



AMERICAN BENEFITS
COUNCIL

October 27, 2014

Filed electronically via www.regulations.gov

CC:PA:LPD:PR (REG-105739-11)
Room 5203
Internal Revenue Service
PO Box 7604, Ben Franklin Station
Washington, DC 20044

Re: IRS REG-105739-11 and Notice 2014-54

Dear Sir or Madam:

The American Benefits Council (Council) is a public policy organization representing principally Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council's members either sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans.

The Council would like to thank the Internal Revenue Service (Service) and the U.S. Treasury (Treasury) for clarifying, in Notice 2014-54 and the proposed regulations amending the designated Roth account rules, the tax treatment of distributions that are made to multiple destinations, such as rollovers to two different Individual Retirement Accounts (IRAs) or partly in a direct rollover to an IRA or another employer plan and partly in cash. We commend the Service and Treasury for issuing this much-awaited guidance in a manner that allows participants to keep pre-tax and after-tax contributions separated in a direct rollover.

As you may know, the Council has been concerned about this issue since the release of Notice 2009-68. The Council is considering a comment letter on the substance of the proposed regulations, but we are sending this preliminary letter to urge the Service and Treasury to issue further clarification as soon as possible to assist plans in complying with the requirement under Code Section 402(f) to provide a written explanation before making an eligible rollover distribution.

The Service provides a safe harbor Special Tax Notice which was last updated in Notice 2009-68. The Special Tax Notice in Notice 2009-68 includes language that is now contrary to Notice 2014-54 and the proposed regulations. The allocation rules in Notice 2014-54 are required to be effective for distributions on or after January 1, 2015, and the proposed Roth regulations are proposed to apply at the same time. In addition, these rules can be applied as of a date selected by the plan that is on or after September 18, 2014. The Service states that it will revise the safe harbor explanation, but plans will need time to reflect the new safe harbor explanation before the rules are effective on January 1, 2015.

The Council understands that revising Notice 2009-68 may be time consuming. Therefore, the Council recommends that Treasury and the Service provide preliminary clarification in the form of "soft" guidance such as through the IRS Newsletter or similar resource. Such "soft" guidance could be a simple indication that, until the new safe harbor language is issued, the Service and Treasury will treat a plan administrator as complying with Code section 402(f) if the plan administrator uses the safe harbor language in Notice 2009-68, whether or not the relevant language which is contrary to Notice 2014-54 is removed. Alternatively, the soft guidance could provide a plain English explanation of the new rules in Notice 2014-54 that could be temporarily provided to participants.

Again, we appreciate the guidance in Notice 2014-54 and the regulatory proposal and would further appreciate the additional guidance requested. If you have any questions or need further information, please contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "Jan Jacobson", written in a cursive style.

Jan Jacobson
Senior Counsel, Retirement Policy

cc: Andrew E. Zuckerman
Director, Rulings and Agreements, Employee Plans

George Bostick
Benefits Tax Counsel
Department of the Treasury