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TCRS 2013-01: In-Plan Roth Conversions and the American Taxpayer Relief Act of 2012.

On January 2, 2013, President Obama signed the American Taxpayer Relief Act of 2012 (“Act”). Section 902 of the Act expanded the availability of in-plan Roth conversions, effective for conversions made after December 31, 2012.

Summary

What changed: In-plan Roth conversions may be made from any non-Roth vested account, without requiring that the amount being converted must be eligible for distribution and rollover from the plan.

- Pre-Act, only amounts eligible for distribution and for rollover, such as in-service withdrawals of elective contributions after age 59½, in-service withdrawals of employer contributions after a stated age and/or stated period of time, and distributions due to disability, severance of employment, or retirement were eligible for conversion.
- A conversion will not be treated as having violated Internal Revenue Code sections 401(k)(2)(B)(i), 403(b)(7)(A)(ii), or 457(d)(1)(A) (pertaining to limitations on distributions).

What remains the same (not inclusive):

- An in-plan Roth conversion feature is discretionary; employers are not required to amend their plans to allow for conversions.
- To allow in-plan Roth conversions, a 401(k), 403(b), or governmental 457(b) plan must (i) permit on-going Roth contributions and (ii) allow conversions.
- Participants who make a conversion are subject to ordinary income tax on the amount converted, but are not subject to the 10% early distribution tax.
- Conversions are not subject to mandatory or optional withholding. However, since the conversion amount is subject to ordinary income tax, the participant should consider increasing their withholding or making estimated tax payments outside the plan to avoid any underpayment penalties.
- If the plan is subject to spousal consent requirements, no spousal consent is required for a conversion.
- See [TCRS 2010-06](#) for additional key provisions of in-plan Roth conversions. See also Internal Revenue Service (“IRS”) [Notice 2010-84](#), which the IRS issued as guidance for in-plan Roth conversions, pre-Act.

What is unknown (not inclusive)

Will amounts converted, that are not currently eligible for distribution and rollover, continue to be subject to the distribution rules that applied pre-conversion? Note that, for in-plan Roth conversions made under the pre-Act rules, the plan’s distribution rules for rollover accounts generally apply, post-conversion.

Since the answer to the question above is unknown, until the IRS issues any guidance, plan administrators and record-keepers might need to consider establishing a tracking and/or record-keeping mechanism to distinguish (a) any in-plan Roth conversions made from amounts not currently eligible for distribution and rollover from (b) in-plan Roth conversions that are/were made from amounts eligible for distribution and rollover.

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