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Our Employee Benefits and Executive Compensation attorneys have a diversified national practice. We assist clients of all shapes and sizes - businesses in virtually every industry sector, 501(c)(3)s and other tax-exempt organizations, and governmental entities under 414(d) - on compensation and benefit-related issues.

New Opportunities for In-Plan Roth Conversions

President Obama signed the Small Business Jobs Act of 2010 (P.L. 111-240) into law on September 27, 2010. The Act makes several important changes to the way retirement plans administer Roth contributions for 401(k), 403(b) and governmental 457(b) plans.

In-Plan Roth Conversions

The Act changes the rules for 401(k) and 403(b) plans (and 457(b) plans in 2011) to permit in-plan Roth conversions. An in-plan conversion is accomplished through a direct rollover of amounts from a non-Roth account to a Roth account within the plan, instead of a rollover to a Roth IRA. The in-plan Roth conversion provision is optional and applies to plans that allow participants to designate contributions as Roth contributions. This new rule is effective now for employees who are eligible to receive a plan distribution, for example, if they have terminated from employment or the plan permits distributions upon attainment of age 59-1/2.

Participants electing to roll over their non-Roth account into a Roth account must include the distribution in their gross income, using the same rules as if the amount were rolled into a Roth IRA. Participants who complete a rollover in 2010 may elect to include the amount in their gross income in equal parts in 2011 and 2012.

Roth Contributions for Governmental 457(b) Plans

Beginning in 2011, 457(b) plans maintained by state or local governments may accept Roth contributions. In addition, the Roth in-plan conversion rules, described above, will also apply to governmental 457(b) plans beginning in 2011.

Awaiting IRS Guidance

The Act raises numerous administrative and operational questions, and it will take time for the IRS to issue guidance addressing some of these ambiguities. The IRS is expected to provide a delayed period for adopting amendments related to the new Roth provisions. Therefore, plan sponsors could decide to implement now or to wait for additional guidance before adopting new Roth features and making related plan amendments.

We would be happy to answer any questions that you may have about the Roth conversion provisions of the Small Business Jobs Act of 2010 and will continue to keep you updated as additional guidance is released. Please contact any member of our [Employee Benefits & Executive Compensation team](#) to discuss these issues.

Please contact any of the attorneys in our [Employee Benefits & Executive Compensation](#) group if you have any questions regarding this alert.

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