



**A Plan Administrator's
"Due Diligence" Obligations
Regarding Rollover
Contributions Into a Plan**

Legacy Retirement Solutions, LLC

P.O. Box 1215
Brookhaven, PA 19015

Phone: 484-483-1044
Fax: 484-361-4800

E-mail: marketing@legacyrslc.com

A Plan Administrator's "Due Diligence" Obligations Regarding Rollover Contributions Into a Plan

Did you know that a plan sponsor acting in its role as plan administrator has a duty to ensure that any rollover into its qualified retirement plan is qualified? Many do not. If you are a plan sponsor of a tax-qualified retirement plan, what steps do you take in order to ensure that the rollover received by your plan is qualified? Sad to say, due to the ignorance associated with the general requirement, many plan sponsors do not follow any process to attempt to reasonably ensure that a rollover it accepts is from a qualified source and in a qualified amount. As a result, many plans could unknowingly have tax-qualification issues as a result of a failure to engage in a diligent "rollover in" review process. If you are one of the many plan sponsors who do not adequately review the qualification of rollovers into your qualified plan; this article will help you to understand the issue, the process that you should already be engaged in when it comes to reviewing such contributions and certain new Internal Revenue Service ("IRS") guidance on the matter.

Background

A little over 20 years ago, the Unemployment Compensation Amendments of 1992 ("UCA") imposed a requirement that all qualified retirement plans allow a direct rollover option *out of* the plan. However, UCA did not require that qualified retirement plans accept rollover contributions *into* the plan.

If a plan sponsor does elect to accept rollover contributions into its plan, certain regulations require that the plan administrator of the recipient plan "reasonably conclude" that the rollover is an "eligible rollover distribution" (essentially a permissible rollover from a tax-qualified plan or "individual retirement account" ("IRA")) in order to be able to assume that such amount does not jeopardize the plan's tax-qualified status. In addition, if the plan administrator later learns that the rollover was not an eligible rollover contribution, the plan administrator must distribute the rolled-over amount, adjusted for earnings, back to the contributing participant within a reasonable amount of time.

Unfortunately, the requirements above have certain limitations. The primary concern is that the plan administrator of a recipient plan generally lacks the direct knowledge necessary to determine whether a rollover it receives actually is an eligible rollover contribution. As a result, existing guidance provides various "due diligence" procedures under which a plan administrator will be deemed to have "reasonably concluded" that a tendered rollover is an eligible rollover from a qualified plan.



The procedures provided by the IRS in relation to this issue describe various fact patterns of acceptable plan administrator actions in this context that involve things such as: obtaining letters from the transferring plan or IRA regarding such plan's or IRA's qualified status; certain factual representations from the transferring participant regarding compliance with the applicable rules; and/or supporting documentation from the transferring plan or IRA. Absent facts which demonstrate a qualification / compliance issue, a plan administrator who follows the procedures highlighted above in connection with the current guidance may treat a rollover contribution into its plan as an eligible rollover contribution from a qualified source.

Notwithstanding the foregoing, the fact that qualified plans are not required to accept rollovers into the plan combined with the complication of evaluating the qualification of rollover contributions received has served to discourage some plan sponsors from accepting rollovers into their qualified plans. As a result, the IRS has revisited this issue in order to update and purportedly simplify some of the guidance on what a plan administrator must do in order to satisfy its due diligence requirements on this issue.

The Guidance

The IRS recently released Revenue Ruling 2014-9 ("Guidance") which essentially describes certain new factual situations under which it is appropriate for a plan administrator to assume that a rollover contribution amount it receives is tax-qualified and, therefore, will not result in a compliance defect for the recipient plan. The following discusses the Guidance in greater detail.

The Guidance focuses on two specific factual situations regarding how a plan administrator might evaluate whether it is reasonable to accept a participant's rollover contribution. In one situation, the rollover emanates from another employer's retirement plan while, in the other, the rollover emanates from an IRA.

Rollover From an Employer

In the first scenario, the Guidance describes a plan administrator who receives a check payable to the trustee of the recipient plan for the benefit of the employee. The attached check stub identifies the source of the distribution as a retirement plan sponsored by another employer. The employee also certifies that the distribution does not include "after-tax" or designated Roth contributions which, in the example, are money types that are not accepted by the recipient plan.

The plan administrator who receives the rollover check accesses the electronic EFAST2 database (www.EFAST2.DOL.gov) maintained by the Department of Labor ("DOL") and searches for the most recently filed Form 5500 in relation to the distributing plan. The plan administrator then confirms through



www.legacyrslc.com

**Legacy Retirement Solutions,
LLC**

P.O. Box 1215
Brookhaven, PA 19015
Phone: 484-483-1044
Fax: 484-361-4800

the EFAST2 website that the Form 5500 does not show code 3C (which is used to indicate that the plan is not intended to be qualified under sections 401, 403, or 408 of the Internal Revenue Code) within line 8a of such form.

Under these facts, the Guidance indicates that, absent any evidence to the contrary, the plan administrator may reasonably conclude that the source of the potential rollover contribution is qualified. Thus, as demonstrated within the Guidance, a plan administrator may now use an on-line, electronic review of the information set forth within a current, compliant Form 5500 as a method of determining that the rollover amount emanates from a qualified plan.

Rollover From an IRA

In the second scenario, the same plan administrator receives a check payable to the trustee of the recipient plan for the benefit of the employee. In this example, the attached check stub identifies the employee's IRA as the source of the rollover funds. In addition, the employee certifies that the rollover includes no after-tax or Roth amounts.

Similar to the rollover from the qualified plan, barring evidence to the contrary, the above referenced factual scenario demonstrates circumstance where the plan administrator may reasonably conclude that the distribution from the IRA emanates from a qualified source.

Further Evaluation of the Rollover Amount

In addition to evaluating and validating the source of the rollover as described above, the plan administrator must also make some effort to ensure that the *amount* of the rollover is actually eligible to be rolled over. For example, the rollover amount should not include any "required minimum distribution" ("RMD") as a result of an individual's attainment of age 70-1/2.

In this regard, with respect to a rollover emanating from a qualified employer plan, the Guidance indicates that the plan administrator can assume that the amount is appropriate once it has concluded that the distribution emanates from a qualified plan. This is because the distributing plan would have had to have already separately satisfied the RMD requirement.

Under the IRA example, the employee certifies that he or she will not attain age 70½ by the end of the plan year of the rollover. This allows the plan administrator to reasonably conclude that the amount is appropriate for rollover.



www.legacyrslc.com

**Legacy Retirement Solutions,
LLC**

P.O. Box 1215
Brookhaven, PA 19015
Phone: 484-483-1044
Fax: 484-361-4800

Conclusion

In the absence of evidence to the contrary, a plan administrator employing the procedures described within the Guidance establishes a presumption that it reasonably concluded that a rollover was valid. Although prior guidance presented other options to achieve this presumption, some plan administrators may prefer the convenience of electronically searching the DOL's EFAST database on-line to the other available options. However, if you are a plan administrator, it is important to remember that, regardless of which method you choose, you are responsible for fulfilling this limited certification process in connection with each rollover contribution you accept into your plan. Therefore, be sure to take appropriate action and satisfy this important obligation in connection with your plan.

We hope this article helped you to better understand this complicated topic. However, as it is not to be construed as financial, tax or legal advice; be sure to further discuss it with a qualified professional before attempting to implement it. For more information about this topic, please contact our marketing department at 484-483-1044 or your administrator at Legacy.



www.legacyrslc.com

**Legacy Retirement Solutions,
LLC**

P.O. Box 1215
Brookhaven, PA 19015
Phone: 484-483-1044
Fax: 484-361-4800