



Pension Analyst

Compliance Bulletin

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IRS updates safe harbor rollover distribution notice

Administrators of qualified plans and governmental section 457(b) plans, and payors under 403(b) plans must provide recipients of eligible rollover distributions with a written explanation describing:

- The direct rollover rules;
- The mandatory income tax withholding rules for distributions that are not directly rolled over;
- The tax treatment of distributions not rolled over; and
- When distributions may be subject to different restrictions and taxability after being rolled over.

This notice must be provided within a reasonable period of time (generally, no more than 180 days and no less than 30 days) before the plan makes an eligible rollover distribution. It may be distributed electronically, as permitted by the [IRS electronic media rules](#).

Changes reflected in new notices

On September 8, 2009, the IRS released two safe harbor explanations that plan sponsors and payors may use to satisfy this notification requirement. This is the first official update to the safe harbor rollover notice since it was last published in 2002. These updated explanations reflect changes made by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), the Pension Protection Act of 2006 (PPA), the Heroes Earnings Assistance and Relief Tax Act of 2008 (HEART), and the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA).

As a result, the new notices discuss:

- [Rollovers to Roth IRAs](#);
- The waiver of the 10% early withdrawal penalty tax for [qualified reservist distributions](#);
- The waiver of the 10% early withdrawal penalty tax for governmental defined benefit plan distributions [to certain public safety employees](#);
- Distributions to inherited IRAs for [non-spouse designated beneficiaries](#);
- The special tax treatment for certain distributions made to eligible retired public safety officers to pay [health insurance premiums](#); and
- The tax treatment of [permissible withdrawals](#) from eligible automatic contribution arrangements.

The IRS has also attempted to simplify the presentation of this information by reorganizing it and presenting it in a more reader-friendly question and answer format.

Notice content

In this update, the IRS provides separate notices explaining the rollover options available for and tax treatment of distributions:

- That are not from a designated Roth account; and
- That are from a designated Roth account.

An individual who will be receiving eligible rollover distributions from both a designated Roth account and an account other than a designated Roth account must receive both notices. However, both notices may be modified to remove information that does not apply to the plan making the distribution. For example, a plan that does not provide for the

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distribution of employer stock would not want to include the discussion about the taxability of employer stock that is not rolled over.

Plan sponsors and payors are not required to use these safe harbor notices. Instead, they may develop their own rollover distribution notices. Customized notices must contain the information required by Internal Revenue Code section 402(f) and be written in a manner designed to be easily understood by the recipient.

In addition, plan sponsors and payors that choose to use the safe harbor notices are responsible for updating those notices to appropriately reflect any changes made after September 28, 2009, to the tax treatment rules or other information contained in the notices.

The IRS expects to publish Spanish translations of both safe harbor notices.

Continued use of old notices

Plan administrators and payors may begin providing the new safe harbor notices immediately. Alternatively, they may continue to provide the old safe harbor notices, as modified to reflect changes in the law since their original publication in 2002, through December 31, 2009. Beginning January 1, 2010, plan sponsors and payors may no longer rely on the old safe harbor notices to satisfy this notification requirement, even if they have been appropriately updated. However, plan sponsors and payors may continue to use customized notices that accurately reflect the current law and contain the required information after December 31, 2009.

Prudential Retirement's notification process

Since the new safe harbor notices provide the required information in a more reader-friendly format, Prudential Retirement will be using them, with appropriate modifications, beginning in 2010.

- Notices provided to defined benefit plan payees will not contain any designated Roth contribution information or information about features, such as employer stock or plan loans, which are only applicable to defined contribution plans.
- For qualified defined contribution plans, 403(b) plans, and governmental section 457(b) plans, less content customization will be needed but multiple versions are needed. For example, in addition to the standard notices, recorded summary versions are needed for use by the interactive voice response (IVR) system and the participant service center. In addition, we are developing our own Spanish translations of these notices for use until the IRS publishes its promised Spanish versions.

Prudential will implement the use of the new notices during the first half of 2010. The standard written notices will use the new safe harbor format and content. The recorded summary notices will satisfy the section 402(f) requirements but will not be true "safe harbor" notices, until the IRS provides additional safe harbor guidance.

Some of the new versions, such as the recorded summaries, may be available sooner than other versions, such as the Spanish translations. Until a new version is available, we will continue to supply the existing customized notices, which are in the old format but accurately reflect the current law and contain the information required by section 402(f).



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