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Issue: # 1

January 14, 2010

Defined Benefit Compliance Reminder

In recent years, the DOL and IRS have increased the information required to be disclosed to participants. For clients where Harbridge prepares client benefit certifications, we have updated the benefit summaries to comply with the new regulations. For clients that perform calculations internally, this note will serve as a reminder of those additional disclosure requirements.

Relative Value Disclosure

Treasury Decision 9256 details that the relative value of the available optional forms of benefit under the Plan must be disclosed to participants in order for valid elections to be made under a Qualified Defined Benefit Plan. There are several ways to comply with the regulations.

- Compare the value of each alternative form under the Plan to the either the default form of payment or the life annuity form of payment based on a reasonable mortality and interest rate assumption.
- Provide a generic form detailing the relative value of the optional forms for a "typical" retiree. If this is done, the participant must be notified in writing that a relative value determination specific to the participant will be provided upon request.

In addition, although the IRS does not mandate the assumptions to be used in the determining the relative value above for most forms of payment, it does specify that the relative value of any form of payment subject to IRC 417(e) (i.e. lump sums, social security leveling options, and certain only options) must be determined based on the commissioner's standard mortality table

and applicable interest rates.

The final regulations can be found at:
<http://www.irs.gov/pub/irs-regs/td9256.pdf>

Additional Disclosure

Under proposed IRS Regulations, a participant's election to receive benefits for which the lump sum present value exceeds \$5,000 shall not be valid unless that participant is informed of both his/her right to defer receipt and the financial consequences of not deferring receipt of the benefit. Plan sponsors may comply by disclosing the value of the normal form of benefit and the earliest date at which such benefit may be received without reduction. If the participant is already eligible for an unreduced benefit, the participant must be informed of the effects of deferring receipt under the late retirement provisions and/or minimum distribution provisions of the Plan.

The proposed regulations can be found at:
<http://edocket.access.gpo.gov/2008/E8-23918.htm>

Suspension of Benefits

Many defined benefit pension plans do not allow participants to receive benefits while remaining employed with the company beyond his/her normal retirement date. The Plan document will specify whether a participant in this situation is entitled to:

- (1) The greater of continued accrual under the Plan or the actuarial increased value of the normal retirement benefit or;***
- (2) Only continued accruals under the Plan.***

If your Plan is designed to comply as in option (2), the participant must receive a suspension of benefits notice prior to age 65, informing him/her that in deferring receipt of benefits at normal retirement, the value of the participant's benefits payable under the Plan may be reduced. We recommend you ask yourself: ***Is our Plan subject to the notice requirements under option (2) and are we providing the required notice to all applicable participants?***

If you are not providing the notice, as required, then the Plan has an operational defect and may be subject to penalties under audit.

Minimum Distribution

Defined benefit plans are subject to stiff minimum distribution guidelines and tax penalties associated with failure to comply with these rules. If your Plan has active or inactive participants who have deferred receipt of benefits beyond age 65, we suggest you review the Plan's late retirement provisions and minimum distribution rules ensure your Plan complies with all applicable provisions. ***It is your obligation, as the plan sponsor, to notify participants of their right to receive benefits and to begin distribution of those benefits in accordance with the distribution rules of the Plan.***

******IRS Releases 402(f) Model Notice For 2010*** (Plans Offering Lump Sums or Accelerated Payment Options)***

The IRS recently released two model notices to comply with the special tax and rollover notification requirements under IRC 402(f). If Harbridge is providing this notice to you as part of your benefit certification requests, the newly released language will be incorporated in those forms for distributions being processed in February 2010 and beyond. ***If these notices are prepared internally at your company, we suggest you review the new requirements to be sure that your notices are in compliance.***

Benefit Statements

For plan years beginning after December 31, 2006, PPA requires that active, vested participants in a defined benefit plan be given an individual benefit statement at least once every three years. There may be a delayed effective date of December 31, 2007 or later for some collectively bargained plans.

As an alternative to providing statements to all vested active participants every three years, some plan sponsors elected to send an annual notice informing participants that a statement of benefits is available to them upon request. Those sponsors were required to send out the first "*notification of availability of statements*" by December 31, 2007 (December 31, 2008 for collectively bargained plans) and should continue to provide this notice annually.

For plan sponsors, who have not previously provided statements

for the 2007 or 2008 plan years (2008 or 2009 for collectively bargained plans) and who did not pursue the alternative notice option above, the plan year beginning in 2009 (2010 for collectively bargained plans) is the last year within the 3 year cycle to satisfy the requirement. Since the DOL has not released official guidance on the content or timing of the statements, informally we understand that distribution within a "reasonable" period of time after the year end should be acceptable.

Non-collectively bargained calendar year plans, who have not distributed statements for plan years 2007-2009 at this point, should be planning for the preparation and distribution of the 2009 statements.

If you have any questions concerning this pension alert and how they may affect your program, please contact your Harbridge consultant.

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