

Rollover Round Up

We have seen increased government focus in the rollover area. The Government Accounting Office (GAO) issued at least two reports discussing rollovers. In 2013, The GAO [issued](#) (“401(k) Plans: Labor and IRS Could Improve the Rollover Process for Participants”) focusing on 401(k) rollovers. The latest [GAO report](#), originally issued September 2014 and reissued October 2014, noted “For tax year 2011 (the most recent year available), an estimated 43 million taxpayers had individual retirement accounts (IRA) with total reported fair market value of \$5.2 trillion.” (*emphasis added*). In addition, both FINRA and the SEC issued rollover guidance primarily for financial institution/advisor rollover practices and procedures. We expect this focus to continue.

The IRS also joined in this rollover focus and this ErisaALERT will discuss some of the recent IRS rollover guidance.

Recent IRS rollover guidance

[Revenue Ruling 2014-09](#) provided practical tips for plan administrators when accepting rollovers into the plan including:

- Checking the DOL Form 5500 data base to confirm that the plan issuing the trust is a qualified plan
- Accepting employee certification regarding the contribution sources
- Examining the check stub for the source of the check

[Announcement 2014-15](#) regarding the one rollover per one year period rule. The Announcement cited a recent Tax Court opinion, [Bobrow v Commissioner](#), T.C. Memo. 2014-21, which held that the limitation regarding one rollover per year applied on an aggregate basis, meaning that an individual could not make an IRA-to-IRA rollover if another rollover of any of the individual's IRAs had been made in the previous one year period. In this Announcement, the IRS indicated its intent to follow this Tax Court decision prospectively (January 1, 2015) and revise Publication 590 as necessary.

[Announcement 2014-32](#) was a follow-up to Announcement 2014-15. This follow-up Announcement clarified that it would apply the *Bobrow* interpretation for distributions from different IRAs only if each of the distributions occurs on or after January 1, 2015. A distribution occurring in 2014 that was rolled over will be disregarded for purposes of determining if a 2015 distribution can be rolled over provided that the 2015 distribution is from another IRA that neither made nor received the 2014 distributions.

A rollover from a traditional IRA to a Roth IRA (a conversion) is not subject to the one rollover per year limitation and is disregarded in applying the one rollover per year rule to other rollovers.

The one rollover per year rule does not apply to a rollover to or from a qualified plan or trustee to trustee transfers. The Announcement encourages IRA trustees to offer IRA owners the trustee to trustee transfer.

[IRS Notice 2014-54](#) issued concurrently with [proposed regulations](#) provided guidance regarding allocating pre and post-tax contributions in a plan distribution. The guidance is effective for distributions occurring after January 1, 2015 with transition guidance for distributions made after September 18, 2014 but before the allocations rules in this Notice apply.

Briefly, IRC 72(e)(8) provides that a distribution consisting of both pre and post-tax contributions (after-tax and Roth contributions) resulted in a pro-rata calculation to determine which part of the distribution is attributable to pre-tax contributions and which part is attributable to post-tax contributions. An exception to this pro-rata calculation applied

if the participant was rolling the distribution via trustee to trustee transfer to another qualified plan (or 403(b) plan) which accepted and separately accounted for pre and post-tax monies.

Plan administrators must provide an IRC 402(f) notice to participants explaining distribution options and tax consequences. [IRS Notice 2009-68](#) provided safe harbor notices to comply with IRC 402(f). The safe harbor notice included language to the effect that if a distribution was split into multiple distributions, the pro-rata allocation of pre and post-tax amounts applied to each distribution amount. The IRS received comments requesting changes to Notice 2009-68 regarding distributions consisting of pre and post-tax amounts made to multiple destinations. Notice 2014-54 addresses the comments.

For purposes of determining the portion of a distribution that is not includible in gross income, all disbursements are treated as a single distribution regardless of whether the distribution may go to multiple places. If the pre-tax amount is less than the amount of the distribution that is directly rolled over to one or more eligible retirement plans, the entire pre-tax amount is assigned to the amount of the distribution that is directly rolled over. If the pre-tax amount equals or exceeds the amount of the distribution that is directly rolled over, the pre-tax amount is assigned to the portion of the distribution that is directly rolled over up to the amount of the direct rollover. Any remaining pre-tax rollover is next assigned to any rollovers that are not direct rollovers. If the amount rolled over to an eligible retirement plan exceeds the pre-tax amount, any excess is considered after-tax. The Notice contains examples explaining the guidance.

Example A participant's account balance of \$250,000 is comprised of \$200,000 pre-tax and \$50,000 post-tax amounts. The participant terminates and requests a \$100,000 distribution. The pre-tax amount is \$80,000 ($\$100,000 \times \$200,000/\$250,000$). The employee requests that \$70,000 be rolled to the qualified plan of his new employer and the remaining \$30,000 be paid to him. The \$70,000 rollover is considered pre-tax and the \$30,000 is considered as \$10,000 pre-tax and \$20,000 post tax.

[Notice 2014-74](#) provides updated safe harbor explanations reflecting Notice 2014-54. It is important to note that the revised safe harbor notice indicates that a participant cannot take a payment of only after-tax contributions unless they were pre-1987 contributions accounted for separately within the plan.

Note: The IRS issued two FAQs in response to IRS Notice 2014-54 as reported by [Benefitslink](#).

What should plan sponsor do now?

This topic is fairly technical as it relates to plans since many plans do not have after-tax money. The IRA topics have significant implications for individuals who have multiple IRAs and participants may ask you questions.

At this point, plan administrators should contact their service providers to ensure that all participant communication material is updated to reflect the latest guidance.

Note: all links are active as of the date of issuance of this ErisaALERT.

Disclaimer: This material is for the sole purpose of providing general information and does not under any circumstances constitute legal advice and should not be used as a substitute for legal advice. You should seek the advice of counsel when applying the requirements to your plan. For more information on this ErisaALERT contact us by phone at 610-524-5351 and ask for Mary Andersen; 610-337-7270 and ask for Paul Protos or 215-508-5629 and ask for Theresa Borzelli at SFE&G.