BRYAN CAVE
A Broader Perspective
Bulletin

Employee Benefits & Executive Compensation Client Service Group

To: Our Clients and Friends September 18, 2009

IRS Issues New Model 402(f) Notices

Earlier this month, the Department of Treasury and Internal Revenue Service ("IRS") issued Notice 2009-68, which includes new safe harbor language for the rollover explanations required under Section 402(f) of the Internal Revenue Code.

Section 402(f)

Section 402(f) generally requires that administrators of certain retirement plans provide recipients of eligible rollover distributions with an explanation of rollover options and applicable tax consequences ("402(f) Notice"). Plans that must comply with Section 402(f) include the following: qualified plans under Section 401(a), including money purchase, profit sharing, 401(k), and defined benefit plans; Section 403(a) plans; Section 403(b) plans; and governmental Section 457(b) plans. The requirement will be deemed satisfied if the plan administrator provides the model notice issued by the IRS.

Notice 2009-68

The IRS has updated the model notice in Notice 2009-68. The new model 402(f) Notice has been expanded to reflect changes in the law since the prior model notice was issued and to explain rules applying to special rollover situations. The new guidance includes two different safe harbor explanations—one for distributions from traditional non-Roth accounts and another for distributions from designated Roth accounts.

Although the model 402(f) Notice is deemed to satisfy the Section 402(f) notice requirements, a plan administrator may customize the safe harbor explanation by omitting certain information that does not apply to its particular plan. Alternatively, a plan administrator may provide its own explanation not based on the model as long as that explanation satisfies the requirements of Section 402(f).

Action Steps

Plans may immediately use the new model 402(f) Notices or continue to use the safe harbor 402(f) Notice contained in Notice 2002-3 through December 31, 2009. Beginning January 1, 2010, only the explanations provided in Notice 2009-68 will provide safe harbor protection. The model notices should be tailored for use with a specific plan and updated in the future to reflect subsequent changes in the law.

Please feel free to contact any member of the Bryan Cave LLP Employee Benefits and Executive Compensation group listed below if you require assistance or have any questions regarding the information described in this Bulletin.

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