

MEMO# 27014

February 14, 2013

ICI List of Issues for Guidance on In-Plan Roth Conversions

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TO: PENSION COMMITTEE No. 3-13

PENSION OPERATIONS ADVISORY COMMITTEE No. 3-13 RE: ICI LIST OF ISSUES FOR GUIDANCE ON IN-PLAN ROTH CONVERSIONS

As you know, the American Taxpayer Relief Act of 2012 (ATRA) [\[1\]](#) was enacted on January 3, 2013 to address the nation's fiscal cliff situation. The legislation includes a few notable provisions related to retirement and education savings vehicles, including a new opportunity for converting non-Roth balances in a 401(k), 403(b), or 457(b) plan to a designated Roth account within the plan; a permanent extension of the expanded rules for Coverdell Education Savings Accounts; [\[2\]](#) and a two-year extension of the ability to make qualified charitable distributions from an IRA held by someone age 70½ or older. [\[3\]](#)

In-Plan Roth Conversions

Section 902 of ATRA allows 401(k), 403(b) and 457(b) plans that permit employees to make contributions to designated Roth accounts to permit participants to transfer (i.e., convert) 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. Current law (pursuant to the Small Business Jobs Act of 2010) allows plans to permit such conversions only upon a distributable event (such as separation from service or reaching age 59-1/2). [\[4\]](#) This new provision, effective after December 31, 2012, was included in ATRA as a revenue raiser to help pay for a two-month delay of scheduled sequestration budget cuts.

We expect the IRS and Treasury Department to provide 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). [\[5\]](#) The Institute recently provided the attached list of issues for guidance and clarification to the Treasury Department. The list is comprised of questions raised by Institute members, including whether plans can restrict conversions to distributable amounts or specific contribution sources; whether participants can specify the source for conversion; confirmation that no special tax reporting rules will apply (i.e., use the same reporting used for conversions of distributable amounts); and whether any special plan

amendment deadlines will apply.

As you continue to explore implementation of the new in-plan Roth conversion feature, please share with us any additional issues for guidance or clarification. We will continue discussions with Treasury and IRS staff regarding the need for guidance and keep you apprised of new developments.

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[Attachment](#)

endnotes

[1] The bill text is available at:

<http://www.gpo.gov/fdsys/pkg/BILLS-112hr8enr/pdf/BILLS-112hr8enr.pdf>

[2] Section 101(a) of ATRA permanently extends certain expiring tax provisions originally enacted under the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), including the expanded rules for Coverdell Education Savings Accounts under Internal Revenue Code §530. Coverdell Education Savings Accounts are tax-exempt savings accounts used to pay the higher education expenses of a designated beneficiary. Among other things, EGTRRA increased the annual contribution amount from \$500 to \$2,000 and expanded the definition of education expenses to include elementary and secondary school expenses. These changes otherwise expired on December 31, 2012.

[3] Section 208 of ATRA extends for two years (through 2013) the ability to make qualified charitable distributions from an IRA held by someone age 70½ or older (of up to \$100,000 per taxpayer, per taxable year). This provision otherwise expired after 2011. The bill includes special rules allowing an individual to make a qualified charitable distribution during January of 2013 and have it count as a 2012 distribution. Also, an individual who took a distribution in December of 2012 can contribute that amount to a charity before February 1, 2013 and count it as a qualified charitable distribution, to the extent it otherwise meets the requirements for such distributions under Internal Revenue Code §408(d)(8). The IRS released guidance on satisfying required minimum distribution rules and reporting obligations relating to qualified charitable distributions at <http://www.irs.gov/Retirement-Plans/Charitable-Donations-from-IRAs-for-2012-and-2013>

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

[5] See Memorandum to Pension Members No. 55-10 [24742], dated November 29, 2010.