



WRMarketplace

An AALU Washington Report

Thursday, January 8 2015

WRM# 15-01

The *WRMarketplace* is created exclusively for AALU Members by the AALU staff and Greenberg Traurig, one of the nation's leading tax and wealth management law firms. The *WRMarketplace* provides deep insight into trends and events impacting the use of life insurance products, including key take-aways, for AALU members, clients and advisors.

TOPIC: IRS Issues Revised Safe Harbor Notices for Recipients of Eligible Rollover Distributions.

MARKET TREND: Administrators of certain qualified plans and governmental 457(b) plans, as well as payors of benefits under 403(b) plans, are required to give notice of the tax treatment and consequences of distributions from these arrangements. To facilitate this process, the IRS has created safe harbor notices that administrators and payors can use to satisfy their obligations.

SYNOPSIS: Internal Revenue Code (“Code”) § 402(f) requires that written notice be provided to participants in plans making eligible rollover distributions. These notices must describe: (1) the tax implications of taking a taxable distribution and (2) the procedures for rolling over the distribution to avoid current taxation. In 2009, the IRS issued safe harbor notices that could be used to satisfy Code § 402(f), but there have been several changes in the laws applicable to rollover distributions since then. Accordingly, the IRS issued updated safe harbor notice forms in Notice 2014-74.

TAKE AWAYS: With the IRS's issuance of Notice 2014-74 and new safe harbor 402(f) notice forms, employers sponsoring these arrangements would be well advised to update their current notice forms to incorporate the IRS guidance or to simply begin using one of the new safe harbor notice forms in its entirety. Advisors to these employers can assist their clients in preparing the most up-to-date notices.

MAJOR REFERENCES: [*IRS Notice 2014-74*](#).

Code § 402(f) requires that plan administrators of qualified retirement plans and governmental 457(b) plans and payors of benefits under 403(b) plans provide the recipient of any eligible rollover distribution¹ with a notice detailing the tax treatment of the distribution, as well as the possibilities of deferring tax on the distribution by rolling it over to an IRA or other tax qualified vehicle. The IRS issued safe harbor 402(f) notices in 2009, but various changes to the rules governing distributions from tax-qualified vehicles have necessitated updates to these safe harbors.

RELEVANT POST-2009 LAW CHANGES

The following post-2009 Code modifications and updated IRS guidance impacted the safe harbor 402(f) notices:

- 2010:
 - Plans that include a qualified Roth contribution program can provide for rollovers to designated Roth accounts in the same plan (*i.e.*, “in-plan Roth rollovers”) (note the IRS provided an amendment to the safe harbor 402(f) notices with regard to payments not from a designated Roth account, but the safe harbor notice itself was not changed).
 - Elimination of the prohibition on making contributions to a Roth IRA as a conversion by taxpayers with earnings in excess of a specified threshold.
- 2012: Allowance of in-plan Roth rollovers of amounts that are not otherwise currently distributable (additional guidance on this issue was provided in 2013, including clarification that a 402(f) notice is not required for a participant who makes an in-plan Roth rollover of an amount not otherwise distributable).
- 2014: Release of guidance that provided new rules concerning the allocation of pre-tax and after-tax amounts among distributions made from a qualified plan to multiple destinations (see discussion in *WRMarketplace #14-42*).

MODIFICATIONS TO SAFE HARBOR 402(F) NOTICES

Notice 2014-74 lists the modifications to the safe harbor 402(f) notices originally issued in 2009 (including updates to address the post-2009 law changes noted above) and provides two new and complete safe harbor notice forms (one for distributions from non-Roth accounts and one for distributions from Roth accounts).

Specifically, the new notices: (1) describe in-plan Roth rollovers, including the ability to make them with amounts that are not otherwise distributable from the plan; (2) remove the outdated language about the income limitations for Roth IRA conversions; and (3) include detailed descriptions of the taxation of amounts distributed from one plan to multiple destinations that are consistent with the rules set forth in IRS Notice 2014-54.

The new safe harbor notices also address a number of relatively minor issues that needed correction or clarification from the prior notice versions, including:

- Clarification that amounts contributed under an eligible automatic enrollment arrangement under a 401(k) plan that the participant requests be refunded within 90 days of the first contribution to the plan are not eligible for rollover;
- Clarification that the exception from the 10% penalty tax for early distributions available for payments after a participant has received unemployment compensation for 12 weeks is limited to payments for health insurance premiums; and
- A statement that a participant generally cannot take a distribution from a plan that consists solely of after-tax money, but that a special rule to the contrary may apply if the participant has pre-1987 after-tax contributions maintained in a separate account.

TAKE AWAYS

- With the IRS's issuance of Notice 2014-74 and new safe harbor 402(f) notice forms, employers sponsoring these arrangements would be well advised to update their current notice forms to incorporate the IRS guidance or to simply begin using one of the new safe harbor notice forms in its entirety.
- Advisors to these employers can assist their clients in preparing the most up-to-date notices.

NOTES

¹ For this purpose, an eligible rollover distribution is any distribution other than: (1) a distribution that is one of a series of substantially equal periodic payments (made not less frequently than annually) made over the life (or joint lives) or life expectancy (or joint life expectancies) of the employee and the employee's designated beneficiary or over a specified period of ten years or more; (2) a distribution made to satisfy the Code's minimum distribution requirements; or (3) a distribution made upon the financial hardship of the employee.

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