



# eBenefits Alert: IRS Guidance Bonanza

September 14, 2009

On September 5, 2009, the IRS issued several notices and revenue rulings with a stated goal of promoting retirement plan savings. The notices and rulings provide additional guidance regarding automatic contribution arrangements and also provide authority for plans to contribute certain unused paid time off to qualified retirement plans. In addition, the wave of guidance includes a much-needed update to the safe harbor eligible rollover distribution notice, including a safe harbor notice for eligible rollover distributions from Roth accounts.

## **Automatic Contribution Arrangements**

The guidance relating to automatic contribution arrangements provides general guidance relating to automatic contribution arrangements in SIMPLE IRAs, and provides sample amendments for adding certain automatic enrollment features to qualified plans and SIMPLE IRAs. The guidance also includes a Revenue Ruling which describes certain circumstances under which automatic increases in contribution rates will continue to be treated as elective contributions. Employers that are considering adding an automatic contribution feature to their plans will want to be sure to refer to these notices and rulings when designing the details of such arrangements. Further, employers who have already implemented an automatic contribution feature will want to ensure that their current arrangements comply with this new guidance.

## **Contribution of Paid Time Off to Qualified Retirement Plans**

Two of the Revenue Rulings issued by the IRS describe circumstances under which qualified plans may be amended to permit contribution of the cash equivalent of unused paid time off. The rulings contemplate plan designs where a contribution of such amounts is made on a mandatory or elective basis. Any contributions of such amounts must comply with the qualified plan nondiscrimination requirements and other benefit limits.

## **Safe Harbor Eligible Rollover Distribution Notices**

Code section 402(f) requires plan sponsors to provide a written explanation to recipients of eligible rollover distributions that explains the direct rollover rules and other relevant tax consequences of failure to roll over eligible amounts. The explanation is often referred to as the "402(f) notice." The IRS last provided a safe harbor 402(f) notice in 2002, but since that time, many changes have been made to the tax code that affect the tax notice language. The recently issued revised notices are a welcome update that incorporate law



changes since 2002 and also include a safe harbor notice for rollovers from Roth accounts. Although plan sponsors are not required to use the safe harbor notices, use of the IRS notices provides a safe harbor that the plan complies with Code section 402(f). The IRS indicated that plan sponsors can still rely on the prior IRS safe harbor notices until December 31, 2009, provided such notices have been properly updated to reflect the changes in the law. Effective January 1, 2010, plan sponsors must switch to the new IRS notices to continue to take advantage of the safe harbor. Plan sponsors should review their 402(f) notices to ensure that they are up-to-date with current IRS requirements and consider whether adoption of one or both of the IRS safe harbor notices will better suit their needs. You can find a link to the new safe harbor notices on the IRS Web site here: <http://www.irs.gov/pub/irs-drop/n-09-68.pdf>.

If you have any questions regarding the foregoing, would like more information, or would like assistance in determining how this new guidance impacts your plans, please contact a member of the Gray Plant Mooty Employee Benefits and Executive Compensation practice group.

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