

IRS Revises Safe Harbor Explanations of Eligible Rollover Distributions

On Sept. 18, 2018, the IRS issued modified safe harbor explanations of eligible rollover distributions.¹ In addition to making some clarifying changes, the modifications reflect laws enacted and guidance issued since Dec. 8, 2014, which was the last time the IRS had revised these safe harbor explanations.

Background

Plan administrators of section 401(a) qualified plans, 403(a) plans, 403(b) plans, and eligible 457(b) governmental plans are required by law to provide recipients of eligible rollover distributions with an explanation of the eligible rollover rules.² To assist plan administrators with meeting this requirement, the IRS has published, and periodically updated, a sample notice. A plan administrator or payor using this safe harbor notice published by the IRS is deemed to be compliant with the disclosure requirement, as long as the notice is timely distributed.

The Treasury regulations previously issued under Code §402(f) require the explanation to be provided no less than 30 days (unless that time period is waived by the payee) and no more than 90 days before the date on which the distribution is made; however, proposed regulations issued under section 1102(a)(1)(B) of the Pension Protection Act of 2006 (on which taxpayers may rely) state that, beginning on the first day of the first plan year beginning on or after Jan. 1, 2007, the explanation may be provided as much as 180 days before the distribution date or annuity starting date.

Summary of Revisions to the Safe Harbor Explanations

The modifications to the safe harbor notification reflect the following statutory and regulatory changes:

- The extended rollover deadline for qualified plan loan offset amounts under the Tax Cuts and Jobs Act of 2017, P.L. 115 97 (“TCJA”). Section 13613 of the TCJA amended Code §402(c)(3) to provide an extended rollover deadline for qualified plan loan offset amounts from 60 days after the plan loan offset amount is distributed to the due date (including extension) of the individual’s tax filing for the taxable year in which the loan offset occurs.
 - A qualified plan loan offset amount is defined in Code §402(c)(3)(C)(ii) as a plan loan offset amount that is distributed from a qualified employer plan to a participant or beneficiary solely by reason of (i) the termination of the qualified employer plan or (ii) the failure to meet the repayment terms of the loan from such plan because of the severance from employment of the participant. Additionally, under Code §402(c)(3)(C)(iv), a qualified plan loan offset may occur only if the loan meets the requirements of Code §72(p)(2).
- The exception to the 10 percent additional tax under Code §72(t) for phased retirement distributions to certain federal retirees under MAP-21 (that is, the Moving Ahead for Progress in the 21st Century Act, P.L. 112-141).
- The expanded exception to the 10 percent additional tax under Code §72(t) on early distributions from a governmental plan for qualified public safety officers who have reached age 50 under Defending Public Safety Employees’ Retirement Act (“DPSERA”), P.L. 114-26. The DPSERA expanded this exception to include specified federal law enforcement officers, customs and border protection officers, federal firefighters, and air

traffic controllers who have reached age 50. The DPSERA also eliminated the requirement that the distributions must be from a defined benefit plan.

- Section 306 of the Protecting Americans from Tax Hikes Act of 2015, P.L. 114-113, includes a list of federal governmental employees who have been added to the definition of qualified public safety employee in Code §72(t)(10)(B).
- The self-certification procedures under Revenue Procedure 2016-47 for claiming eligibility for a waiver of the 60 day deadline for making rollovers.

The modifications also:

- Clarify that the 10 percent additional tax under Code §72(t) for early distributions applies only to amounts includable in income.
- Explain how the rollover rules apply to governmental 457(b) plans that include designated Roth accounts.
- Clarify that the general exception to the 10 percent additional tax under Code §72(t) for payments from a governmental plan made after a qualified public safety employee separates from service (if the employee will be at least age 50 in the year of the separation) is not available for payments from IRAs.
- Recognize the possibility that taxpayers who are affected by federally declared disasters and other events may have an extended deadline for making rollovers, based on IRS publication.
 - The IRS publishes a notice or issues other guidance in which it identifies the federally declared disaster or a terroristic or military action that is eligible for relief from the otherwise applicable 60-day rollover deadline.

Recommended Actions

Plan administrators and payers should consider the following actions at this time:

- As soon as administratively practicable, either adopt the modified safe harbor notices included in Notice Procedure 2018-74, or revise your current rollover notices to reflect the modifications contained in Notice 2018-74. If the IRS version of the notice is to be used, consider revising it to remove information that does not apply to the plan (e.g., remove the information related to governmental 457(b) plans if the plan isn't one).
- Make certain that the updated notices are provided to participants, beneficiaries and any other payees.
- Consider posting the updated notices on benefits portals or in other places where participants may access information about the plan.

Sept. 20, 2018

- The safe harbor explanations, as modified in Notice 2018-74, only reflect changes in relevant law occurring prior to Sept. 18, 2018. Be on the lookout for subsequently enacted laws and issued guidance that may affect the contents of the explanations and make such additional revisions to the explanations, as needed, so that they remain accurate and up-to-date.

If you have any questions or would like assistance of issues affecting your benefit plans, please contact us:

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