

IRS Updates Safe Harbors for Eligible Rollover Distribution Notices

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The IRS, in [Notice 2018-74](#), has updated the model notices that plan administrators must provide to participants who receive eligible rollover distributions from a tax-qualified retirement plan. Under § 402(f) of the Internal Revenue Code, retirement plan administrators must provide a written explanation of certain information to recipients of eligible rollover distributions from qualified plans, 403(a) and 403(b) plans, and governmental 457(b) plans including a description of the recipient's option to roll over the distribution to defer taxation and tax consequences of taking a taxable distribution.

Notice 2018-74 updates the two [safe harbor](#) notices that meet this requirement: (i) one for payments not from a designated Roth account, and (ii) one for payments from a designated Roth account. As before, only the Roth version of the notice should be provided to participants whose distributions are made from only a designated Roth account, and only the non-Roth version should be provided to participants whose distributions are made only from non-Roth designated accounts. If the participant receives a distribution that includes payments from both Roth and non-Roth accounts, both notices must be provided. Plan administrators also may customize the notice to omit any information that does not apply to that plan.

Notice 2018-74 modifies the safe harbor explanations in Notice 2014-74 to reflect certain legislative changes and guidance issued after December 8, 2014, including:

- the extended rollover deadline for loan offsets—individuals may roll over any portion of a qualified loan offset amount into an eligible retirement plan until the due date for filing the individual's tax return for the year of the offset—as provided in the Tax Cuts and Jobs Act of 2017;
- the exception to the 10% additional tax under § 72(t) for phased retirement distributions to certain federal retirees under Section 100121 of the Moving Ahead for Progress in the 21st Century Act;
- the expanded exception to the 10% additional tax under § 72(t) to include specified federal law enforcement officers, customs and border protection officers, federal firefighters, and air traffic controllers who have reached age 50, and eliminating the requirement that the distributions be from a defined benefit plan under Section 2 of the Defending Public Safety Employees' Retirement Act; and
- a description of the self-certification procedures under Rev. Proc. 2016-47 for taxpayers claiming eligibility for a waiver of the deadline for making 60-day rollovers.

The safe harbor explanations also contain clarifying modifications, such as:

- modifications clarifying that the 10% additional tax under § 72(t) for early distributions applies only to amounts includable in income;
- an explanation describing how the rollover rules apply to governmental § 457(b) plans that include designated Roth accounts;
- clarifying that the general exception to the 10% additional tax under § 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; and
- recognizing the possibility that taxpayers affected by federally declared disasters and other events may have an extended deadline for making rollovers.

Plan administrators should begin using the new versions of the notices as soon as possible. Plan sponsors who rely on their recordkeepers or other third party service providers to distribute the notices should check with their service providers to ensure that the updated notices are being distributed.

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