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September 11, 2009

Re: IRS Issues New 402(f) Notices for Eligible Rollover Distributions

Dear Clients and other Friends:

At long last the IRS has finally updated the safe harbor 402(f) model notice to participants and beneficiaries who receive eligible rollover distributions from employer retirement plans. This notice is referred to as a "402(f)" notice after the Internal Revenue Code section that requires it. A safe harbor model 402(f) notice was last issued by the IRS in 2002.

Key Terms Used in the 402(f) Notice

- An "eligible employer plan" is a qualified retirement plan (i.e., 401(a) plans, including 401(k), profit sharing and pension plans), 403(a) plans, 403(b) plans and governmental 457(b) plans.
- An "eligible rollover distribution" is a payment from an eligible employer plan that may be rolled over to an eligible retirement plan.
- An "eligible retirement plan" is an individual retirement plan or an eligible employer plan.
- A "designated Roth account" is a separate account under a 401(k), 403(b) or governmental 457(b) plan that holds a participant's salary deferrals that are designated Roth contributions. Designated Roth contributions are after-tax contributions that are governed by special rules.

402(f) Notice Requirements

Internal Revenue Code § 402(f) requires plan sponsors of eligible employer plans to provide a notice explaining a participant's or beneficiary's options when receiving an eligible rollover distribution. Treas. Reg. § 1.402(f)-1, Q&A-1(b) provides that the notice required by Code § 402(f) is deemed satisfied if a plan sponsor provides the model notice issued by the IRS. Because the IRS had not updated the model notice since 2002, plan sponsors were left with only the outdated 2002 model notice which required regular revisions to keep it current with ongoing law changes. The IRS issued two versions of the new model 402(f) notice: a standard 402(f) notice for most plan distributions and a new 402(f) notice for distributions from designated Roth

accounts. The new model notices are welcomed. They should prove to be helpful to plan sponsors and easier to understand for recipients of eligible rollover distributions.

A 402(f) notice must be provided a “reasonable period of time” prior to the distribution. That period of time is deemed to be no less than 30 days and not more than 180 days before the distribution is made. The 30-day period is commonly waived, as permitted, by the recipient. The 402(f) notice may be provided electronically in a way that complies with the electronic notice requirements of Treas. Reg. §1.401(a)-21.

Updated Explanations in the New IRS Model 402(f) Notices

- Distribution options from designated Roth accounts.
- Automatic rollovers for mandatory (cash out) distributions of amounts between \$1,000 and \$5,000 as applicable to an employer plan.
- Distributions from employer plans may be rolled over to Roth IRAs.
- Qualified reservist distributions.
- Direct transfers to inherited IRAs, including for nonspouse beneficiaries.
- Distributions to nonresident aliens.
- Rules applicable to certain public safety or other employees under certain governmental plans.

The presentation of the new model notices was reorganized and simplified by the IRS. There is now a designated Roth account version of the notice, and therefore 401(k) plans and other salary deferral plans with the Roth feature will need to provide both model 402(f) notices to a recipient of a plan distribution from a designated Roth account as well as other plan accounts. Otherwise, only the standard notice is required for plan distributions that do not include Roth amounts and only the designated Roth account notice is required for plan distributions of only Roth amounts.

Customizing the 402(f) Notice

The IRS acknowledges that the model 402(f) notices may be customized for particular employer plans. For example, the model notices describe distributions from after-tax employee contribution accounts (not Roth accounts but “traditional” employee after-tax accounts) and this language can be deleted if the plan does not permit such after-tax contributions. Also, language regarding distributions of employer stock can be deleted where the plan does not hold employer stock. Other information that may not be relevant to a particular plan includes language describing distribution options from governmental 457(b) plans and language addressing options for retired public safety officers. A notice may be customized by providing additional information as long as that information is not inconsistent with Code § 402(f). Also, the 2002

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model notice or an individually customized 402(f) notice may be used as long as it is worded in a way that satisfies Code § 402(f) and is up to date.

Future Revisions

The new IRS model 402(f) notices may be used beginning immediately. The IRS specifies that to continue to satisfy Code § 402(f), the model 402(f) notices must be updated to accurately describe current law. This means that plan sponsors or their service providers will need to periodically review and update the language of the model 402(f) notices where the IRS has not itself published updated model notices. The IRS has indicated that it expects to publish a Spanish translation of the new IRS model 402(f) notices.

Links to IRS information

- New IRS Model 402(f) Notices as included in IRS Notice 2009-68:
<http://www.irs.gov/pub/irs-drop/n-09-68.pdf>
- IRS Rollover Chart: http://www.irs.gov/pub/irs-tege/rollover_chart.pdf

MS Word Version of New IRS Model 402(f) Notices

If you received this letter via e-mail, you also received a Microsoft Word version of the new IRS model 402(f) notices. If you received this letter by U.S. Mail and would like an electronic MS Word version of the new IRS model 402(f) notices, please contact us.

If you have questions about these new 402(f) notices or require assistance in customizing a notice, please contact us.

Sincerely,

Ted Rice

TKR/jks