



DANA CONSULTING GROUP

Innovative Design and

Administration of Retirement Plans

**memorandum**

December 9, 2010

**T O :** Clients & Friends of the Firms  
**F R O M :** Lee T. Jennings  
**R E :** In-Plan Roth Rollovers

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The Small Jobs Business Act of 2010 permits in-plan rollovers to a Roth account in the same retirement plan. This new law eliminates the need for an eligible participant to take an actual distribution from a qualified retirement plan and then roll the distribution to a Roth IRA. In 2010 only, a special tax rule permits a rollover that occurs in 2010 to be included in the participant's gross income for income tax purposes in 2011 and 2012. The IRS has just issued guidance on the mechanics of the in-plan rollover rules.

**What Can and Cannot Be Rolled Over**

Only amounts that are pre-tax and eligible for immediate distribution can be rolled over. Some examples include:

- An individual who terminates employment and is eligible to take a complete distribution of his account, but can elect to leave the money in the plan, may elect to roll over.
- An individual who is under age 59½ may NOT do a rollover of his 401(k) account since pre 59½ in-service withdrawals are not permitted under the law.

**What Provisions Must the Plan Document Include**

The plan must permit employees to make 401(k) contributions, AND the plan must permit employees to make their 401(k) contributions as Roth contributions. The plan document may be amended later to permit Roth contributions; however, employees must be immediately notified they may begin making Roth contributions to the plan.

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The plan must be amended to permit in-plan rollovers to a Roth account. This amendment can be adopted at anytime up to the later of December 31, 2011, or the last day of the plan year in which the amendment is effective.

### Miscellaneous Issues

1. In-plan rollovers to a Roth account are available to the employee-participant, a spousal beneficiary, or a spousal alternate payee under a QDRO.
2. 20% withholding does not apply to any in-plan rollover.
3. Special notices explaining distributions from qualified plans [called 402(f) notice] must be modified to include provisions for this feature. Jennings Law Firm is currently updating our 402(f) notice model amendment.
4. Married participants do NOT need spousal consent to elect an in-plan rollover to a Roth account.
5. Plan loans can be transferred to a Roth account without changing the repayment options.
6. The mutual fund or insurance company platform handling your 401(k) plan must be able to offer this feature. We are contacting all of our clients' platforms and requesting information about their procedures for offering in-plan rollovers.

### What To Do Now

1. Various amendments are needed to plan documents that wish to offer this feature. For non-401(k) plans that wish to offer this feature, the plan must be amended to permit 401(k) contributions BEFORE an in-plan rollover can occur.

If you are a Firm client, please call Lee T. Jennings at (312) 651-6073 to discuss your particular plan's situation.

2. Each individual who is considering whether to make an in-plan rollover needs to discuss with their financial advisor the advantages and

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disadvantages of making the rollover. IRS Notice 2010-84 contains special information regarding how an eligible individual may elect to spread the income taxation of a 2010 in-plan rollover to 2011 and 2012. This Notice should be reviewed in detail. Our office can furnish interested individuals with a copy of the notice by calling Lee T. Jennings at (312) 651-6073.

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