

MEMO# 35756

June 25, 2024

GAO Issues Report on 402(f) Notices

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TO: ICI Members

Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension

Tax RE: GAO Issues Report on 402(f) Notices

The US Government Accountability Office (GAO) last month issued a report entitled "401(k) Retirement Plan Tax Notices: Federal Actions Can Help Participants Understand Their Distribution Options."[\[1\]](#) The GAO Report is required under section 336 of the SECURE 2.0 Act, which requires GAO to analyze Internal Revenue Code (Code) section 402(f) notices provided by retirement plan administrators to plan participants and report its findings to Congress.[\[2\]](#) Per section 336, the report "shall analyze the effectiveness of such notices and make recommendations, as warranted by the findings, to facilitate better understanding by recipients of different distribution options and corresponding tax consequences, including spousal rights."

GAO in a January 2024 report completed under a separate engagement reviewed access to 401(k) plan savings during the pandemic in 2020 and challenges participants have rolling over their retirement savings from one plan to another.[\[3\]](#) Among other things, this report considered challenges with 401(k) plan-to-plan rollovers and federal actions that can improve the process. As the work for the new GAO Report was performed under the January 2024 Report, the earlier report's conclusions are reflected in the conclusions in the GAO Report.

Based on a nationally representative survey, GAO reported that:

- An estimated 82 percent of 401(k) participants eligible for a rollover were not aware of all four distribution options (i.e., staying in the plan, rolling over to another plan, rolling over to an IRA, or cashing out).
- 401(k) participants do not fully understand the associated tax consequences of their distribution options, even though plans are required to outline them in the 402(f) notice before participants receive a distribution. About 40 percent of all eligible 401(k) participants did not understand the tax consequences of their distribution options.
- Not all 401(k) participants receive information from their old plan in time to inform their decisions about their retirement savings. Of those who received a notice, about 15 percent received it after they made a decision.

GAO recommended steps federal agencies can take to better facilitate participants' understanding of their distribution options and the associated tax implications. These recommendations included the following.

- Treasury can take action to clarify the 402(f) notice, including amending the notice requirements and providing for clarifying information in the notice, to:
 - include clear information about participants' option to leave their savings in their old plan;
 - provide clearer and more concise information on each of the four distribution options available to participants, and their associated tax consequences; and
 - address the timing requirements for plans to provide the 402(f) notice, to ensure the notice is provided to participants when they leave their job and become eligible to take a distribution.
- Treasury could improve the content of the 402(f) notice to address surviving spouses and former spouses, both of which may receive the notice under certain circumstances.
- DOL can take steps to help plans develop clear and concise communications to participants, to help ensure that participants receive easily understandable information about their distribution options and the associated tax consequences.

In comments to a draft of the GAO Report, DOL stated that EBSA is currently engaged in projects that will enhance disclosures to separating plan participants. Treasury in response to a draft of the January 2024 Report stated that an update to the 402(f) notice is in process. Treasury also noted that it lacks statutory authority to require that the timing of the notice be adjusted as recommended.

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Notes

[1] 401(k) Retirement Plan Tax Notices: Federal Actions Can Help Participants Understand Their Distribution Options, GAO-24-1007167 (May 22, 2024), available at <https://www.gao.gov/products/gao-24-107167> ("GAO Report").

[2] Pub. L. No. 117-328, div. T, § 336, 136 Stat. 4459, 5373. The SECURE 2.0 Act of 2022 was enacted as Division T of the Consolidated Appropriations Act, 2023. For an overview of the SECURE 2.0 Act, see ICI Memorandum No. 34795, dated January 12, 2023, available at <https://www.ici.org/memo34795>.

[3] 401(k) Plans: Additional Federal Actions Would Help Participants Track and Consolidate Their Retirement Savings, GAO-24-103577 (Jan. 18, 2024), available at <https://www.gao.gov/products/gao-24-103577> ("January 2024 Report").