



IRS Issues Updated Eligible Rollover Distribution Notices – Plans Should Begin Using Immediately

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Most retirement plans (including profit sharing, 401(k), and 403(b) plans) are required to provide participants with an explanation of the rules for making an eligible rollover distribution and the tax rules for distributions that are not rolled over. Generally, this rollover notice is part of the participant's distribution election packet.

The Internal Revenue Service (IRS) publishes model rollover notices, titled "Your Rollover Options," and updates them from time to time. While plan administrators can rely on the IRS model notices to meet their rollover notice requirement, they are nonetheless still responsible for updating them for applicable changes in the law.

Updated IRS Model Rollover Notice

The IRS recently updated its model notices in IRS Notice 2018-74 to include a number of significant changes in the law. There are two model notices, one for payments from a Roth account and one for payments not from a Roth account. Two changes addressed in the updated model notices apply to participants of most retirement plans, while others only apply to participants in certain governmental plans.

Self-Certification of 60-Day Deadline Waiver

One broadly applicable revision to the IRS model notices deals with self-certification of a participant's eligibility for waiver of the 60-day rollover deadline.

When a distribution eligible for rollover is paid to the participant (rather than being paid directly to an Individual Retirement Account (IRA) or eligible retirement plan), the participant has 60 days after receiving the distribution to deposit the payment into an IRA or eligible retirement plan to avoid taxes and penalties. Any amount withheld for taxes must be included, which means the participant must add back this amount using his or her own funds.

The IRS has the authority to waive the 60-day rollover deadline in certain situations. A waiver is given automatically if the distribution amount was sent to an IRA or eligible retirement plan in a timely and correct manner, but the financial institution for the IRA or eligible retirement plan failed to deposit it before the deadline passed. Prior to 2016, if this automatic waiver did not apply, participants seeking a waiver had to request the IRS for a private letter ruling. Obtaining a private letter ruling is an expensive and time-consuming process.

According to IRS guidance issued in 2016, a participant may make written certification to a plan administrator or an IRA trustee that the 60-day rollover deadline was missed because one of a limited set of circumstances occurred. The plan administrator or an IRA trustee may rely on the taxpayer's self-certification in accepting and reporting receipt of the rollover contribution.

Rollover Deadline Extended for a Plan Loan Offset

Another revision to the model notices covers a recent legislative change extending the rollover deadline for a plan loan offset.

A plan loan offset occurs when the terms of the plan or the plan's loan policy provides that the outstanding balance of any plan loan becomes immediately due and payable when the participant is eligible to elect a distribution, such as upon termination of employment. If the outstanding loan balance is not paid, the participant's account is reduced by the outstanding loan amount.

A plan loan offset is different from a deemed distribution of a plan loan. A deemed distribution occurs when the participant's loan payments are delinquent beyond the cure period given in the plan loan policy. The IRS considers a plan loan offset to be an actual distribution that can be rolled over, while a deemed distribution is not.

Many IRAs or retirement plans will not accept a direct rollover that includes a plan loan offset for administrative reasons. For an eligible rollover distribution not paid directly to a receiving IRA or retirement plan, a plan loan offset may be rolled over so long as the participant adds back the amount of the plan loan offset from his or her own funds. In many cases, this is a greater burden for the participant than adding back the tax-withholding amount, because

the entire amount of the account reduction for the outstanding loan balance must be funded, not just the withholding percentage on the distribution payment she or he received.

Prior to 2018, the 60-day rollover deadline applied to the plan loan offset amount that must be funded by the participant. Participants have found it difficult to fund the entire plan loan offset amount within the 60-day rollover deadline, and plan loan offsets generally became subject to taxes and penalties (such as the 10% penalty for distributions prior to age 59½).

Effective Jan. 1, 2018, the deadline for completing the rollover of a plan loan offset amount was changed from the 60-day rollover deadline to the period ending on the participant's tax return due date (including extensions) for the taxable year in which the distribution was made. Thus, the plan loan offset amount may not be due for a year or more after the participant receives her or his distribution. The 60-day rollover deadline still applies to the portion of the distribution that is not a plan loan offset (unless eligible for a waiver).

Using the Update Model Notice

The updated IRS model rollover notices can be used by plan administrators "as is" or can be modified by omitting material that does not apply to their plan. For instance, as noted above, the updated model notices include language dealing with issues that only apply to certain governmental plans. Keeping this material in the rollover notice might confuse participants of non-governmental plans.

IRS Notice 2018-74 has detailed instructions on how to update the version of the model notices issued in 2014, in case that approach makes more sense for a given plan administrator than simply using the new versions.

The Internal Revenue Code and Employee Retirement Income Security Act of 1974 (ERISA) both require plan administrators to provide an accurate written explanation of a participant's rollover options within a reasonable period before making an eligible rollover distribution. Therefore, plan administrators should begin using the

new safe harbor model immediately.

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