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NEW IRS GUIDANCE ALLOWS INDIVIDUALS TO SELF-CERTIFY WAIVERS OF THE 60-DAY ROLLOVER REQUIREMENT

IRS Revenue Procedure 2016-47
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When a retirement plan or IRA pays a distribution to a participant or IRA holder (i. e., the distribution is not rolled over or transferred directly to another plan or IRA), the taxpayer generally has only 60 days to make a tax-deferred rollover of the distribution into another plan or IRA. Taxpayers who fail to comply with the 60-day deadline for completing the rollover are able to request a waiver of the 60-day rule from the IRS where there has been some form of hardship (e.g., “where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement”). New guidance from the IRS, however, will allow a taxpayer who receives an eligible distribution from a plan or IRA to make a written *self-certification* to a plan administrator or IRA trustee that the taxpayer’s rollover contribution qualifies for a waiver of the 60-day rule.

They key requirements for self-certifying a waiver of the 60-day rollover requirement are as follows:

- The taxpayer must make a written certification that the rollover contribution satisfies all the condition for a waiver of the 60-day rule. The IRS guidance includes a model certification letter that the taxpayer may use on a word-for-word basis, or the taxpayer may use a letter that is substantially similar to the model letter. A copy of the certification should be kept in the taxpayer’s files and be available if requested on audit.
- The IRS must not have previously denied a waiver request with respect to a rollover of all or part of the distribution to which the rollover contribution relates.
- The taxpayer must have missed the 60-day deadline because of the taxpayer’s inability to complete a rollover due to one or more of 11 specific reasons listed in the new guidance, including financial institution error, distribution check was lost and never cashed, severe damage to the taxpayer’s principal residence, death of a member of the taxpayer’s family, serious illness of the taxpayer or a member of the taxpayer’s family, incarceration of the taxpayer, postal error, etc.

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- The rollover contribution must be made to the recipient plan or IRA as soon as practicable after the hardship reason(s) specified in the certification no longer prevent the taxpayer from making the contribution. This requirement is deemed to be satisfied if the rollover contribution is made within 30 days after the reason(s) no longer prevent the taxpayer from making the rollover contribution.

A taxpayer may report the contribution as a valid rollover unless later informed otherwise by the IRS. But, importantly, the IRS guidance makes it clear that a self-certification is *not* an actual waiver by the IRS of the 60-day rollover requirement. The IRS, in the course of a subsequent examination, may consider whether a taxpayer's contribution actually meets the requirements for a waiver. If there is a later determination by the IRS that the conditions for a waiver were not satisfied, the taxpayer could be liable for taxes and penalties associated with an improper rollover contribution.

For purposes of accepting and reporting a rollover contribution into a plan or IRA, a plan administrator or IRA trustee may rely on a taxpayer's self-certification in determining whether the taxpayer has satisfied the conditions for a waiver of the 60-day rollover requirement. However, a plan administrator or an IRA trustee may not rely on the self-certification for determining whether the contribution satisfies other requirements for a valid rollover. A plan administrator or an IRA trustee also may not rely on the self-certification if the plan administrator or IRA trustee has actual knowledge that is contrary to the self-certification.

The new guidance is effective as of August 24, 2016. For further details on self-certifying waivers of the 60-day rollover deadline, see *IRS Revenue Procedure 2016-47*.