

Date: December 18, 2013

TCRS 2013-07: Guidance on in-plan Roth rollovers/conversions, primarily addressing amounts not otherwise eligible for distribution from a plan

Background:

On December 11, 2013, the Internal Revenue Service (“IRS”) issued Notice 2013-74, mainly providing guidance on in-plan Roth rollovers of amounts not otherwise eligible for distribution from a plan.

We previously issued two TCRS releases with related information, as follows:

- TCRS 2010-10 (click [here](#) for a link), which summarized IRS guidance about rollovers/conversions of amounts *eligible* for distribution from a plan, and
- TCRS 2013-01 (click [here](#) for a link), which summarized initial information about rollovers/conversions of amounts *not otherwise eligible* for distribution from a plan (which is also the primary subject of this release, TCRS 2013-07).

Summary of Notice 2013-74 (not inclusive): The summary is divided into two parts, below. Part I summarizes additional information and guidance about in-plan Roth rollovers/conversions of amounts not otherwise eligible for distribution from a plan. Part II summarizes guidance about all in-plan Roth rollovers/conversions.

Part I: Guidance on in-plan Roth rollovers/conversions of amounts not otherwise eligible for distribution from a plan.

- Only vested amounts may be rolled/converted (there had been some question if non-vested amounts could be rolled/converted).
- Only a direct rollover/conversion is allowed.
- No tax notice is required (i.e. no Internal Revenue Code §402(f) notice).
- If a plan so provides, a rollover/conversion may be made from the following types of contributions:
 - elective deferrals (applicable to a 401(k) or 403(b) plan),
 - matching contributions,
 - non-elective contributions, including qualified matching contributions and qualified non-elective contributions, and
 - annual deferrals made to a governmental 457(b) plan.
- Any distribution restrictions on contributions *before* a rollover/conversion still apply after rollover/conversion.
 - This requirement impacts the plan’s record-keeper, so be certain to determine if tracking any distribution restrictions on the amounts rolled/converted is feasible¹.
- The adoption date of the discretionary amendment to add in-plan Roth rollovers/conversions may be extended². Following are details about the extension:

401(k) plan: Generally, the amendment should be signed by the last day of the plan year in which the amendment is effective. However, if operationally, a plan permits in-plan Roth rollovers/conversions in 2013, the amendment may be adopted as of the later of (i) the last day of the plan year in which the amendment is effective, or (ii) December 31, 2014. Thus, for a calendar year plan permitting rollovers/conversions in 2013 or 2014, the plan must be amended on or before December 31, 2014.

In addition, for an interim period ending December 31, 2014, a safe harbor 401(k) plan is permitted to amend its plan adding the rollover/conversion provision *during* the plan year. Generally, an employer must wait and amend a safe harbor 401(k) plan effective as of the first day of the following plan year (unless an exception applies, such as the exception to add in-plan Roth rollovers/conversions).

¹ Following is an example of how having to track distribution restrictions impacts the plan’s record-keeper. Assume a 401(k) plan permits in-service withdrawals of elective contributions after age 59 ½, and also permits in-plan Roth rollovers/conversions of amounts not otherwise eligible for distribution. If a participant who is not yet age 59 ½ rolls/converts elective contributions, the plan’s record-keeper must track and monitor that no distribution of that rollover/conversion (or its earnings) is made from the Roth rollover/conversion account until after the participant attains age 59 ½ (unless a distributable event arises, such as the participant’s severance from employment).

² The extension may also apply to an amendment (i) permitting elective deferrals to be designated as Roth contributions, (ii) providing for the acceptance of rollover contributions by designated Roth accounts, and (iii) permitting in-plan Roth rollovers/conversions of some or all amounts eligible for distribution.

403(b) plan: A written 403(b) plan intended to satisfy 403(b) requirements/regulations may adopt an amendment adding the rollovers/conversions as of the later of (i) the last day of a remedial amendment period or (ii) the last day of the plan year in which the amendment is effective. The remedial amendment period is the period in which the employer may correct form defects for compliance with 403(b) requirements/regulations. According to Notice 2013-74, the IRS has not yet announced the end date of the remedial amendment period – and the end date is expected to be more than a year after such announcement.

Governmental 457(b) plan: The deadline by which to adopt the amendment is the same extended deadline that applies to a 401(k) plan, described above.

Part II: Guidance on all in-plan Roth rollovers/conversions (i.e. amounts *eligible* for distribution from a plan, as well as amounts *not otherwise eligible* for distribution).

- Subject to non-discrimination requirements (such as a plan's benefits, rights, and features), a plan may limit:
 - the type of contributions eligible for an in-plan Roth rollover/conversion, and
 - the frequency of rollovers/conversions.
- A plan is not required to permit any in-plan Roth rollovers/conversions – or may choose to limit in-plan Roth rollovers/conversions to only amounts eligible for distribution, or to only amounts not otherwise eligible for distribution.
- A plan currently permitting in-plan Roth rollovers/conversions may remove the provision.
- The 5-taxable-year period, required for a non-taxable “qualified distribution,” begins on the first day of the taxable year in which the employee makes an in-plan Roth rollover/conversion (if the rollover/conversion is the first contribution made to an employee's designated Roth account). A “qualified distribution” is a distribution made after a 5-taxable-year period and after the employee is age 59 ½.
- An in-plan Roth rollover/conversion is treated as a distribution for determining eligibility for the special tax rules on net unrealized appreciation in employer securities paid as a lump-sum distribution (under Internal Revenue Code §402(e)(4)(B)).
- An in-plan Roth rollover is treated as a “related rollover” and must be counted in determining a plan's top-heavy status under Internal Revenue Code §416.

This Summary is designed to provide an overview of the IRS' guidance under Notice 2013-74 and is not intended to be comprehensive. The Transamerica Center for Retirement Studies® (“TCRS”) is a division of Transamerica InstituteSM (“TI”), a nonprofit, private foundation. TI is funded by contributions from Transamerica Life Insurance Company and its affiliates and may receive funds from unaffiliated third parties. For more information about TCRS, please refer to www.transamericacenter.org. TCRS and its representatives cannot give ERISA, tax, investment or legal advice. This material is provided for informational purposes only and should not be construed as ERISA, tax, investment or legal advice. Interested parties must consult and rely solely upon their own independent advisors regarding their particular situation and the concepts presented here. Although care has been taken in preparing this material and presenting it accurately, TCRS disclaims any express or implied warranty as to the accuracy of any material contained herein and any liability with respect to it.