

MEMO# 14280

December 27, 2001

IRS RELEASES REVISED SAFE HARBOR EXPLANATION UNDER CODE SECTION 402(F)

[14280] December 27, 2001 TO: PENSION MEMBERS No. 42-01 PENSION OPERATIONS ADVISORY COMMITTEE No. 79-01 RE: IRS RELEASES REVISED SAFE HARBOR EXPLANATION UNDER CODE SECTION 402(f) The Internal Revenue Service has issued Notice 2002-3, which contains two "safe harbor explanations" that plan administrators may provide to recipients of eligible rollover distributions in order to satisfy section 402(f) of the Internal Revenue Code. One of the explanations relates to distributions from section 401(a) and 403(a) plans and section 403(b) arrangements, and the other is designed for use by administrators of governmental 457 plans. The revisions to the previous version of the safe harbor explanation include detailed discussions of expanded rollover opportunities resulting from the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). For example, the explanation includes new sections on the rollover of after-tax contributions and expands the list of the types of plans into which distributions may be rolled over. In this regard, the explanation states that after-tax contributions from a section 401(a) or 403(a) plan may be rolled over "to another such plan using a direct rollover," and that after-tax contributions from a section 403(b) arrangement may be directly rolled over into another section 403(b) arrangement, but after-tax contributions may not be rolled over to a governmental 457 plan. In addition, the explanation describes the potential consequences of rolling over certain amounts, such as amounts qualifying for ten-year averaging and capital gain treatment, into various types of plans. Notice 2002-3 states that the new safe harbor explanations meet the requirements of section 402(f) for distributions on or after January 1, 2002, if provided to the recipient of an eligible rollover distribution within a reasonable period of time before the distribution is made. According to the notice, the previous version of the safe harbor explanation, which was contained in Notice 2000-11, will not be considered a safe harbor explanation for distributions on or after January 1, 2002, because of the changes made by EGTRRA. The notice further states, however, that no penalty will be imposed for any failure to provide the expanded explanation 2 required by section 641(c) of EGTRRA with respect to any distribution made before April 14, 2002, provided that the plan administrator makes a reasonable attempt to comply with the expanded notice requirement. Kathy D. Ireland Associate Counsel

Attachment Note: Not all recipients receive the attachment. To obtain a copy of the attachment, please visit our members website (<http://members.ici.org>) and search for memo 14280, or call the ICI Library at (202) 326-8304 and request the attachment for memo 14280. Attachment (in .pdf format)

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.