

# In-Plan Roth Rollovers

- Phone Forum on December 20, 2010
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# In-Plan Roth Rollovers - Background

- The Small Business Jobs Act of 2010, §2112 permits §401(k) and §403(b) plans to offer in-plan Roth rollovers.
- Conditions:
  - must be an eligible rollover distribution (ERD);
  - made after September 27, 2010;
  - from a non-designated Roth account in the plan;
  - only if the plan permits the ERD; and
  - the rollover otherwise meets the rollover requirements.

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## In-Plan Roth Rollovers - Background

- The Small Business Jobs Act of 2010, §2112 provides same 2-year income tax deferral for in-plan Roth rollovers done in 2010 as rollovers or conversions to a Roth IRA in 2010

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# In-Plan Roth Rollovers - Background

- An eligible rollover distribution is a distribution from a plan that is not for example:
  - a required minimum distribution
  - a hardship distribution
  - any of a series of substantially equal periodic distributions paid at least once a year over the participant's lifetime or life expectancy, participant's and his or her beneficiary's lifetimes or life expectancies, or a period of 10 or more years
  - an excess contribution, excess deferral, excess annual addition, or other corrective distributions and any earnings on these amounts
  - See **Publication 560**, *Retirement Plans for Small Business*, for complete list

# In-Plan Roth Rollovers - Background

- September 27, 2010
  - Only distributions made after this date are eligible for an in-plan Roth rollover in a 401(k) or 403(b) plan

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# In-Plan Roth Rollovers - Background

- Non-designated Roth account is any account that does not hold designated Roth contributions. For example, an account that holds
  - Pre-tax elective deferrals
  - After-tax contributions
  - Profit-sharing contributions
  - Rollover contributions

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# In-Plan Roth Rollovers - Background

- Only if the plan permits the ERD
  - For example,
    - when an employee severs employment; or
    - the plan allows a current employee to receive a distribution from his or her pre-tax elective deferral account to do an in-plan Roth rollover only if:
      - Over 59 ½
      - Death
      - Disability
      - Qualified reservist contribution

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# In-Plan Roth Rollovers - Background

- Must meet rollover requirements
  - 60-day requirement if not a direct rollover
  - In-plan Roth rollovers can be either:
    - In-plan Roth direct rollover - the plan trustee transfers an eligible rollover distribution from a participant's non-Roth account to the participant's designated Roth account in the same plan
    - In-plan Roth 60-day rollover - the participant deposits an eligible rollover distribution within 60 days of receiving it from a non-Roth account into a designated Roth account in the same plan

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# In-Plan Roth Rollovers - Background

- IRS Notice 2010-84, issued on November 26, 2010, provides guidance on in-plan Roth rollovers for 401(k) and 403(b) plans

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## In-Plan Roth Rollovers – Plan Amendments

- Notice 2010-84 extends certain amendment adoption deadlines
- Purpose of extension is to allow 401(k) and 403(b) plans to offer in-plan Roth rollovers in 2010 as long as the amendment's effective date is the date the plan first operated in accordance with that amendment

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# In-Plan Roth Rollovers – Plan Amendments

- Extended Deadlines:
  - 401(k) plans: the later of the last day of the year in which the amendment is effective or December 31, 2011
  - Safe harbor 401(k) plans: the later of the day before the first day of the plan year in which the safe harbor plan provisions are effective or December 31, 2011
  - 403(b) plans: the later of the plan's remedial amendment period (described in [Announcement 2009-89](#)) or the last day of the first plan year in which the amendment is effective

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# In-Plan Roth Rollovers – Plan Amendments

- Amendments eligible for the extended deadlines:
  - To add a qualified Roth contribution program that permits elective deferrals to be designated as Roth contributions
  - To allow designated Roth accounts to accept rollover contributions
  - To offer in-plan Roth rollovers
  - Add in-plan Roth direct rollover option for new in-service distributions
- Amendment deadline is **not** extended to add a cash or deferred arrangement

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# In-Plan Roth Rollovers – Plan Amendments

- Designated Roth contribution program to be “in place” before in-plan Roth rollover contribution made
  - “in-place” – when eligible employees are given an opportunity to elect to have designated Roth contributions made to the plan

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# In-Plan Roth Rollovers – Plan Amendments

- New in-service distributions
  - Plans can offer new in-service distributions conditioned on the participant doing an in-plan Roth direct rollover
  - Plans **can not** restrict previously allowed in-service distributions to the participant's doing an in-plan Roth direct rollover

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# In-Plan Roth Rollovers – Eligible Participants

- Who can do an in-plan Roth rollover
  - Participants
  - surviving spouse beneficiaries
  - alternate payees who are current or former spouses

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# In-Plan Roth Rollovers – Rollover Notices

- Rollover (402(f)) Notice:
  - Plans that offer in-plan Roth rollovers must provide a notice explaining them to plan participants who receive an ERD
  - Notice 2010-84 describes how plans that use safe harbor explanations can revise them
  - If plan conditions new in-service distributions on the participant doing an in-plan Roth direct rollover, the notice must eliminate all other options for a participant who receives that in-service distribution

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# In-Plan Roth Rollovers – Not Considered Distributions

- An in-plan Roth rollover is not treated as a distribution for purposes of:
  - Plan loans- if repayment terms remain the same
  - Spousal consent - not required for in-plan Roth direct rollovers
  - Right to defer distribution- rolled over amount taken into account in determining whether accrued benefit exceeds \$5,000 so that participants can't be cashed out
  - Optional forms - distribution rights not eliminated

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## In-Plan Roth Rollovers – Loans

- Outstanding loans eligible for an in-plan Roth rollover:
  - No change in repayment terms
  - Taxable amount is the outstanding balance of the loan at the time of the rollover

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# In-Plan Roth Rollovers – Recharacterization

- Recharacterization rights
  - Unlike a rollover or a conversion to a Roth IRA, participants **can not** recharacterize any amount of an in-plan Roth rollover

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## In-Plan Roth Rollovers- Taxability

- Taxable amount = the fair market value of the distribution minus the participant's basis, if any
- Reported in year rollover is done (special 2010 rules)
- No 10% additional tax on early distributions on an in-plan Roth rollover but special recapture rule may apply
- No 20% withholding on in-plan Roth direct rollovers but may need to make estimated tax payments
- In-plan Roth 60-day rollovers are subject to the 20% withholding

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# In-Plan Roth Rollovers- Taxability

- Special Recapture Rule:
  - If any amount of an in-plan Roth rollover is distributed within a 5-taxable-year period, the 10% additional tax on early distributions applies unless:
    - An exception to this tax applies,
    - The distribution is allocable to the nontaxable portion of the in-plan Roth rollover, or
    - The distribution is rolled over to another designated Roth account or to a Roth IRA (but may apply to a subsequent distribution from the rolled over account or IRA within the 5-taxable-year period).

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# In-Plan Roth Rollovers in 2010

- 2010 in-plan Roth rollovers
  - **Definition** – distribution made no later than December 31, 2010
  - **Benefit for participant** is 2-year income tax deferral (same as rollovers and conversions to a Roth IRA in 2010)
    - Allows participant to include half of the taxable portion of the in-plan Roth rollover in 2011, and half in 2012; or
    - Elect to include the entire taxable amount in 2010 gross income

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## In-Plan Roth Rollovers in 2010

- The election to include the taxable amount of an in-plan Roth rollover in 2010 income:
  - Applies to all of the participant's in-plan Roth rollovers
  - Does not apply to any election by the participant's spouse
  - May not be revoked after the due date (including extensions) of the participant's 2010 tax return
  - Is independent of any election to include in 2010 income the taxable amount of any rollover or conversion to a Roth IRA in 2010

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# In-Plan Roth Rollovers in 2010

- Special Income Acceleration Rules:
  - applies if any amount of a 2010 in-plan Roth rollover is distributed in 2010 or 2011 and that amount would not have been included in gross income until 2011 and 2012
    - must increase gross income in the year of distribution by the amount of the distribution that could have been deferred to 2012, or 2011 if the distribution is in 2010 and it is more than  $\frac{1}{2}$  of the taxable portion of the 2010 in-plan Roth rollover

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# In-Plan Roth Rollovers – Allocation Rule

- Allocation rules:
  - Generally a distribution from a designated Roth account is treated as coming pro-rata from basis and earnings in the account
  - The basis portion:
    - if plan does not have a separate account for in-plan Roth rollovers - treated as coming first from the regular designated Roth contributions and then from an in-plan Roth rollover
    - If plan has a separate account for in-plan Roth rollovers, allows a distribution only from that account and the distribution is made only from that account, then the basis is from the in-plan Roth rollover

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# In-Plan Roth Rollovers – Ordering Rules

- Ordering rules:
  - A distribution attributed to an in-plan Roth rollover is treated as:
    - first coming from the oldest in-plan Roth rollover (first-in-first-out basis), and
    - is allocated first to the taxable amount of that rollover

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# In-Plan Roth Rollovers – Reporting by Plans

- Form 1099-R, *Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.*
  - Include the amount rolled over in box 1 (Gross distribution)
  - Include the taxable amount rolled over in box 2a (Taxable amount)
  - Report the basis in the amount rolled over in box 5 (Employee contributions)
  - Use distribution code “G” in box 7

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# In-Plan Roth Rollovers – Reporting by Plans

- 2010 Distribution of any amount of an in-plan Roth rollover in 2010:
  - Report on Form 1099-R as a regular designated Roth account plan distribution
  - enter the amount of the distribution allocable to the in-plan Roth rollover in the blank box to the left of box 10

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# In-Plan Roth Rollovers – Reporting by Participants in 2010

- File Form 8606, *Nondeductible IRAs*:
  - With their 2010 tax return
  - Complete Form 8606, Part III, to report their in-plan Roth rollover
- If they receive a distribution in 2010 of any amount of their in-plan Roth rollover:
  - then complete certain lines of the same Form 8606, Part IV

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# In-Plan Roth Rollovers – Reporting by Participants in 2010

- If participant also did a rollover or conversion to a Roth IRA in 2010:
  - report any amount converted from a non-Roth IRA to a Roth IRA in 2010 by completing Part II of the same Form 8606 on which they report their 2010 in-plan Roth rollover
  - report any rolled over amounts from a qualified retirement plan to a Roth IRA in 2010 by filing a separate Form 8606 and completing Part III

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# In-Plan Roth Rollovers – Additional Resources

- **Newsletters:**

- *Employee Plans News* – for benefits professionals
- *Retirement News for Employers* – for business owners and tax professionals

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# In-Plan Roth Rollovers – Additional Resources

- Employee Plans Web pages @ [www.irs.gov/ep:](http://www.irs.gov/ep)
  - [Designated Roth Account Web pages](#)
  - [Frequently Asked Questions on Designated Roth accounts](#)
  - [Top Ten Differences Between a Roth IRA and a Designated Roth Account](#)

# In-Plan Roth Rollovers – Questions

- Questions:
  - Check the [Retirement Plans Frequently Asked Questions](#)
  - Call us at (877) 829-5500 (toll-free number)
  - E-mail us @ [RetirementPlanQuestions@irs.gov](mailto:RetirementPlanQuestions@irs.gov)
  - Send mail to:

Internal Revenue Service  
TE/GE Division, Correspondence Unit  
P.O. Box 2508  
Cincinnati, OH 45201

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