

MEMO# 4703

April 15, 1993

IRS NOTICE ALLOWING WAIVER OF 30-DAY NOTICE PERIOD UNDER SECTION 402(F) OF THE CODE

April 15, 1993 TO: PENSION MEMBERS NO. 17-93 OPERATIONS MEMBERS NO. 18-93
TRANSFER AGENT ADVISORY COMMITTEE NO. 26-93 RE: IRS NOTICE ALLOWING WAIVER OF
30-DAY NOTICE PERIOD UNDER SECTION 402(F) OF THE CODE

As we previously advised, section 402(f) of the Internal Revenue Code, as amended by the Unemployment Compensation Amendments of 1992 ("UCA"), requires that plan administrators of qualified retirement plans provide explanations of the direct rollover rules to plan participants "within a reasonable period of time before making an eligible rollover distribution." The temporary and proposed regulations under this section stated that the required notice in the context of a qualified plan must be provided within the time frame prescribed by final regulations under section 411(a)(11) of the Code. Thus, under the temporary and proposed regulations, the section 402(f) notice under a qualified plan was required to be given no less than 30 days and no more than 90 days before the annuity starting date. For distributions not governed by section 411(a)(11), such as distributions not exceeding \$3,500, the same time period applied, but the participant was permitted to waive the 30-day period by affirmatively electing to make or not make a direct rollover. (See Institute Memorandum to Pension Members No. 28-92, Operations Members No. 39-92, and Transfer Agent Advisory Committee No. 62-92, dated October 22, 1992.) Attached is a copy of IRS Notice 93-26, which states that any participant under a qualified plan may waive the 30-day waiting period, provided that he or she is given the opportunity to consider the decision for at least 30 days and that the plan administrator provides information clearly indicating that the participant has a right to this period for making the decision. The guidance provided by the notice also applies to the time period for providing the notice of distribution rights required under section 1.411(a)-11(c) of the regulations. No change has been made to the 90-day period, however. Although section 402(f) does not apply to distributions from section 403(b) arrangements, the temporary and proposed regulations require the payor under such an arrangement to provide a similar explanation. The regulations require that this explanation be provided within a reasonable time before making an eligible rollover distribution, but do not require that it be provided strictly within the 90/30-day period. Notice 93-26 does not alter this general rule, but permits waivers under the same conditions provided for qualified plans. The notice also clarifies that the "annuity starting date" for nonperiodic distributions is generally the date of distribution, and that amounts paid under an annuity contract purchased for a participant and distributed to the participant by a qualified plan constitute eligible rollover distributions if they otherwise qualify as such. The guidance provided by the notice is generally effective for distributions made on or after January 1, 1994; however,

taxpayers, plan administrators, and payors may rely on this guidance as though it were provided in the temporary and proposed regulations under the UCA and the final regulations under section 411(a)(11). We will keep you informed of developments. Kathy D. Ireland Associate Counsel - Pension Attachment

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.