the plan's actuary.

At-Risk Plans. Under the Act, single-employer defined benefit plans that are less than 60% funded may look back to the previous plan year to determine their funding status for purposes of the benefit accrual limit only. This only applies for plan years beginning on or after October 1, 2008 and before October 1, 2009.

> **Action**: Discuss with the plan's actuary.

Lump Sum Distributions. For defined benefit plans maintained by employers with no more than 100 employees, the Act modifies the interest rate rules for adjusting a participant's benefit to a straight life annuity effective for years beginning after December 31, 2008. Under the Act, the interest rate must be the greater of 5.5% or the interest rate specified in the plan.

> **Action**: Plan sponsors should review their plans to determine if an amendment is needed to address this change. Amendments must be adopted on or before the last day of the 2009 plan year.

OTHER

Non-Spouse Rollovers. Effective for plan years beginning after December 31, 2009, plans <u>must</u> allow non-spouse beneficiary rollovers.

> **Action**: Plan sponsors should review their plans to determine if an amendment is needed to address this change. Amendments must be adopted on or before the last day of the 2009 plan year. In addition, distribution notices should be updated.

HOLLAND&HART LLP
BENEFITS LAW GROUP

News Alert

Jane Francis
jfrancis@hollandhart.com
(303) 295-8599
Denver

Rebecca Hudson
rhudson@hollandhart.com
(303) 295-8005
Denver

Elizabeth Nedrow
enedrow@hollandhart.com
(406) 252-2166
Billings

Leslie Thomson
lthomson@hollandhart.com
(406) 252-2166
Billings

Brenda Berg
brberg@hollandhart.com
(303) 295-8029
Denver

For questions regarding this Alert, please contact
Beth Nedrow, Holland & Hart LLP, 401 North 31st Street, Suite 1500, Billings MT 59101
Phone: 406-252-2166 | enedrow@hollandhart.com