

# THE EMPLOYEE BENEFIT Forum

current issues in retirement benefit planning



## Accepting Rollovers from Other Employer Plans

**SITUATION:** A new employee wants to roll over his account balance from a former employer's 403(b) plan to our 401(k) plan.

**QUESTION:** Can we accept his rollover without jeopardizing our plan's tax-exempt status?

**ANSWER:** Generally, yes, if your plan's provisions allow rollovers from other employer plans. Plans are not required to accept rollovers. However, if your employee has any designated Roth 403(b) contributions and earnings in his former employer's plan, these amounts can be rolled over to your 401(k) plan only if your plan has a Roth feature. Various requirements apply.

**DISCUSSION:** Accepting rollovers can have advantages. For instance, it may make

your plan more attractive to prospective hires and help you recruit qualified employees. However, you should take precautions with rollovers to avoid having a contribution considered an after-tax contribution subject to nondiscrimination testing and counted as an annual addition to the plan.

Verify that your employee's rollover is from an eligible plan (see table below). And, if the funds aren't directly transferred to your plan from the employee's former plan, also make sure the rollover was made in a timely manner. An indirect rollover must be made within 60 days of the date the employee receives the distribution from the former plan.

### Plan Rollovers at a Glance

Rolling distribution from	Rolling distribution to			
	401(k)/qualified plan <sup>1</sup> (pretax)	Roth 401(k)	Traditional IRA	Roth IRA
401(k) and other qualified plans <sup>1</sup> (pretax)	Yes	Yes <sup>2,8,3</sup>	Yes	Yes <sup>3</sup>
403(b) (pretax)	Yes	No	Yes	Yes <sup>3</sup>
Governmental 457(b) (pretax)	Yes	No	Yes	Yes <sup>3</sup>
Designated Roth account (401(k), 403(b), or 457(b))	No	Yes <sup>4</sup>	No	Yes
SIMPLE IRA	Yes, after 2 years	No	Yes, after 2 years	Yes, <sup>3</sup> after 2 years
SEP-IRA	Yes	No	Yes	Yes <sup>3</sup>

<sup>1</sup> Profit sharing, money purchase, defined benefit plans    <sup>2</sup> Must be an in-plan rollover    <sup>3</sup> Must include in income  
<sup>4</sup> Must be a direct trustee-to-trustee transfer

Source: IRS

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## They're Enrolled — Now What?

Having a successful retirement plan depends in part on your getting as many employees as possible enrolled in the plan. But plan participation is only one factor in a plan's success. Once employees are enrolled, you should take steps to keep them participating and encourage them to increase their deferrals regularly until they are contributing enough to meet their goals.

What can you do? A regular education program can show employees the value of the plan, why they need to save

for retirement, and how to invest for retirement. Employees who understand their retirement plans tend to stay in their plans and save more. Review your plan participants' savings rates over time. If many of them aren't regularly increasing their rates, newsletter articles or payroll flyers encouraging them to do so may help. Also be aware that many employees base their deferral rate on the amount their employers will match. Consider making matching contributions if you don't currently or increasing your match, if feasible.

## SPDs Are Not “Plan Terms”

The U.S. Supreme Court recently addressed the issue of whether discrepancies between summary plan description (SPD) language and plan document language are controlled by the SPD if participants show they would be harmed if the SPD were not followed.\*

The case involved a company that had amended its traditional defined benefit plan to provide a cash balance formula. The plan participants brought a class action lawsuit claiming that their employer did not accurately explain the changes in the plan's new SPD, leading them to believe their benefits were enhanced by an additional amount under the new formula. The participants also contended noncompliance regarding a pension law (ERISA) notice requirement.

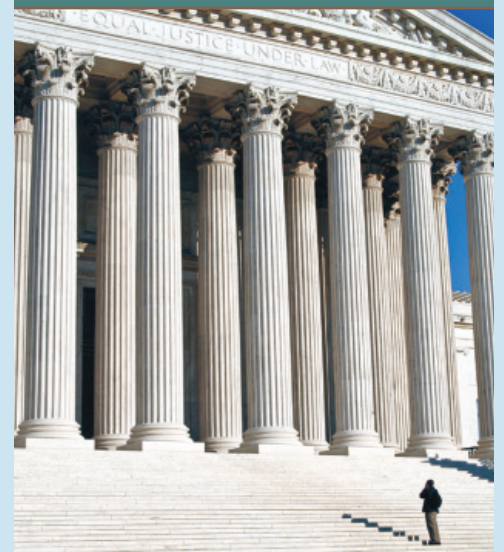
Two lower courts found that the SPD and other plan communications violated ERISA notification requirements and that reliance on the SPD caused “likely harm” to the participants. The courts reformed the plan to match the SPD and ordered the sponsor to pay the more generous benefits indicated in the SPD.

The Supreme Court disagreed, concluding that the ERISA provision interpreted by the lower courts does not give courts authority to *change* the terms of a plan, only to *enforce* those terms. The Court stated that SPDs provide participants with information *about* a plan, but do not constitute the *terms* of the plan. However, the high court indicated the participants might be able to seek remedy under another ERISA provision that could result in reformation or monetary compensation.

While potentially limiting future lawsuits, the ruling underscores the need for you to exercise care in preparing your plan's SPD and other plan communications.

\* *Cigna Corp v. Amara*, 536 U.S. \_\_\_, May 16, 2011

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## Prep Your Employees for Fee Disclosure

The U.S. Department of Labor has given plan sponsors a short reprieve from requirements to furnish plan participants and beneficiaries with more information about the fees and expenses associated with their plans. Below, we answer questions about this time extension and how you can put the additional time to good use preparing your employees for the disclosures.

**How much more time do we have?** If your plan operates on a calendar-year basis, the latest date for furnishing participants with their first set of initial participant disclosures (all disclosures other than disclosures required at least quarterly) has been moved to May 31, 2012.\*

**Why do we need to prepare plan participants for fee disclosure?** Many plan participants believe their retirement plan is a free benefit. When AARP surveyed a group of 401(k) participants, it found that 71% of the respondents said they pay no fees in association with their plan. Rather, many think their employers cover all the costs. When these employees begin receiving the DOL-required information about their plan's fees and expenses, they may falsely believe their employers are making them pay charges they didn't previously have to pay.

**What can we do to prevent our employees from thinking they're being charged new fees?** Point out that fees are standard in both the retirement plan and investment industries, and make sure they realize they're currently paying certain plan costs. You might provide them with individual benefit statements showing how much you pay for all of the benefits they receive as an employee, including plan administration fees if you pay some (or all) of them, and how much they pay in plan fees, health insurance premiums, etc.

### **Do participants need any other information about fees ahead of the required disclosure?**

You may want to tell them fees are only one factor to consider when investing their plan accounts and their investments should be based on their particular needs and circumstances. In some cases, a fund with a higher fee might better meet a participant's needs and goals. Your plan offers a variety of choices that allow them to select an investment mix that is best for them.

### **Can we do anything else to reduce participant fee "shock" when disclosures begin?**

Even if you prepare your plan participants by educating them about plan fees in advance, when you begin furnishing required disclosures, stress that the fees you're reporting are not new fees. It's the disclosure rules that are new. You are simply giving them added value by providing them with more detailed information than you previously did. Also explain how plan fees and expenses are reviewed by the company to ensure they are reasonable and competitive. If you provide matching contributions, show how the money helps to offset the plan fees they pay.

### **Are there any other reasons for starting a fee communications program now?**

Beginning your fee communications program now will help you put a system in place for the ongoing disclosures plan sponsors are required to provide. After the initial disclosure, the DOL requires plans to provide follow-up disclosures annually. And new participants and beneficiaries must receive disclosures on or before the date they can first direct their plan investments. In addition, participants must receive statements, at least quarterly, showing certain administrative and individual expenses charged to or deducted from their plan accounts. Calendar-year plans must furnish the first quarterly disclosure by August 14, 2012.

\* Initial disclosures are due by the later of (1) 60 days after the first day of the plan year beginning on or after November 1, 2011, or (2) 60 days after April 1, 2012 (the effective date of the service provider fee disclosure rules).

The general information in this publication is not intended to be nor should it be treated as tax, legal, or accounting advice. Additional issues could exist that would affect the tax treatment of a specific transaction and, therefore, taxpayers should seek advice from an independent tax advisor based on their particular circumstances before acting on any information presented. This information is not intended to be nor can it be used by any taxpayer for the purpose of avoiding tax penalties.



## RECENT DEVELOPMENTS In Benefit Plans

**Number of Funds Used Increases.** 401(k) and other defined contribution plan participants increasingly have been using more funds for their account investments. According to the Spectrem Group, which conducted the research, one reason for this increase is the increase in the number of funds plan sponsors offer their employees. The average number of funds offered in 2011 is 19.4, compared to 6.3 in 1996. But, despite the increase in the number of funds used, participants

still use only about a quarter of the funds offered by their plans.

**Form 8955-SSA Filing Deadline Extended.** With the release of its final Form 8955-SSA (*Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits*) for 2009, the IRS also announced another extension of the form's filing deadline for the 2009 and 2010 plan years to January 17, 2012, or the due date that generally applies for filing the Form 8955-SSA for 2010, whichever is later. The January 17, 2012, date isn't

eligible for further extensions by filing Form 5558. Form 8955-SSA is used to report required information formerly reported on the discontinued Schedule SSA of Form 5500 (*Annual Return/Report of Employee Benefit Plan*). It is to be filed separately from Form 5500. Filers can either combine 2009 and 2010 plan year data on the 2009 Form 8955-SSA or file separate forms to report 2009 and 2010 plan year data.

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