DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF THE CHIEF COUNSEL

May 31, 2017

Number: **2017-0018**
Release Date: 6/30/2017

UIL: 408.03-00

CC:TEGE:EB:QP4:
PRESP-117066-17

Bret D. Edwards
Director, Division of Resolutions and Receiverships
Federal Deposit Insurance Corporation
3501 N. Fairfax Dr., 3701-10072
Arlington, VA 22226

Dear Mr. Edwards:

I am responding to the recent inquiry from your office concerning the income tax consequences of individual retirement account (IRA) distributions made from a failed financial institution for which the Federal Deposit Insurance Corporation (FDIC) has been appointed receiver and for which there is no acquirer for the IRAs maintained with the failed institution.

Generally, a distribution from an IRA, other than a distribution of after-tax amounts and a qualified distribution from a Roth IRA, is includible in the depositor's gross income in the year distributed and may be subject to a 10-percent additional tax if the depositor is under age 59½. However, current taxation may be avoided if the distribution is rolled over to another IRA or to certain other types of retirement plans, provided the rollover is made within 60 days and the depositor did not roll over another IRA distribution that had been received in the preceding 12 months.

This "one-rollover-per-year" limitation does not apply to rollovers to or from other types of retirement plans nor to rollovers from a traditional IRA to a Roth IRA. The question of application of the rule in the context of payouts by failed financial institutions was addressed in a February 5, 1991, letter to the FDIC from James J. McGovern, Assistant Chief Counsel (Employee Benefits and Exempt Organizations), who stated:

> The legislative history of the Employee Retirement Income Security Act of 1974 (ERISA) indicates that the purpose of the restriction on multiple rollovers of an IRA within a three year (now twelve month) period was to prevent abuse of a system permitting voluntary transfers. Under these circumstances you describe, the distribution is made by an independent quasigovernmental third party acting as a state or federally-appointed receiver for a failed financial institution. The

> distribution is made due to the insolvency of the custodial institution and the inability of the receiver to find a purchaser for the failed institution. Neither the custodial institution nor the depositor initiates the distribution, and neither the custodial institution nor the depositor can prevent the distribution. We believe this is not the type of transaction that Congress sought to limit through the twelve month restriction.

We conclude that the same analysis should apply to the involuntary distributions described in your inquiry.

Accordingly, an IRA distribution made from a failed financial institution by the FDIC as receiver is disregarded for purposes of applying the one-rollover-per-year limitation, provided:

(1) neither the failed financial institution nor the depositor initiated the distribution, and

(2) no financial institution has assumed the IRAs of the failed financial institution.

Sincerely,

Victoria A. Judson
Associate Chief Counsel
Tax Exempt and Government Entities