

Qualified Plan Consulting Alert

IRS Releases Updated Safe Harbor Rollover Notice

October 7, 2009

On September 5, 2009, the Internal Revenue Service (IRS) released Notice 2009-68 (<http://www.irs.gov/pub/irs-drop/n-09-68.pdf>) which contains two safe harbor rollover notices; one for distributions from accounts other than a designated Roth account and the other for distributions from accounts that are designated Roth accounts. The notices are updated to reflect changes in the law since the last safe harbor notice was released in Notice 2002-3, and the presentation of the information is reorganized and simplified. Prior to the release of Notice 2009-68, it was the responsibility of the benefits community to update the prior safe harbor notice for changes in the law.

Internal Revenue Code (IRC) section 402(f) requires the plan administrator of a 401(a) plan, 403(a) plan or 457(b) plan to provide a written explanation to any recipient of an eligible rollover distribution. The payor of a 403(b) plan must also provide such notice. The notice must be provided within a reasonable time period not more than 180 days and not less than 30 days before the date a distribution will be made and it must describe:

- The direct rollover rules
- Mandatory income tax withholding rules for distributions not directly rolled over
- Tax treatment of distributions not rolled over
- When distributions may be subject to different restrictions and tax consequences after being rolled over

The notice may be customized, as appropriate, for each plan and it is not required to include information that does not apply to the plan (e.g., information related to employer stock). Alternatively, a plan administrator may provide an explanation that is different from the safe harbor explanation as long as it contains all information required under IRC 402(f).

The safe harbor explanations provided in Notice 2002-3, appropriately modified for law changes since it was published, will continue to be the safe harbor explanation with respect to notices provided through December 31, 2009. Alternatively the new safe harbor notice explanation may be used now. Whether safe harbor or customized notices are used, Plan administrators must amend the notices for any changes in the law after September 28, 2009.

ING currently uses a notice that is based on the safe harbor notice in Notice 2002-3, but it has been customized. The notice has been updated for all changes in the law (e.g., Economic Growth and Tax Relief Reconciliation Act, designated Roth accounts, Pension Protection Act, etc.). Currently ING is reviewing its customized notice and the new safe harbor notices to determine whether to enhance the ING customized notice or to adopt the new safe harbor notices.



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