

**MEMO# 18377**

December 30, 2004

## **IRS ISSUES GUIDANCE ON AUTOMATIC IRA ROLLOVERS**

[18377] December 30, 2004 TO: PENSION MEMBERS No. 68-04 PENSION OPERATIONS ADVISORY COMMITTEE No. 89-04 TRANSFER AGENT ADVISORY COMMITTEE No. 87-04 RE: IRS ISSUES GUIDANCE ON AUTOMATIC IRA ROLLOVERS The Internal Revenue Service issued guidance on the automatic rollover rules enacted as part of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA).<sup>1</sup> We are pleased to inform you that Notice 2005-5 reflects recommendations made by the Institute,<sup>2</sup> particularly with regard to the manner in which employers may establish automatic rollover IRAs on behalf of participants.<sup>3</sup> Notice 2005-5 sets forth guidance in a question and answer format under Code section 401(a)(31)(B),<sup>4</sup> the provision amended by EGTRRA that establishes the automatic rollover requirements. As you are aware, the Department of Labor issued separate guidance in September that established a fiduciary safe harbor under this provision.<sup>5</sup> Among the issues addressed by Notice 2005-5 are the following: Establishment of Automatic Rollover IRAs. As suggested by the Institute, the Notice provides that a plan administrator may execute the necessary documents to establish an IRA on a participant's behalf with a financial institution selected by the plan administrator. For this purpose, the plan administrator may use the participant's most recent mailing address in the records of the employer and plan administrator. 1 IRS Notice 2005-5 is available at <http://www.treas.gov/press/releases/reports/rollovernotice20055.endjs2169.pdf>. 2 See Institute Memorandum (#15741) to Pension Members No. 12-03 and Pension Operations Advisory Committee No. 15-03, dated March 12, 2003. 3 See discussion below and Q&A-10 in the Notice. 4 This provision requires that mandatory distributions of more than \$1,000 (and generally less than \$5,000) from a qualified plan be automatically rolled over to an IRA designated by the plan administrator, unless the participant affirmatively elects otherwise. 5 See Institute Memorandum (#18052) to Pension Members No. 49-04, Pension Operations Advisory Committee No. 64-04, and Transfer Agent Advisory Committee No. 74-04, dated September 29, 2004. 2 As the Institute also suggested, the Notice clarifies the manner in which the disclosure statement delivery and revocation period requirements apply in the context of automatic rollovers. Specifically, an IRA trustee will not be treated as failing to satisfy the disclosure requirements for IRAs merely because the U.S. Postal Service returns the disclosure statement as undeliverable after it was mailed to the participant's most recent mailing address. In addition, the Notice reiterates the Department of Labor's prior statement regarding the impact of the USA PATRIOT Act's customer identification requirements on the automatic rollover rules.<sup>6</sup> Notably, a financial institution that receives an automatic rollover is not required to implement its customer identification program until the former employee first contacts the institution to assert ownership or exercise control over the account. Transition Relief. While the automatic rollover requirements generally apply to mandatory distributions made on or after March 28, 2005, the Notice provides



relief for plans that have not sufficiently established administrative procedures by that date. Provided that mandatory distributions are made on or before December 31, 2005, a plan will not be treated as failing to operate in accordance with its terms (including the automatic rollover provisions) merely because it does not process mandatory distributions due to a lack of sufficient administrative procedures for automatic rollovers (including establishing IRAs to accept automatic rollovers). Plans Subject to Automatic Rollover Requirements. In addition to qualified plans under Code section 401(a), the Notice provides that the following types of plans are subject to the automatic rollover requirements: (i) governmental plans under section 414(d), (ii) governmental deferred compensation plans under 457(b), (iii) 403(b) plans (including custodial accounts described in section 403(b)(7)), and (iv) church plans under section 414(e). The Notice provides a delayed compliance date with respect to these plans.

**Notice to Participants.** Notice 2005-5 provides that a plan administrator must notify the participant in writing (either as part of the section 402(f) notice or separately) that the distribution will be paid to an IRA, absent the participant's affirmative election. This notice must identify the trustee or issuer of the IRA. A plan administrator, however, will not be treated as failing to satisfy the notice requirement merely because the U.S. Postal Service returns the notice as undeliverable after having been mailed it to the participant's most recent mailing address. The use of electronic media (in accordance with the section 402(f) regulations) to notify participants also is permitted.

**Plan Amendments.** Under the Notice, plans that provide for mandatory distributions must adopt a good faith plan amendment reflecting the automatic rollover requirements by the end of the first plan year ending on or after March 28, 2005. Governmental plans are subject to a later deadline as set forth in the Notice. The Notice provides a sample plan amendment that qualifies as a good faith amendment. The Notice further clarifies that the adoption of the sample amendment by a sponsor (or volume submitter/practitioner) of a pre-approved plan will not cause the plan to be treated as 6 See Institute Memorandum (#17163) to Pension Members No. 17-04 and Pension Operations Advisory Committee No. 20-04, dated March 3, 2004.

3 an individually designed plan. Where a timely good faith amendment is made, a plan amendment to a disqualifying provision relating to the automatic rollover requirements can be made within the plan's EGTRRA remedial amendment period (to the extent necessary to satisfy the automatic rollover requirements). The remedial amendment may be made retroactively effective as of March 28, 2005, or, if later, the date on which the plan becomes subject to the automatic rollover requirements.

**Rollover of Amounts Greater than \$5,000.** The Notice clarifies that amounts attributable to rollover contributions that exceed \$5,000 are subject to the automatic rollover requirements. Thus, the portion of a distribution attributable to a rollover contribution is subject to the automatic rollover requirements even if that amount is excludable under section 411(a)(11)(D) (the provision that determines the present value of the nonforfeitable accrued benefit exceeds \$5,000). In addition, the Notice provides that although section 411(a)(11) generally prohibits mandatory distributions of accrued benefits attributable to employer contributions with a present value exceeding \$5,000, the automatic rollover provisions of section 401(a)(31)(B) apply without regard to the distribution amount, so long as the amount exceeds \$1,000.

**Elimination of Mandatory Distributions.** The Notice clarifies that a plan sponsor may eliminate a plan provision requiring mandatory distributions under section 411(a)(11) without violating the anti-cutback rules of section 411(d)(6). Thomas T. Kim Associate Counsel