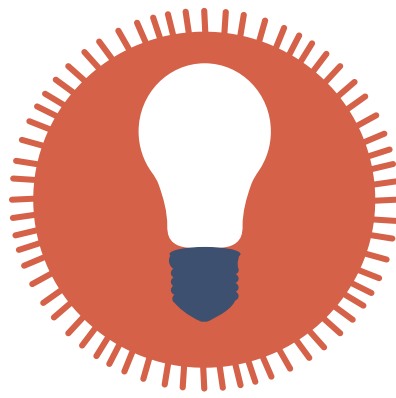


# MURTHA MEANS MORE INFORMATION



## LABOR AND EMPLOYMENT NEWS

February 2014

### IRS Issues New Guidance on In-Plan Roth Rollovers

While we have spent a lot of time over the past several years discussing the requirements of the Affordable Care Act, changes and new guidance impact many aspects of employee benefit plans. On December 11, 2013, the IRS issued Notice 2013-74 answering many outstanding questions on in-plan Roth rollovers, often called "in-plan Roth conversions."

#### Does this impact my plan?

The Notice affects Plan sponsors and third party administrators of qualified retirement plans that currently accept Roth contributions, permit in-plan Roth rollovers, or that may be interested in permitting Roth contributions or in-plan Roth rollovers. Although plans do not have to provide for Roth contributions or in-plan Roth rollovers, the inclusion of such provisions can make a plan more attractive to plan participants.

#### Background

Roth contributions to a qualified retirement plan are contributions that may be designated by a participant as taxable upon contribution, and which are then eligible to be distributed from a plan tax-free. If the distribution meets certain requirements for a qualified distribution, earnings on the Roth contributions are also distributed tax-free. Roth contributions must be maintained by the plan sponsor in a separate Roth account. Notice 2013-74 provides guidance on converting non-Roth account balances to Roth account balances in 401(k), 403(b), and governmental 457(b) plans.

Previously, non-Roth balances could be rolled over to Roth accounts within the plan if the plan allowed Roth contributions and if the non-Roth account balances were both vested and eligible for distribution under the plan. Early in 2013, subsequent legislation permitted Roth rollovers of vested amounts that were not distributable under the plan, but left certain questions unanswered.

#### What changed?

Under Notice 2013-74, vested amounts that do not yet satisfy the conditions for plan distribution may still be rolled-over into a Roth account in an in-plan Roth rollover. For example, a participant would not have to satisfy the hardship or age 59 ½ distribution requirements under certain 401(k) plans to be able to roll non-Roth balances over into a Roth account in an in-plan Roth rollover. The Notice clarifies that elective deferrals in 401(k) and 403(b) plans, matching contributions and nonelective contributions, and annual deferrals under governmental 457(b) plans are eligible for in-plan Roth rollover. However, plan sponsors can restrict the type of contributions that are eligible for this treatment. For example it could be limited to pre-tax 401(k) deferrals only. Significantly, the guidance provides that any such rolled-over amounts would remain subject to the same distribution restrictions that applied previously to those amounts. The Notice also made other helpful clarifications.

If you have any questions about the issues addressed here, or any other matters involving Labor and Employment issues, please feel free to contact:

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## When does the change take effect?

401(k) plans generally can be amended at any time to permit in-plan Roth rollovers and to accept Roth deferrals and contributions. Typically the IRS requires such an amendment to be made by the last day of the plan year in which the feature is added, however the Notice has extended this deadline until the last day of the first plan year in which the amendment is effective or December 31, 2014, whichever is later. Certain other timing rules may apply to 403(b) and governmental 457(b) plans, and to safe-harbor 401(k) plans.

**Action Steps:** If you offer Roth accounts, you must be familiar with these new rollover rules and make sure that your plan complies.

If you have questions about your plan's Roth account options, are interested in adding a Roth contribution or in-plan Roth rollover feature, or have any other questions about the issues addressed here, please contact Rachel Faye Smith at 617.457.4023/[rsmith@murthalaw.com](mailto:rsmith@murthalaw.com) or William J. Keenan, Jr. at 860.240.6028/[wkeenan@murthalaw.com](mailto:wkeenan@murthalaw.com).