

# ADS BENEFITS UPDATE

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## **New Law Allows In-Plan Roth Conversion Option**

The Small Business Jobs Act of 2010 permits employers to amend their 401(k) or 403(b) plans to allow participants to transfer a portion of their account balances to a Roth account in the plan instead of requiring a transfer to a Roth IRA to complete a conversion to a Roth account.

This new provision is purely optional and applies only if a plan already permits participants to make Roth contributions to it. In addition, the new statute does not expand any conversion opportunities that currently exist for plan participants with respect to transfers to Roth IRAs.

Plans can permit conversions to Roth accounts without having to permit actual distributions from the plan. A plan that does not currently permit in-service withdrawals can add in-service distribution options to facilitate these conversions but can limit such distributions to those who are converting their account to a Roth account.

Employers can permit elective 401(k) and 403(b) deferrals for employees who have attained age 59½ to be converted to the Roth account. Vested employer contributions, that are not elective 401(k) or 403(b) deferrals, could be transferred to the Roth account regardless of the participant's age if the contributions have aged for two years or the employee has been a participant in the plan for at least five years.

If a participant converts a portion of their account to a Roth account, he or she must include any previously untaxed portion of the distribution in gross income. However, the rolled over amount is not subject to the additional 10% early withdrawal tax.

For 2010 only, if a participant rolls over an eligible rollover distribution (ERD) into a designated Roth account in a §401(k) or §403(b) plan, he or she can include:

1. Half of the taxable amount of the rollover in 2011 gross income and half in 2012 gross income; or
2. The entire taxable amount of the rollover in 2010 gross income.

The new law also permits sponsors of governmental §457(b) plans to add designated Roth accounts to their plans in taxable years beginning after 2010. These plans can then be amended to allow in-plan Roth Conversions to participants' designated Roth accounts if the conversion meets the required conditions discussed above.

In order to offer an in-plan conversion to a Roth account a plan amendment will be required. It is anticipated that the IRS will provide sufficient time for employers to permit conversions in 2010 and amend their plans at a later time if necessary.

Details of the requirements and operation of in-plan Roth conversions are still forthcoming. However, plan sponsors who wish to offer this option and allow conversions in 2010 will need to work quickly to understand the conversion requirements of the new law and to have forms, amendments, communication and education materials prepared and delivered to plan participants.

If you are interested in finding out more about the new in-plan Roth conversion option, please contact your ADS plan administrator.