

DOL REQUIREMENTS AFFECTING RETIREMENT PLANS

AUTOMATIC ROLLOVER PROGRAM

Many employer-sponsored retirement plans have missing and non-responsive participants who increase plan administration costs each year. To help reduce these expenses, the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) amended the Internal Revenue Code (Code) to allow plans to establish IRAs for former employees with plan balances less than or equal to \$5,000. This allows a plan sponsor to effectively outsource these participant accounts to a qualified IRA provider, thereby saving money, time, and valuable personnel resources, and at the same time, preserving tax deferred retirement savings for its former employees.

DOL SAFE HARBOR

On September 28, 2004, the Department of Labor (DOL) published final regulations providing plan sponsors a safe harbor for rolling over distributions to IRAs. If done in accordance with these rules, the plan sponsor will be deemed to satisfy its fiduciary duties under the Employee Retirement Income Security Act (ERISA). The safe harbor requirements are:

- The present value of the participant's vested account balance may not be more than \$5,000, or, if the plan so provides, \$5,000 plus amounts (and earnings) rolled over from other plans.
- The plan fiduciary must enter into a written Automatic Rollover agreement with an IRA provider addressing the initial investment, services and related fees and expenses.
- The initial investment product must be offered by a state or federally regulated financial institution, such as a bank, trust company, credit union, insurance company, or '40 Act investment company.
- The initial investment product must be designed to minimize risk, preserve principal, provide a reasonable rate of return and maintain liquidity. Examples provided include money market funds, interest-bearing savings accounts, certificates of deposit, and stable value products.
- The fees and expenses cannot exceed those charged by the selected IRA provider for its other comparable IRAs.
- The plan sponsor must provide information about the automatic rollover process and the investment products offered to all participants in either a Summary Plan Description (SPD) or Summary of Material Modification (SMM).

If the safe harbor requirements are met, the individual is no longer a participant in the plan after the rollover. Further, plan fiduciaries are not required to monitor the IRA provider and have no responsibility for the IRA provider's compliance with the terms of the IRA agreement after the funds are rolled over. The terms of the IRA agreement are enforceable by the participant on whose behalf the rollover was made.

Since the plan terms are no longer applicable, any specified beneficiary designation and investment election ends when the rollover is made. The IRA terms will prospectively govern the individual's beneficiary designation and investment of assets.

IRS GUIDANCE

The Internal Revenue Service (IRS) issued IRS Notice 2005-5 clarifying that the automatic rollover rules apply to tax qualified plans established under 401(a) of the Code, including 401(k) plans, profit sharing plans and defined benefit plans, including plans maintained by governments and churches.

Plan fiduciaries of these types of plan may need to take further steps to satisfy fiduciary obligations since the DOL safe harbor provides protections only for ERISA covered plans.

The IRS also clarified that distributions made to a participant on the later of age 62 or normal retirement age under the plan are not subject to the automatic rollover rules. Also excluded are distributions to a surviving spouse or alternate payee and plan loan offsets.

TERMINATED PLANS

For terminated plan distributions, the DOL has issued separate guidance on the steps that plan sponsors must take to search for lost participants in Field Assistance Bulletin No. 2004-02. This advice relates only to terminating defined contribution plans.

DOL REQUIREMENTS AFFECTING RETIREMENT PLANS



Generally, the notice details what the DOL expects from fiduciaries of terminated plans in terms of looking for missing participants and distributing plan assets. If participants remain missing after following the search steps as outlined by the DOL, plan fiduciaries may be deemed to have satisfied their ERISA fiduciary responsibilities by rolling over benefits to an IRA, regardless of the amount.

ROTH 401(K)S

Automatic Rollovers are also available for Roth 401(k) transfers. For participants with both pre-tax and Roth 401(k) money, a traditional IRA and a Roth IRA will be required to hold each distinct type of money.

PLAN AMENDMENT

Plans may have been amended to remove any mandatory cashout distributions of amounts of more than \$1,000 (reduced the threshold from \$5,000 to \$1,000). However, such an amendment will increase the number of inactive participants with small benefit amounts in the plan. Larger numbers of participants will likely increase ongoing plan administrative expenses, including ongoing insurance premiums to the Pension Benefit Guaranty Corporation for defined benefit plans. Prospectively, additional administrative work may be required if any of these participants is or becomes “missing.”

The IRS issued model plan amendment language that can be used by plan sponsors to adopt the automatic rollover rules into their tax qualified plan. Additionally, this model plan language can be altered to include safe harbor protection for participants with balances of \$1,000 or less. This can significantly reduce administrative expenses for missing participants of which distribution checks have been returned as lost addresses.

ACTION STEPS

- Enter into a written Automatic Rollover agreement with a qualified IRA provider.
- Amend the plan document to provide for automatic rollovers.
- Make appropriate disclosures to plan participants about the selected IRA provider and investments via an updated SPD or SMM before automatic rollovers begin.
- Be prepared to modify the “special tax notice” required under section 402(f) of the Code to explain the automatic rollover rules.



820 JORIE BLVD, SUITE 420
OAK BROOK, IL 60523
800.258.7878
WWW.MTRUSTCOMPANY.COM

COMPANY PROFILE

Millennium Trust Company is an industry leader in administrative and custodial services. Millennium custodies alternative and traditional assets in IRAs, Solo 401(k)s and custody accounts, offers cost-effective 403(b) solutions, creates customized Automatic Rollover programs, provides integrated Health Savings Account solutions and designs unique trading platforms for Investment Advisors.

Millennium Trust performs the duties of a custodian and, as such, does not provide investment advice or sell investments, nor offer any tax or legal advice.