



## Flashpoint: The Latest from the IRS – New Rollover Notice and Hurricane Florence Relief

The last few years have seen several changes in the rollover rules. With that in mind, the IRS just released new safe harbor special tax notices under Internal Revenue Code (Code) §402(f) for plans to use with distribution packages. For those who relish “IRS-speak,” the release is in Notice 2018-74. The IRS issued the last model notices in 2014.

If you use the IRS model notices for eligible rollover distributions, you should update yours to the new standards. If you use an alternative notice (which is also permitted), you should modify it to address the issues in the new models.

The new models follow a familiar format. There are separate notices for Roth and non-Roth distributions. If a participant will receive a mixed eligible rollover distribution, a plan using the “safe harbor” notices will distribute both model forms. (This unfortunately means that the poor participant must receive 19 pages of repetitive material.)

For the practitioner community, Notice 2018-74 serves as a helpful checklist of recent rollover changes. These include:

- *The extended rollover deadline for qualified plan loan offset amounts.* The recent 2018 tax law changes (the Tax Cut and Jobs Act, aka TCJA) lengthened the deadline (normally 60 days) for rollovers of loan offsets resulting from employment or plan termination to any time between the distribution date and the extended due date of the employee’s personal tax return; and

- *The new self-certification procedures under Rev. Proc. 2016-47 for claiming eligibility for a waiver of the 60-day deadline for making rollovers.* This self-certification process replaces costly and time-consuming applications to the IRS for waivers of the deadline for 11 preapproved reasons.

For federal employees, there are two more changes:

- The exception to the 10% additional tax under Code § 72(t) for phased retirement distributions to certain federal retirees under MAP-21; and

- The expanded exception to the 10% additional tax under Code § 72(t) for specified federal employees who have reached age 50 under DPSERA.

In addition, the revised notices address several issues that have been around for years but haven't been covered in prior model notices. These include:

- Recognizing the possibility that taxpayers affected by federally declared disasters and other events may have an extended deadline for making rollovers. For example, Hurricane Florence victims have until January 31, 2019, to complete rollovers. See NC-2018-03 and Rev. Proc. 2007-56 (discussed in detail below).

- Clarifying that the 10% additional tax under Code § 72(t) for early distributions applies only to amounts includable in income.

- Explaining 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 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.

### **Hurricane Florence**

Speaking of Florence, the IRS announced on Friday, September 13, the “standard” package of emergency tax relief for residents and workers in the following North Carolina counties: Beaufort, Bladen, Brunswick, Carteret, Columbus, Craven, Cumberland, Duplin, Harnett, Lenoir, Jones, New Hanover, Onslow, Pamlico, Pender, Robeson, Sampson, and Wayne.

This relief postpones deadlines for filing requirements and many tax-related acts, which otherwise would have come due between September 6 and January 31, 2019. So, suppose a Florence-affected employer filed an extension to October 15, 2018, to file its 2017 Form 5500. That deadline is automatically extended to January 31, 2019. The extension also applies to taxpayers who are unable to obtain on a timely basis information necessary for completing the forms from a bank, insurance company, or any other service provider because such service providers' operations are located in the disaster area. The extension also extends deadlines for affected participants to make participant loan payments and to take required minimum distributions.

The relief also extends deadlines for affected employers to file tax returns, which, in turn, extends the deadline to make deductible contributions. Suppose an affected employer had a 2017 calendar year return under extension to October 15, 2018. The deadline is automatically extended to January 31, 2019. This also extends the deadline to make contributions that will be deductible on the 2017 return to January 31, 2019. However, the deadline to pay safe harbor 401(k) contributions for the 2017 calendar year is still December 31, 2018.

As always, if you have any questions about the new distribution forms or the Hurricane Florence relief, please call us.

(Thanks to our of counsel, Derrin Watson, for this contribution to the Ferenczy FlashPoint!)

## Firm News

In case you haven't heard, we moved our office on August 18th about a block away to 2635 Century Parkway, Suite 200, Atlanta, GA 30345. All other contact information remains the same. If you are in our neighborhood, be sure to stop by to see the new location.



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