

MEMO# 27841

January 14, 2014

IRS Publishes Guidance on In-Plan Roth Rollovers

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TO: BANK, TRUST AND RETIREMENT ADVISORY COMMITTEE No. 4-14 RE: IRS PUBLISHES GUIDANCE ON IN-PLAN ROTH ROLLOVERS

On December 11, 2013, the Internal Revenue Service (IRS) released Notice 2013-74, [\[1\]](#) which provides long-awaited guidance on rollovers within a retirement plan to designated Roth accounts in the same plan ("in-plan Roth rollovers"). As you know, section 902 of the American Taxpayer Relief Act of 2012 (ATRA), [\[2\]](#) enacted on January 3, 2013, allows 401(k), 403(b) and 457(b) plans that permit employees to make contributions to designated Roth accounts to permit participants to roll over non-Roth balances to a designated Roth account within the plan (a taxable event), without regard to whether the participant is eligible for a distribution from the plan. Prior law (pursuant to the Small Business Jobs Act of 2010) allowed plans to permit such conversions only upon a distributable event (such as separation from service or reaching age 59-1/2). [\[3\]](#) This new provision, allowing rollovers of otherwise nondistributable amounts under Code section 402A(c)(4)(E), is effective for rollovers made after December 31, 2012.

As expected, Notice 2013-74 provides guidance on implementation of the in-plan Roth conversion feature, similar to Notice 2010-84 (released following enactment of the Small Business Jobs Act provision allowing in-plan Roth conversions of distributable amounts). [\[4\]](#) The new guidance is in a Q&A format and supplements Notice 2010-84, containing guidance explaining the application of Notice 2010-84 to in-plan Roth rollovers of otherwise nondistributable amounts, new guidance specifically applicable to in-plan Roth rollovers of otherwise nondistributable amounts, and guidance applicable to all in-plan Roth rollovers under Code section 402A(c)(4). The IRS stated that the rules of Notice 2010-84 generally apply to all in-plan Roth rollovers, including rollovers of otherwise nondistributable amounts, while specifying certain aspects of the 2010 guidance that apply only to rollovers of otherwise distributable amounts.

Highlights of Notice 2013-74 include the following:

- Only vested amounts may be rolled over into a designated Roth account;
- In-plan Roth rollovers of otherwise nondistributable amounts may be accomplished only by direct rollover; a section 402(f) notice is not required in this situation; and

there is no withholding under Code section 3405 in this situation (and no voluntary withholding under Code section 3402(p)).

- Elective deferrals to 401(k) and 403(b) plans, matching and nonelective contributions (including safe harbor matching and nonelective contributions), and annual deferrals to governmental 457(b) plans (and earnings on each of these types of contributions) may be rolled over.
- Amounts rolled over into a designated Roth account within the same plan remain subject to the same distribution restrictions that applied prior to the rollover.
- Plans may limit the types of contributions eligible for in-plan Roth rollovers (e.g., only distributable amounts) and the frequency of in-plan Roth rollovers.
- If an in-plan Roth rollover is the first contribution made to an employee's designated Roth account, the 5-taxable year period of participation required for a qualified distribution begins on the first day of the first taxable year in which the employee makes the in-plan Roth rollover.
- An in-plan Roth rollover is treated as a distribution for purposes of determining eligibility for the special tax rules on net unrealized appreciation in employer securities, as explained in Notice 2010-84, Q&A-7.

Plan Amendments

Notice 2013-74 provides an extended deadline for adopting a plan amendment to permit in-plan Roth rollovers of otherwise nondistributable amounts in a 401(k) plan. Similar discretionary amendments typically have been required to be adopted no later than the last day of the first plan year in which the amendment is effective. However, to give plan sponsors sufficient time to adopt amendments permitting in-plan Roth rollovers of otherwise nondistributable amounts to be made before the end of the 2013 plan year, the deadline is extended to the later of the last day of the first plan year in which the amendment is effective or December 31, 2014, provided the amendment is effective as of the date the plan first operates in accordance with the amendment. The Notice provides special rules for safe harbor 401(k) plans making a mid-year change to allow in-plan Roth rollovers of otherwise nondistributable amounts (Q&A-5(b)), 403(b) plans (Q&A-5(c)), and governmental 457(b) plans (Q&A-5(d)). These plan amendment rules also apply to related amendments, such as plan amendments permitting elective deferrals to be designated as Roth contributions.

Elena Barone Chism
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endnotes

[1] Notice 2013-74 is available at: <http://www.irs.gov/pub/irs-drop/n-13-74.pdf>.

[2] The bill text is available at:
<http://www.gpo.gov/fdsys/pkg/BILLS-112hr8enr/pdf/BILLS-112hr8enr.pdf>.

[3] See [Memorandum](#) to Pension Members No. 39-10 and Federal Legislation Members No. 7-10 [24557], dated September 24, 2010.

[4] See [Memorandum](#) to Pension Members No. 55-10 [24742], dated November 29, 2010.

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