



## CITY OF GAINESVILLE

*Office of the City Manager*

060716

*November 3, 2006*

Jeff Gibson  
Director, New Business Unit  
ICMA-RC  
Suite 600  
777 North Capitol Street, NW  
Washington, DC 20002-4240

Dear Mr. Gibson:

In response to the letter received from ICMA-RC dated October 6, 2006, the **City of Gainesville, Florida** hereby notifies ICMA-RC of its intention to suspend elective contributions in **City of Gainesville** Retirement Health Savings ("RHS") Plan. The suspension is effective **for Plan Year beginning January 1, 2007** and will be in place for the entire plan year 2007. If, as a result of the discussion with the IRS, this suspension needs to become permanent, a formal amendment of the terms of the Adoption Agreement doing this, or some variation of that, will be made during calendar year 2007. The plan number impacted by this suspension is **800150**.

I understand ICMA-RC will notify us when a resolution is reached so that we may take appropriate actions at that time.

Thank you.

Sincerely,

**Russ Blackburn**  
**City Manager**



October 6, 2006

Dear Plan Sponsor:

At ICMA-RC we are active public policy advocates for state and local government workers on retirement security issues. With this responsibility we have been at the forefront in developing a forward-looking retiree health solution – the VantageCare Retirement Health Savings plan (RHS). The basic structure of the plan has been recognized by the Internal Revenue Service (IRS) and over the years they have been fully aware of the product features.

RHS is designed to provide you and your employees with funding solutions that offer additional financial protection for what has become one of the most significant expenses in retirement – retiree health care. Like you, many employers have embraced this solution for their employees.

We recently learned that the IRS has concerns with the elective features that are offered in many of our RHS plans. In response to their concern, we are working with the IRS to reach a practical resolution for RHS plans. We are looking forward to getting the issues resolved as quickly as possible and will keep you up to date on our progress as we continue discussions with the IRS.

Until the matter is resolved, ICMA-RC has voluntarily suspended offering RHS plans with elective features in response to all RFPs we receive in the normal course of business.

Because of IRS concerns with the elective features and the uncertainty regarding a resolution with the IRS, you may want to temporarily suspend future irrevocable election contributions to RHS plans beginning January 1, 2007. If you choose to suspend irrevocable election contributions, please notify ICMA-RC of your intention and we will work with you to implement your request. Please refer to the enclosed Q&A document which provides additional information.

We will continue to keep you informed of our discussions with the IRS and we are always available to respond to any questions that you may have. If you have any plan specific concerns or questions, we are glad to respond to you directly. Please contact our RHS Priority Line on 1-800-730-7250 so that we may assist you.

ICMA-RC is fully committed to support you on retiree health care issues. We recognize the critical importance of health care to your employees and we remain dedicated to providing you and your employees with the best retirement health options available.

Sincerely,

Keith Sendall  
Senior Vice President, Field Sales



October 6, 2006

## Questions & Answers for Plan Sponsors

**Question:** What is RHS?

**Answer:** ICMA-RC's Retirement Health Savings (RHS) program provides employers a tool to give retirees a flexible source of funding – often supplemental to a basic retiree health program – to meet escalating medical costs later in life. The RHS program may also help state and local governments address new Government Accounting Standards Board (GASB) rules for retiree health costs if employers shift from a defined benefit to a defined contribution approach to retiree health.

**Question:** Why is the IRS looking at the RHS program?

**Answer:** The IRS regularly performs payroll audits on government and private sector organizations to ensure that they are in compliance with existing regulations and interpretations of tax law. We are currently assisting several employers with payroll audits and stand ready to assist any employers whose RHS plans are audited by the IRS.

**Question:** What has changed since your letter in July?

**Answer:** Recently ICMA-RC met with IRS officials to discuss our RHS plan. At the meeting, IRS officials indicated that since there was no statutory basis for the irrevocable elections the elections were not explicitly permitted.

**Question:** What has ICMA-RC done to date to resolve these issues?

**Answer:** ICMA-RC is actively engaged in discussions with the IRS to reach a satisfactory solution as soon as possible. We also continue to work with our legal counsel, Groom Law Group, to build our legal position on the issue of one-time irrevocable elections. Given the IRS position, ICMA-RC has opted not to offer RHS plans with elective features in response to new Requests-for-Proposals (RFPs).

**Question:** At this point what has the IRS decided to do?

**Answer:** They have indicated a willingness to reach a resolution to this issue for all the concerned parties. We are actively engaged in discussions with them.

**Question:** We have a mandatory plan. Does this development impact our plan?

**Answer:** No. Plans with mandatory features only are not impacted by the IRS position. You should continue plan administration as usual.

**Question:** How long will it take to reach a resolution with the IRS?

**Answer:** In consultation with our legal counsel, Groom Law Group, we understand that it could take up to six months to reach a resolution. However, each situation is unique and it could be resolved more quickly.

*(Continued)*

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**Question:** What does the IRS position mean to my plan if it has elective features?

**Answer:** At this time, the IRS has not made a final determination and therefore your plan may not be currently affected. However, because of IRS concerns with the elective features and the uncertainty regarding a resolution with the IRS, you may want to temporarily suspend irrevocable election contributions to RHS plans beginning January 1, 2007. There is a possibility that by taking this action you may limit your future options under a final resolution with the IRS.

**Question:** Why are you suggesting we wait until January 1, 2007 to temporarily suspend contributions in RHS plans with elective features?

**Answer:** We are hopeful that we may have reached a resolution on this matter with the IRS by the end of the year. However, if not, we believe the beginning of the tax year is a logical time to make plan changes.

**Question:** Other than suspending future contributions, what options are available to our plan?

**Answer:** While this is not a comprehensive list, these are primary options. With each of these options there are advantages and disadvantages to your plan and we encourage you to speak with your counsel to determine the appropriateness of these options for your plan. The options include:

- Maintain plan status quo pending final resolution with the IRS.
- Amend the plan to include mandatory-only features.
- Suspend future enrollments but maintain the plan for current participants.

Depending on the final resolution with the IRS, there is a possibility that by taking any action you may limit your future options. We stand ready to work with you to implement the option you choose. If you need assistance or have any questions, please call our RHS Priority Line at 1-800-730-7250.

**Question:** We are in the middle of our open enrollment season. What should we do?

**Answer:** You may want to temporarily suspend offering the elective features of your RHS plan to new enrollees during your open enrollment windows. Again, this approach could limit your future options under the final resolution with the IRS.

**Question:** We are signed up for RHS with elective features but have not started payroll deductions. What should we do?

**Answer:** You may want to temporarily suspend the onset of payroll deductions. However, each RHS plan is different and we will work with you individually to determine the best approach for your situation. We encourage you to contact our RHS Priority Line at 1-800-730-7250.

**Question:** What is likely to happen when the IRS makes its final decision?

**Answer:** When the IRS communicates a final decision on the issue of elective features, ICMA-RC will take all the appropriate steps with employers to make certain that our plans are in compliance.

**Question:** Should we consider terminating our plan now to protect our participants?

**Answer:** This is an option available to you. However, depending on the final resolution with the IRS, there is a possibility that by taking this action you may limit your future options.

**Question:** Who should I call for more information?

**Answer:** If you have questions that have not been addressed by this Q&A, please call our RHS Priority Line at 1-800-730-7250.

**Question:** Is ICMA-RC taking any other actions related to this issue?

**Answer:** Yes. We are working with organizations that represent state and local government entities, public employers, benefits administrators and employees to contact key lawmakers to ask for their support in obtaining guidance that will allow state and local governments and their employees to design the tools they need to help meet their retiree health care expenses. Specifically, we ask that key lawmakers urge the Internal Revenue Service to clarify the tax issues surrounding the funding of HRAs. We also ask that those same lawmakers contact the Secretary of the Treasury and the IRS Commissioner to encourage them to promptly provide formal written guidance that addresses the tax issues with these arrangements.



## CITY OF GAINESVILLE

*Department of Risk Management*

### **Current Participants/ Suspending Deferrals beginning 1/1/07**

Dear RHS Participant,

Our records indicate you are currently making elective contributions to the Retirement Health Savings (RHS) plan to help pay for medical expenses incurred during retirement. As you know, your contributions are irrevocable once you've initiated participation. Health Reimbursement Arrangements (HRAs) like the RHS plan are relatively new and guidelines governing these programs continue to evolve.

We have recently been notified that a division of the Internal Revenue Service (IRS) has questioned whether the irrevocably-elected contributions made to these programs qualify as tax-preferred contributions. Our plan administrator, ICMA-RC, is in the midst of active dialogue with the IRS to clarify the situation.

There are numerous possible outcomes to these discussions with the IRS, but we won't know anything specific until an agreement is reached. Because of the current uncertainty, we believe the best course of action is to temporarily suspend enrollment for elective contributions in the RHS plan for the plan year effective January 1, 2007. In addition, we will be suspending all current contributions made under a previous election for the plan year beginning January 1, 2007. Should the IRS provide clarification before then and we determine that no change is needed, we will notify you. Elective contributions to the plan will resume no earlier than the beginning of the next plan year (January 2008) and only if the IRS provides the necessary clarification.

The City of Gainesville and ICMA-RC remain committed to helping employees to effectively save for their retiree medical expenses. If you would like to consider alternative methods to defer taxes for calendar year 2007, you may increase your contributions to the City's 457 Plan (subject to maximum contribution rules). In addition, if you are over 55 and currently accessing your RHS plan for reimbursement of your medical expenses, you may want to consider a medical reimbursement account. Please contact Risk Management to discuss these options at 334-5045. We will keep you abreast of further progress as it develops.

If you have any questions please feel free to contact us or ICMA-RC's Investor Services toll-free at 1-800-669-7400.

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