

RETIREMENT AND SAVINGS INITIATIVES

On September 5, the IRS released a series of four notices and three revenue rulings comprising the “Retirement and Savings Initiatives: Helping Americans Save for the Future.”

The newly released guidance provides details on automatic enrollment provisions for 401(k) and SIMPLE IRA plans, permits the contribution of payments for unused vacation and other accrued leave to company sponsored retirement plans, and announces a new program to allow the direct investment of income tax refunds in government I Bonds.

The retirement and savings initiatives also include updated and simplified model employee notices which explain distribution options for retirees and other terminating employees (the so-called “402(f) notice” required by Section 402(f) of the Internal Revenue Code). This material is included in Notice 2009-68 and, because it applies to any qualified retirement plan providing lump sum distributions, warrants close attention by plan administrators and sponsors.

The model employee notices contained in Notice 2009-68 include one form for distributions from a designated Roth account and one form for all other retirement plan eligible rollover distributions. The substance of the model notices is updated to include information required by the Economic Growth and Tax Relief Reconciliation Act of 2001 and the Pension Protection Act of 2006. Portions of the model notices which do not apply to your plan can be omitted and additional material not inconsistent with the substance of the model notice can be added. Accordingly, statements in the model notices about after-tax employee contributions and benefit distributions involving employer securities do not apply to most plans, and can be omitted.

Existing employee notices based on IRS safe harbor language which dates back to 2002 can be used through December 31, 2009, but only if they are modified to reflect all currently applicable statutory changes.

Recommendations: All 402(f) notices need to be revised to reflect current statutory requirements. The substantive changes parallel those required for retirement plan documents (see “Retirement Plan Update: 2009 Deadline for Amendments”). Plan administrators can use their existing 402(f) notices until the end of 2009, *but only if they are customized to reflect current legal requirements*. It makes more sense to adopt the applicable model notice from IRS Notice 2009-68. Because it is unclear that there is any grace period for adopting the new

employee notice, this change should be made *now* with respect to all subject retirement plans, which includes plans qualified under Section 401(a) of the Internal Revenue Code (profit sharing, Section 401(k) and defined benefit pension plans) as well as Section 403(b) tax deferred annuity arrangements maintained by not-for-profit entities.

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