

## IRS Guidance on Mid-Year Changes to Safe-Harbor Contributions and In-Plan Roth Rollovers

### Suspending or Reducing Safe-Harbor Contributions Mid-Year

On November 15, 2013, the Internal Revenue Service (IRS) published a final rule on mid-year suspension or reduction of safe harbor non-elective or matching contributions (the “Rule”).<sup>i</sup> Under the Rule, matching or non-elective contributions can be suspended or reduced if either:

1. The annual safe-harbor notice contains language reserving the right to suspend or reduce contributions and an additional notice is provided at least 30 days before it occurs; or
2. The employer is operating at an economic loss for the plan year.<sup>ii</sup> This standard is easier to satisfy than the standard under the proposed rule issued in 2009 that would have required employers to determine that they were operating under a substantial economic hardship.

For elective contributions the Rule is effective for 2014 plan years, and for matching contributions it is effective for 2015 plan years. Under existing law, safe-harbor matching contributions can be reduced or suspended by amending the plan and notifying employees 30 days in advance.<sup>iii</sup> The Rule applies to both regular safe-harbor plans and Qualified Automatic Contribution Arrangements (QACAs). If hardship contributions are reduced or suspended mid-year the relief from ADP and ACP testing is no longer available.

### In-Plan Roth Rollovers

The American Taxpayer Relief Act of 2012 (ATRA) expanded opportunities for in-plan Roth rollovers by allowing rollover of amounts not otherwise available for distribution.<sup>iv</sup> This option was technically available for plan years beginning January 1, 2013, but has not been practically available to most plans due to lack of guidance from the IRS. In December of 2013 the IRS published Notice 2013-74, which provides guidance on both Roth rollovers of non-distributable amounts and on in-plan Roth rollovers generally.

Prior to ATRA, amounts otherwise eligible for distribution could be converted from pre-tax to Roth through an in-plan rollover and guidance was provided on how to do that in IRS Notice 2010-84. IRS Notice 2013-74 states that the requirements of Notice 2010-84 also apply to Roth rollovers of non-distributable amounts except to the extent they are not applicable to non-distributable amounts. For example, the requirement that all rolled amounts be fully vested applies to both distributable and non-distributable amounts, but the ability to accomplish the rollover as a 60-day rollover or to elect tax withholding does not apply to Roth rollovers of non-distributable amounts.

Notice 2013-74 also contains additional rules for Roth rollovers of non-distributable amounts and clarifies that any distribution restrictions that applied to a pre-tax non-distributable account continue to apply after the account is rolled over to a Roth account. The Notice also contains an amendment extension allowing plans (including safe-harbor plans) to offer in-plan Roth rollovers of non-distributable amounts in 2013 as long as the plan is amended by December 31, 2014. The full text of Notice 2013-74 can be accessed at <http://www.irs.gov/pub/irs-drop/n-13-74.pdf>.

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i Treas. Reg. §§1.401(k)-3 & 1.401(m)-3

ii IRC §412(c)(2)(A)

iii Treas. Reg. §1.401(k)-3(g)

iv IRC §402A(c)(4)