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EMPLOYEE BENEFITS ALERT — MAY 2005

IRS AUTOMATIC ROLLOVER GUIDANCE REQUIRES PLAN AMENDMENT

Many tax-qualified retirement plans require that small vested amounts, generally $5,000 or less, be distributed without the participant's consent following the participant's termination of employment. The IRS recently issued regulations which require that any cash-out distributions in excess of $1,000 (excluding rollovers) which is made without the consent of the Participant (a "Mandatory Distribution") must be directly transferred to an individual retirement account or annuity ("IRA") established for the Participant. Mandatory Distributions in excess of $5,000 cannot be made without the Participant's consent.

This automatic rollover requirement will be effective for Mandatory Distributions of between $1,000 and $5,000 occurring **on and after March 28, 2005.** Plans need to be able to operate in compliance with this new requirement by that date. In the alternative, some Plan Sponsors are eliminating the ability to distribute accounts with balances of greater than $1,000 without the consent of the Participant.

In addition to operating in compliance with this new requirement, plans must be amended by the last day of the first plan year ending after March 28, 2005, to comply with these automatic rollover rules or to eliminate the plan's mandatory distribution provisions. Consequently, for calendar year plans, the deadline for amendments is December 31, 2005.

We are in the process of preparing required amendments and a summary of material modifications for our clients' plans and will contact you regarding this amendment over the coming months.

If you desire to amend the mandatory distribution provisions in your Plan document to eliminate Mandatory Distributions in excess of $1,000, please contact a member of McAfee & Taft's Employee Benefit Group.

NEW LAW EXTENDS USERRA CONTINUATION COVERAGE REQUIREMENTS

On December 10, 2004, President Bush signed into law an amendment to the continuation coverage requirements in the Uniformed Services Employment and Reemployment Act of 1994 ("USERRA"). The amendment is part of the Veterans' Benefits Improvements Act of 2004 (Pub. L. 108-454).

USERRA originally required that eligible employees who are called up to military active duty must be given an opportunity to continue group health coverage for themselves (and their spouses and dependents) for up to 18 months. The new law extends that 18-month coverage to a total of 24 months. This extension will be provided for individuals electing coverage beginning on and after the December 10, 2004, enactment date. Therefore, the extension will not operate to extend a continuation coverage period that had already begun before enactment.

Separately in the new law, employers must provide an annual notice of USERRA rights and obligations to affected employees. This notice can be met through a general posting at the workplace location where the employer provides general notices to employees. The Department of Labor will issue a model notice that will meet these requirements.

MCAFEE & TAFT EMPLOYEE BENEFITS PRACTICE GROUP

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