

IRS Updates Safe Harbor Explanations for Eligible Rollover Distributions

IRS has updated the model notices retirement plan use to inform participants receiving eligible rollover distributions about tax information applicable to their benefits. Plan administrators — particularly those who had not independently updated notices to reflect recent law changes — will want to implement the new model as soon as possible.

Background

Retirement plan administrators must provide a written explanation to recipients of eligible rollover distributions from qualified plans, 403(a) and 403(b) plans, and governmental 457(b) plans. This “402(f) notice” describes the recipient’s option to roll over the distribution to defer taxation and the tax implications of taking a taxable distribution. IRS provides two safe harbor notices to meet this obligation: one for payments not from a designated Roth account and the other for payments from a designated Roth account.

The Tax Cuts and Jobs Act of 2017 (TCJA) changed the deadline for rolling over qualified plan loan offsets. Any portion of a qualified plan loan offset amount (up to the entire qualified plan loan offset amount) may be rolled over into an eligible retirement plan by the individual’s tax filing due date (including extensions) for the taxable year in which the offset occurs. Guidance in Rev. Proc. 2016-47 changed rules on self-certification of eligibility for a waiver of the deadline for completing a rollover. Both affect the explanations in the 402(f) rollover notices.

Other recent changes modify the 10% premature distribution penalty in IRC 72(t) by adding a new exception for certain federal retirees participating in phased retirement programs, and by broadening the exception for separation from service after age 50 for qualified public safety employees — both by expanding the group of employees who qualify for the exception and eliminating the rule that limited it to qualified defined benefit plans.

Revised IRS Safe Harbor Notices

In [Notice 2018-74](#), IRS updates the language of both safe harbor explanations to reflect the changes from TCJA, Rev. Proc. 2016-47, and the penalty modifications. In addition, the latest updates include the following clarifying modifications:

- The 10% penalty tax under §72(t) for early distributions applies only to amounts includable in income
- Addition of a section explaining how rollover rules apply to governmental §457(b) plans that include designated Roth accounts
- Clarification that it is not necessary to itemize deductions on your tax return to qualify for the exception to the 10% penalty tax for deductible medical expenses
- Recognition 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
- Recognition of the possibility that taxpayers affected by federally declared disasters and other events may have an extended deadline for making rollovers

In addition to providing the updated notices in Appendix A, the IRS provides editing instructions in Appendix B for those plan administrators who prefer to selectively modify notices that they have edited by omitting information irrelevant to their own plans or adding information that is not inconsistent with 402(f), as permitted.

Effective Date and Future Updates

Although the notice does not state an effective date, given that all the modifications are currently relevant, plan administrators should plan on implementing the new safe harbor notices immediately. Many plan administrators had already modified the previous language, particularly language describing the loan offset rollover deadline; for most plans, the public safety language would not apply.

IRS does note that the updated safe harbor explanations provided in the notice “may be used by plan administrators and payors to satisfy §402(f). However, the updated safe harbor explanations will not satisfy §402(f) to the extent the explanations are no longer accurate because of a change in the relevant law occurring after September 18, 2018.” Therefore, plan administrators may wish to consider modifying notices independently for future law changes ahead of any updates the IRS offers for their safe harbors.

In Closing

Plan administrators should affirm that all changes relevant to their plans are incorporated into notices provided to participants receiving eligible rollover distributions as soon as possible.

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