



AMERICAN BENEFITS COUNCIL

March 13, 2013

George Bostick
Benefits Tax Counsel
Office of Tax Policy
U.S. Department of Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Joyce Kahn
Acting Director
Office of Rulings and Agreements (SE:T:EP:RA)
Internal Revenue Service
999 N. Capital St.
Washington, DC 20224

Dear Mr. Bostick and Ms. Kahn:

On behalf of the American Benefits Council (the “Council”), I am writing to request guidance under Section 902 of the American Taxpayer Relief Act of 2012 (“ATRA”), which expands the availability of “in-plan Roth conversions,” also called “in-plan Roth rollovers.” **It is critical that Treasury and the Service provide guidance as soon as possible because the amendments to Code section 402A(c)(4) are already effective.**

The Council is a public policy organization principally representing Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council’s members either sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans.

Under Code section 402A(c)(4), prior to enactment of ATRA, amounts in defined contribution plans (such as 401(k), 403(b), and governmental 457(b) plans) may be converted to Roth amounts within the same plan, provided that (a) the amounts are distributable from the plan, (b) the distribution would be an eligible rollover distribution, and (c) the plan otherwise permits non-rollover designated Roth contributions. Section 902 of ATRA amends 402A(c)(4) by adding a new subsection (E) which provides:

- A plan may allow an individual to elect to have the plan transfer any amount not otherwise distributable under the plan to a designated Roth account maintained for the benefit of the individual,

- The transfer is treated as a distribution to which Code section 402A(c)(4) applies which was contributed in a qualified rollover contribution (within the meaning of Code section 408A(e)) to the account, and
- The plan will not be treated as violating the distribution restrictions that otherwise apply to 401(k), 403(b), and governmental 457(b) plans, solely by reason of such transfer.

Treasury and the Service provided comprehensive guidance on Section 402A(c)(4) (prior to amendment by ATRA) in Notice 2010-84. Much of this guidance should continue to apply after amendment by ATRA, however, many important questions remain.

The Council has also prepared a list of questions that the Council's members have raised in connection with Section 902 of ATRA. We would like to meet with you to discuss this list.

Sincerely,

A handwritten signature in black ink, appearing to read "Jan Jacobson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jan Jacobson
Senior Counsel, Retirement Policy
American Benefits Council

cc: Robert Choi, Director, Employee Plans, Tax Exempt and Government Entities Division
William Evans, Department of Treasury
Victoria Judson, Division Counsel/ Associate Chief Counsel, Tax Exempt and Government Entities Division
Roger Kuehnle, Employee Plans, Tax Exempt and Government Entities Division