Roth contributions are increasingly popular with defined contribution (DC) plan sponsors and their plan participants. Among 367 surveyed DC plans, the percentage of plans offering Roth contributions increased from 11% in 2007 to 58% in 2015. And 33% of plans surveyed that offer Roth contributions also permit in-plan Roth conversions. Roth contributions can offer a plan participant a tax advantage over traditional pretax elective deferrals (and traditional after-tax contributions), particularly if the participant’s effective income tax rate is higher when distributions are taken from the plan than when contributions are made to the plan.

Because Roth contributions are made on an after-tax basis, this can lead to some confusion for plan sponsors and participants, especially if a plan offers both Roth contributions and traditional after-tax contributions (although there are reasons to offer both). Further, familiarity with Roth individual retirement account (IRA) rules can result in additional confusion, since the rules for Roth contributions to a plan are similar but not identical to those for a Roth IRA.

This article provides an overview of Roth contribution rules (and in-plan conversion rules) and contrasts Roth contributions with traditional after-tax contributions and Roth IRAs.

Why Roth Contributions?

Roth contributions may be attractive to plan participants because both the contributions and earnings on those contributions are not taxed when distributed, if distributed as a “qualified distribution.” Pretax elective deferrals, although excluded from federal taxable income when made, are taxed when distributed, along with earnings on those deferrals, unless taxation is further delayed through an eligible rollover to an eligible retirement plan or individual retirement account (IRA). Pretax elective deferrals, although excluded from federal taxable income when made, are taxed when distributed, along with earnings on those deferrals, unless taxation is further delayed through an eligible rollover to an eligible retirement plan or individual retirement account (IRA).

Roth Is on the Rise: Is Roth Right for Your Plan?

Roth is on the rise among defined contribution (DC) plans. Nearly three out of five DC plans surveyed now offer Roth contributions, and nearly one out of five offers in-plan Roth conversions. Roth contributions can offer tax advantages and permit tax-impact diversification to participants but also can add administrative complexities for the plan sponsor. There may also be confusion about Roth contributions relative to traditional after-tax contributions and Roth individual retirement accounts (IRAs). This article provides an overview of Roth contribution and in-plan conversion rules and contrasts Roth contributions with traditional after-tax contributions and Roth IRAs.
retirement annuity or IRA. Non-Roth after-tax contributions are not taxed when distributed, but the earnings on those contributions are taxed when distributed, unless taxation is further delayed through an eligible rollover to an eligible retirement plan, individual retirement annuity or IRA. If a participant’s effective tax rate is expected to be higher when distribution is made from the participant’s Roth account than when contributions were made to the participant’s Roth account, Roth contributions will be more tax attractive than pretax elective deferrals. Offering Roth contributions allows plan participants to diversify with respect to future tax rates, whether by making both pretax elective deferrals and Roth contributions or by making Roth contributions and taking into account that employer contributions to the plan are pretax and will be taxable at distribution.

The simplified example in the table shows the basic concept of the effect of future versus current effective tax rates on choosing between Roth contributions and pretax elective deferrals.

Although future tax rates generally are not known with certainty, a participant will obtain more of a tax advantage from a Roth account if a higher effective tax rate applies at the time of distribution than at the time of contribution. Even if actual tax rates remain the same, a participant might be moved to a higher actual tax rate because the participant no longer claims exemptions for dependent children or deductions such as mortgage interest, which could increase the participant’s effective tax rate at retirement. The longer a participant remains invested in a Roth account, the more likely the participant will benefit from tax-free earnings on the Roth account.

### Required Minimum Distributions and Longevity Retirement Planning

A Roth account may be of particular benefit for longevity retirement planning. Although a Roth account is subject to the same required minimum distribution (aged 70½) rules as pretax elective deferrals, a Roth account can be rolled over to a Roth IRA, which is not subject to required minimum distributions beginning at the age of 70½ while the IRA owner is alive. Unlike a rollover of a pretax elective deferral account (or earnings on a non-Roth after-tax account) to a Roth IRA, which is a taxable event, a rollover of a Roth account to a Roth IRA does not trigger federal income taxation.

Although the annual amount that can be contributed to a plan as Roth contributions is subject to the limitations described in the next section, the amount is greater than the amount that can be contributed to a Roth IRA, due to the dollar limit on IRA contributions ($5,500 for 2017, whether to traditional or Roth IRAs, increased to $6,500 if

### Table: Effect of Future vs. Current Effective Tax Rates

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Tax rate the same at retirement distribution</th>
<th>Tax rate lower at retirement distribution</th>
<th>Tax rate higher at retirement distribution</th>
</tr>
</thead>
<tbody>
<tr>
<td>Effect at retirement distribution</td>
<td>25%</td>
<td>15%</td>
<td>35%</td>
</tr>
<tr>
<td>Total after-tax distribution at retirement</td>
<td>$20,685</td>
<td>$23,443</td>
<td>$17,927</td>
</tr>
</tbody>
</table>

<p>| Table: Effect of Future vs. Current Effective Tax Rates |
|---------------------------------------------|---------------------------------|</p>
<table>
<thead>
<tr>
<th>Roth contribution</th>
<th>Pretax deferral</th>
</tr>
</thead>
<tbody>
<tr>
<td>Years to retirement</td>
<td>35</td>
</tr>
<tr>
<td>One-time pretax deferral</td>
<td>Not applicable</td>
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<tr>
<td>Current effective tax rate</td>
<td>25%</td>
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<tr>
<td>Comparable Roth contribution ($5,000 taxed at 25%)</td>
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<tr>
<td>Assumed annual growth rate over 35 years</td>
<td>5%</td>
</tr>
<tr>
<td>Accumulation at retirement</td>
<td>$20,685</td>
</tr>
</tbody>
</table>
over the age of 50), and may be phased out based on a participant’s modified adjusted gross income.\textsuperscript{5} To the extent otherwise permitted, an individual can make both Roth contributions to a plan and contributions to a Roth IRA.

\textbf{Roth Usage}

The longer that Roth contributions are available in a plan, the more likely it is that participants will contribute on a Roth basis. (See Figure 1.) Younger participants are more likely to choose Roth contributions over pretax elective deferrals (See Figure 2.) This may be because they believe overall tax rates will be higher when they retire or that their personal effective tax rates will be higher when they retire.

\textbf{Roth Contribution Basics}

Roth contributions are permitted in a 401(k) plan, a 403(b) plan and a governmental 457(b) plan.\textsuperscript{6} Even though Roth contributions are made on an after-tax basis, in most other respects they are treated the same as traditional pretax elective deferrals to any of these three types of defined contribution plans. Unlike pretax elective deferrals, neither the earnings on Roth contributions nor the Roth contributions themselves are taxable when distributed to the participant, provided the distribution satisfies the criteria to be a “qualified distribution.” Both the earnings on pretax elective deferrals and the pretax elective deferrals themselves are taxable when distributed to the participant, unless the distribution is an eligible rollover distribution that is effectively rolled over to an eligible retirement plan or IRA.

\textbf{Qualified Distribution}

A qualified distribution from a designated Roth account is not includible in gross income. With certain exceptions,\textsuperscript{7} a qualified distribution means a distribution from a designated Roth account that is both:

- Made after a five-taxable-year period of participation
- Either:
  - Made on or after the date the employee attains the age of 59½
  - Made to a beneficiary or the estate of the employee on or after the employee's death or
  - Attributable to the employee being disabled within the meaning of Code Section 72(m)(7).\textsuperscript{8}

The five-taxable-year period of participation is the period of five consecutive taxable years that begins with the first day of the first taxable year during which the employee makes a designated Roth contribution to the plan (i.e.,

---

\textbf{FIGURE 1}

\textbf{Percentage of Participants Using Roth by Time Since Adoption}

\begin{figure}[h]
\begin{center}
\includegraphics[width=\textwidth]{figure1}
\end{center}
\end{figure}

\textit{Source: Aon Hewitt, 2015 Trends & Experience in Defined Contribution Plans Survey.}

\textbf{FIGURE 2}

\textbf{Percentage of Participants Using Roth by Age}

\begin{figure}[h]
\begin{center}
\includegraphics[width=\textwidth]{figure2}
\end{center}
\end{figure}

\textit{Source: Aon Hewitt, 2015 Trends & Experience in Defined Contribution Plans Survey.}
the first taxable year in which such Roth contribution is includible in the employee's gross income) and ends when five consecutive taxable years have been completed. The beginning of the five-taxable-year period is not reetermined for any portion of an employee's designated Roth account. This is true even if the entire designated Roth account is distributed during the five-taxable-year period and the employee subsequently makes additional designated Roth contributions under the plan.

Generally, an employee's five-taxable-year period is determined separately for each separate plan in which the employee participates, so the employee might have multiple five-taxable-year periods. If a direct rollover contribution of a distribution from a designated Roth account under another plan is made by the employee to the plan, the five-taxable-year period of participation begins on the first day of the employee's taxable year in which the employee first had designated Roth contributions made to such other designated Roth account, if earlier than the first taxable year in which a designated Roth contribution is made to the plan. Additional rules apply to determine the start of the five-taxable-year period in the case of an indirect rollover or a reemployed veteran.

A Roth contribution returned as an excess deferral or excess contribution does not begin the five-taxable-year period. A Roth contribution returned as a permissible withdrawal under Code Section 414(w) also does not begin the five-taxable-year period.

If the employee dies or the account is divided pursuant to a qualified domestic relations order (QDRO) such that a portion of the account is payable to the employee's beneficiary or an alternate payee, generally the age, death or disability of the employee is used to determine whether the distribution to an alternate payee or beneficiary is a qualified distribution. However, if an alternate payee or a spousal beneficiary rolls the distribution into a designated Roth account in a plan maintained by his or her own employer, such individual's age, disability or death is used to determine whether a distribution from the recipient plan is a qualified distribution. Further, if the rollover is a direct rollover contribution to the alternate payee's or spousal beneficiary's own designated Roth account, the five-taxable-year period under the recipient plan begins on the earlier of the date the employee's five-taxable-year period began under the distributing plan or the date the five-taxable-year period applicable to the alternate payee's or spousal beneficiary's designated Roth account began under the recipient plan.

The plan administrator or other responsible party with respect to the plan is responsible for tax-reporting and recordkeeping requirements, including keeping track of the five-taxable-year period of participation and the participant's Code Section 72 investment in the contract basis. A distribution from an employee's designated Roth account that is not a qualified distribution is includible in gross income pursuant to Code Section 72 in proportion to the employee's investment in the contract (basis) and earnings on the contract.

**Roth Contributions Treated as Elective Deferrals**

Generally, Roth contributions are treated as elective deferrals for purposes of the Internal Revenue Code, except that Roth contributions are not excludible from a participant's gross income. In other words, the rules that apply to pretax participant deferrals generally apply to Roth contributions, except that Roth contributions are made on an after-tax basis. However, certain additional rules (such as the qualified distribution rules described above) apply to Roth contributions that permit earnings on Roth contributions to be excludable from a participant's gross income.

Roth contributions are elective deferrals that a participant has designated as not excludable from gross income ("designated Roth contributions"), which are held in a separate "designated Roth account" along with any earnings properly allocable to those designated Roth contributions. In order to provide for designated Roth contributions, a plan must also offer traditional, pretax elective contributions. Separate recordkeeping of Roth accounts is required. A participant's Roth contributions are limited to the amount of elective deferrals the participant could make for the year but reduced by the amount of elective deferrals the participant actually makes for the year. Therefore, the following limitations apply to a participant's combined amount of elective deferrals and Roth contributions:

- **Roth contributions to a 401(k) plan.** A participant's
combined amount of elective deferrals and Roth contributions to a 401(k) plan cannot exceed the smallest of:
— The individual dollar limit ($18,000 for 2017) for the year
— The lesser of (1) 100% of the participant’s compensation or (2) the dollar limit on annual additions ($54,000 for 2017) for the limitation year, when employer matching and nonmatching contributions on behalf of the participant are taken into account along with the participant’s combined amount of elective deferrals and Roth contributions, the participant’s non-Roth after-tax contributions (if permitted by plan provisions) and any forfeitures allocated to the participant for the limitation year
— The limit imposed on the participant by the plan’s actual deferral percentage (ADP) test results, if applicable.

Such limits described above may be increased by age 50 catch-up contributions ($6,000 for 2017).

- **Roth contributions to a 403(b) plan.** A participant’s combined amount of elective deferrals and Roth contributions to a 403(b) plan cannot exceed the smaller of:
  — The individual dollar limit ($18,000 for 2017) for the year, as may be increased by 15-year service catch-up contributions
  — The lesser of (1) 100% of the participant’s includible compensation or (2) the dollar limit on annual additions ($54,000 for 2017) for the limitation year, when employer matching and nonmatching contributions on behalf of the participant are taken into account along with the participant’s combined amount of elective deferrals and Roth contributions, the participant’s non-Roth after-tax contributions (if permitted by plan provisions) and any forfeitures allocated to the participant for the limitation year.

Such limits described above may be increased by age 50 catch-up contributions ($6,000 for 2017).

- **Roth contributions to a governmental 457(b) plan.** A participant’s combined amount of elective deferrals and Roth contributions to a governmental 457(b) plan cannot exceed the smaller of:
  — The individual dollar limit ($18,000 for 2017) for the year
  — 100% of the participant’s compensation.

Such limits described above may be reduced by employer nonelective contributions to the plan (whether matching contributions or not) and increased by age 50 catch-up contributions ($6,000 for 2017).

**Automatic Enrollment**

If a plan with automatic enrollment has both pretax elective deferrals and designated Roth contributions, the plan must state how the employer will allocate automatic contributions between the pretax elective deferrals and designated Roth contributions.

**Matching Contributions**

Matching contributions can be made on Roth contributions. Roth contributions are treated as elective deferrals for this purpose. Because matching contributions are employer contributions, matching contributions on Roth contributions continue to be on a pretax basis and taxable upon distribution, like they would be if made on pretax elective deferrals or non-Roth after-tax contributions.

In the author’s consulting experience, some employers initially do not want to match Roth contributions, even though their plans match pretax elective deferrals. While this may be possible, the result is asymmetric in that participants will favor pretax elective deferrals, at least up to the maximum match contribution available. This seems to be a result of some confusion of Roth contributions with non-Roth after-tax contributions and of employers not initially realizing that Roth contributions dollar for dollar reduce a participant’s ability to make pretax elective deferrals under the annual individual dollar limits.

**Plan Loans**

Designated Roth contributions can be the basis for a plan loan. All plans within the employer’s controlled group
are treated as one plan for purposes of determining the total amount an employee is permitted to borrow from the plan, and such amount is based on the total of the designated Roth contribution amounts and the other amounts under the plan. However, the substantially level amortization requirement must be satisfied separately with respect to the portion of the loan from Roth accounts and with respect to the portion of the loan from other accounts under the plan.\textsuperscript{38}

\textbf{Universal Availability Under 403(b) Plans}

All employees of an employer eligible to have a 403(b) plan must be permitted to have Section 403(b) elective deferrals contributed on their behalf if any employee of the employer may elect to make Section 403(b) elective deferrals, subject to limited exceptions.\textsuperscript{39} The universal availability requirement for elective deferrals under a 403(b) plan has a corollary for Roth contributions under a 403(b) plan. The employee’s right to make elective deferrals under this universal availability rule also includes the right to designate Section 403(b) elective deferrals as designated Roth contributions.\textsuperscript{40} Thus, if any employee of an employer eligible to have a 403(b) plan is eligible to make Roth contributions, subject to the limited exceptions, all employees of the employer must be permitted to have Roth contributions contributed on their behalf.

\textbf{Earliest Distribution Restrictions}

Roth contributions are subject to the same distribution restrictions as pretax elective deferrals in a 401(k) or 403(b) plan, meaning not earlier than severance from employment, death, disability, attainment of the age of 59\frac{1}{2}, plan termination or hardship.\textsuperscript{41} Roth contributions are subject to the same distribution restrictions as other contributions in a 457(b) plan, meaning not earlier than severance from employment, death, plan termination or unforeseeable emergency.\textsuperscript{42}

\textbf{Rollover Distributions and Contributions}

An eligible rollover distribution from a designated Roth account can be rolled over only to another designated Roth account or a Roth IRA, and the amount rolled over is not includible in gross income until later distributed. To the extent that a portion of a distribution from a designated Roth account is not includible in income, determined without regard to the rollover, a rollover of that portion into a designated Roth account must be done as a direct rollover (i.e., a 60-day rollover to another designated Roth account is not permitted).\textsuperscript{43} If a distribution from a designated Roth account is instead made to the employee, the employee is able to roll over the entire amount (or any portion) into a Roth IRA within the 60-day rollover period.\textsuperscript{44}

If an employee receives a distribution from a designated Roth account, the portion of the distribution that would be includible in gross income is permitted to be rolled over to a designated Roth account under another plan. The employee’s period of participation under the distributing plan is not carried over to the recipient plan for purposes of satisfying the five-taxable-year period of participation requirement under the recipient plan. The taxable year in which the recipient plan accepts such rollover contribution is the taxable year that starts the participant’s five-taxable-year period in the recipient plan, unless the participant already has a designated Roth account in the recipient plan with a longer period of participation, in which case the starting date of the recipient account is used to measure the five-taxable-year period.\textsuperscript{45}

For distributions after December 31, 2015 from a participant’s designated Roth account to the participant and also in a direct rollover to the participant’s Roth IRA or designated Roth account, pretax amounts are allocated first to the direct rollover rather than being allocated pro rata to each destination. Also, a participant can direct the allocation of pretax and after-tax amounts included in disbursements from the participant’s designated Roth account that are directly rolled over to multiple destinations, applying the same allocation rules that apply to distributions from other types of accounts.\textsuperscript{46}

\textbf{In-Plan Roth Conversions}

The Small Business Jobs Act of 2010 permitted plans that include Roth contributions to allow individuals to roll over eligible distribution amounts from their accounts other than designated Roth accounts to their designated Roth accounts in the plan (i.e., permitted in-plan Roth conversions).\textsuperscript{47} A participant may convert all or any portion of
retirement plans

(non-Roth) vested account balances to a designated Roth account if the plan allows, although the plan can specify the frequency of such in-plan Roth conversions (subject to plan benefits, rights and features nondiscrimination requirements, if applicable to the plan). For this purpose, non-Roth vested account balances include pretax deferral, rollover and after-tax account balances and vested matching or other vested employer contribution account balances, although the plan can specify which balances are eligible for in-plan Roth conversion (subject to plan benefits, rights and features nondiscrimination requirements, if applicable to the plan).48

If an in-plan Roth conversion is the first contribution made to an employee's designated Roth account, the five-taxable-year period of participation required for a qualified distribution begins on the first day of the first taxable year in which the employee makes the in-plan Roth conversion.49 The taxable amount of the in-plan Roth conversion must be included in the participant's gross income for the year in which the conversion occurs and is the amount that would be includible in a participant's gross income if the conversion amount were rolled over to a Roth IRA. This amount is equal to the fair market value of the distribution reduced by any basis the participant has in the distribution.50

An in-plan Roth conversion is treated as a distribution for purposes of determining eligibility for the special tax rules on net unrealized appreciation, whether the rollover is made by a direct in-plan Roth conversion or by a 60-day in-plan Roth conversion (described in the next section).51

For a plan to permit in-plan Roth conversions, the plan must permit Roth contributions and expressly provide for in-plan Roth conversions.52 An employee's ability to make an in-plan Roth conversion is not a Code Section 411(d)(6) protected benefit, but the timing of a plan amendment to eliminate in-plan Roth conversions cannot have the effect of discriminating significantly in favor of highly compensated employees or former highly compensated employees.53

The amount of an in-plan Roth conversion continues to be taken into account in determining whether the participant's benefit exceeds $5,000 for purposes of the cash-out rules.54 Participants, surviving spouse beneficiaries and alternate payees who are current or former spouses are eligible if a plan offers an in-plan Roth conversion. Nonspouse beneficiaries are not included as eligible for in-plan Roth conversions.55

Two Ways to Make an In-Plan Roth Conversion

One way to make an in-plan Roth conversion is to direct the plan to transfer a vested non-Roth amount to a Roth account in the same plan. Spousal consent is not required for this direct in-plan conversion.56 No income tax withholding is taken on such direct in-plan Roth conversion, but increased payroll withholding or estimated tax payments may be needed to avoid underwithholding penalties, since the in-plan conversion is a taxable event.57 Notice of the participant's right to defer receipt of a distribution is not triggered by a direct in-plan Roth conversion.58 A participant who had a distribution right (such as a right to an immediate distribution of the amount converted) prior to the conversion cannot have this right eliminated through a direct in-plan Roth conversion.59

Another way to make an in-plan Roth conversion is to take an eligible rollover distribution from non-Roth amounts and then deposit all or part of the distribution to a Roth account in the same plan within 60 days.60 Mandatory withholding of 20% is required on the taxable portion of the distribution. Spousal consent may be required for the eligible rollover distribution if the plan otherwise requires spousal consent (such as if the default form of payment is an annuity).61 This 60-day in-plan Roth conversion requires the individual to be eligible for a distribution,62 but it may be preferred by a participant in order to have taxes withheld from the conversion.

Recharacterization Not Permitted

Unlike a rollover to a Roth IRA, no portion of an in-plan Roth conversion can be recharacterized.63 In other words, an in-plan Roth conversion cannot be undone.

Plan Loans

If the plan permits, an outstanding loan balance can be transferred from a non-Roth account to a Roth account in the same plan, provided there is no
change in the loan repayment schedule. The taxable amount upon conversion would be the balance of the loan at the time of the transfer.64

**Tax on Early Distribution**

An in-plan Roth conversion generally is not subject to the additional 10% early distribution tax. However, a special recapture rule applies if any part of the in-plan Roth conversion is distributed within the five-taxable-year period beginning January 1 of the year of the conversion. Such distribution in the five-taxable-year period makes the distribution subject to the additional 10% early distribution tax, unless an exception to the 10% tax otherwise applies or the distribution is allocable to a nontaxable portion of the in-plan Roth conversion. The special recapture rule does not apply to a distribution that is rolled over to another designated Roth account of the participant or a Roth IRA owned by the participant but does apply to a subsequent distribution from the recipient Roth account or IRA within the five-taxable-year period.65

**In-Plan Roth Conversions of Nondistributable Amounts**

The American Taxpayer Relief Act of 2012 expanded the ability of 401(k), 403(b) and governmental 457(b) plan participants to convert plan balances to Roth accounts. Under these rules, an in-plan Roth conversion is no longer limited to amounts that are distributable at the time of conversion, although the plan can limit in-plan Roth conversions only to distributable amounts.66 A Special Tax Notice under Code Section 402(f) is not required for a participant making an in-plan Roth conversion of an otherwise nondistributable amount.67 Because an in-plan Roth conversion of an otherwise nondistributable amount must be made by a direct rollover, no withholding is required and, further, no part of the conversion may be withheld for voluntary withholding either.68 An in-plan Roth conversion of an otherwise nondistributable amount (plus earnings) remains subject to the distribution restrictions that were applicable to the amount before the in-plan Roth conversion.69

**Potential Impact on ACP Test Results**

A plan subject to actual contribution percentage (ACP) testing that includes non-Roth after-tax contributions as well as in-plan Roth conversions may potentially have difficulty passing the ACP test. Non-Roth after-tax contributions must be included in the plan’s ACP test, and an ACP test of non-Roth after-tax contributions must be performed even if the plan is an ACP safe harbor plan design. Having the ability to make both non-Roth after-tax contributions and an in-plan Roth conversion of non-Roth after-tax contributions may induce plan participants to increase their non-Roth after-tax contributions in order to convert them to Roth contributions. Highly compensated employees may be more likely to take this approach, since they are more likely to be limited in their ability to make pretax elective deferrals or otherwise make Roth contributions under the plan due to the dollar limit on elective deferrals and other limits described earlier in this article. If, in fact, that happens, the plan’s ACP test results may become less favorable, and the plan may fail. This may not happen, and it may be that highly compensated employees were already making non-Roth after-tax contributions in anticipation of rolling them over to a Roth IRA at retirement, in which case the ACP test results may not change significantly. As mentioned previously, an in-plan Roth conversion is not a protected plan feature and could be prospectively amended out of a plan, even if only with respect to converting non-Roth after-tax contributions provided the timing of the amendment does not discriminate in favor of highly compensated employees.

**Conclusion**

Roth contributions are an attractive and valuable option for many plan participants. A plan sponsor offering, or intending to offer, Roth contributions should clearly and effectively communicate a Roth option to distinguish it from Roth IRAs that may be available to their plan participants and, if non-Roth after-tax contributions are also permitted, to distinguish Roth contributions from those after-tax contributions. Similarly, if in-plan Roth conversions will also be offered, the rules surrounding an in-plan conversion, such as the inability to recharacterize the conversion, should be clearly communicated. This will reduce participant confusion and help participants better prepare their overall re-
retirement savings planning. Plan sponsors should review the compliance implications of offering Roth contributions with their recordkeepers and other plan advisors, particularly if in-plan Roth conversions will also be offered.

Endnotes
1. 2015 Trends & Experience in Defined Contribution Plans Survey, Aon Hewitt. The term defined contribution plans for purposes of the survey includes 401(k), 403(b), 401(a) and 457(b) plans.
3. See Code §404(a)(9), 402A(a), 403(b)(10), 408A(c)(5) and 457(d)(2) and Treasury Regulation §1.401(a)(9)-1, Q&A-1; 1.403(b)-3(c)(2); 1.403(b)-6(c); 1.408A-6, Q&A-14; 1.457-6(d). The postdeath required minimum distribution rules that apply to traditional (non-Roth) IRAs, with the exception of the at-least-as-rapidly rule, also apply to Roth IRAs. A government plan within the meaning of Code §414(d) and a governmental 457(b) plan described in Code §1.457-2(f) is treated as having complied with Code §401(a)(9) if the plan complies with a reasonable and good faith interpretation of Code §401(a)(9). See Treasury Regulation §1.401(a)(9)-1, Q&A-2(d).
5. See Code §408A(c) and IRS Publication 590-A. Roth IRA contributions were fully phased out for 2017 if modified adjusted gross income was at least $196,000 when married and filing jointly or $133,000 when filing as single or head of household. The Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA) eliminated the income restrictions on converting a traditional IRA to a Roth IRA, so it may be possible for those exceeding the modified adjusted gross income limits that would allow a direct contribution to a Roth IRA to instead contribute to a traditional after-tax IRA and later convert that traditional IRA to a Roth IRA. See Code §5408A(c)(B)(i) and 408A(d)(3)(C) and TIPRA §512, including the Conference Committee Report.
6. See Internal Revenue Code §402A(e)(1). Roth contributions are not permitted under a 457(b) plan of a Code §501(c)(3) tax-exempt employer.
7. These exceptions include distributions of excess deferrals under Code §402(g)(2) and attributable income, excess contributions under Code §401(k)(8) and excess aggregate contributions under Code §401(m)(8). See Treasury Regulation §1.402A-1, Q&A-2(a).
8. See Treasury Regulation §1.402A-1, Q&A-2(b).
10. See Treasury Regulation §1.402A-1, Q&A-4(c).
11. See Treasury Regulation §1.402A-1, Q&A-5(c).
12. See Treasury Regulation §1.402A-1, Q&A-4(e).
13. See Treasury Regulation §1.402A-1, Q&A-4(a).
16. See IRS Notice 2010-84, §I.
17. See Code §402A(a)(1) and Treasury Regulation §1.401(k)-1(f)(4)(i).
22. This limitation is an individual annual limit that applies to the total elective deferrals and Roth contributions an individual makes to any 401(k) and 403(b) plan in which the individual participates. See Code §401(a)(30) and §402(g)(1).
23. A participant's compensation for purposes of the limitation on annual additions to a 401(k) plan must be one of four compensation definitions in Treasury Regulation §1.415(c)-2. A participant’s compensation for purposes of elective deferrals and Roth contributions to a 401(k) is also subject to the compensation limit for qualified plans ($270,000 for 2017) under Code §401(a)(17).
24. The Code §415(c) limitations on annual additions apply to the total, for the limitation year, of employer matching and nonmatching contributions on behalf of the participant, the participant’s combined amount of elective deferrals and Roth contributions, the participant’s non-Roth after-tax contributions (if permitted by plan provisions) and any forfeitures allocated to the participant under any Code §401(k) or 401(a) plan of the employer’s controlled group based on more than 50% ownership or control among entities. See Code §§415(c)(2), 415(f)(1)(B), 415(g) and 415(h) and Treasury Regulation §1.415(a)-1(f)(1).
25. Roth contributions are included with elective deferrals for purposes of the ADP test. See Treasury Regulation §1.401(k)-1(f)(4)(i).
26. See Code §§402(g)(1)(C) and 414(v)(3) and Treasury Regulation §§1.401(k)-2(a)(5)(iii), 1.402(g)-2.1.414(v)-1 and 1.415(c)-1(b)(2)(ii)(B). A 401(k) plan is not required to permit age 50 catch-up contributions.
28. This limitation is an individual annual limit that applies to the total elective deferrals and Roth contributions an individual makes to any 401(k) and 403(b) plan in which the individual participates. For employees of a qualified organization (e.g., a university, hospital, health and welfare service agency) with at least 15 years of service, the employee deferral limit in a 403(b) plan is increased by the least of (1) $3,000, (2) $15,000 minus previous service catch-up amounts or (3) $5,000 times years of service minus all deferral amounts (including Roth contributions) for prior years with the organization, if the plan so provides. If both the 15-year service catch-up and the age 50 catch-up apply in a 403(b) plan, the 15-year service catch-up must be applied first. See Code §§401(a)(30), 402(g)(1) and 402(g)(7) and Treasury Regulation §1.403(b)-(4)(c)(3)(iv).
29. A participant’s compensation for purposes of the limitation on annual additions to a 403(b) plan is “includible compensation” as defined in Code §403(b)(3) and Treasury Regulation §1.403(b)-2(b)(11). See Code §415(c)(3)(E) and Treasury Regulation §1.415-2(i). Includible compensation includes only compensation from an employer eligible to have a 403(b) plan that is includible in a participant’s gross income for federal income tax purposes.
30. The Code §415(c) limitations on annual additions apply to the total, for the limitation year, of employer matching and nonmatching contributions on behalf of the participant, the participant’s combined amount of elective deferrals and Roth contributions, the participant’s non-Roth after-tax contributions (if permitted by plan provisions) and any forfeitures allocated to the participant under any Code §403(b) plan of the employer’s controlled group based on more than 50% ownership or control among entities. This limit generally applies separately to 403(b) plans. However, if an employer owns or controls more than 50% of another employer (i.e., other than the employer sponsoring the 403(b) plan) with at least 15 years of service, the employee deferral limit in a 403(b) plan is increased by the least of (1) $3,000, (2) $15,000 minus previous service catch-up amounts or (3) $5,000 times years of service minus all deferral amounts (including Roth contributions) for prior years with the organization, if the plan so provides. If both the 15-year service catch-up and the age 50 catch-up apply in 403(b) plan, the 15-year service catch-up must be applied first. See Code §§401(a)(30), 402(g)(1) and 402(g)(7) and Treasury Regulation §1.403(b)-(4)(c)(3)(iv).
31. See Code §§402(g)(1)(C) and 414(v)(3) and Treasury Regulation §1.401(k)-1(f)(4)(i).
33. A 457(b) plan may provide that, for one or more of a participant’s last three taxable years ending before the participant attains normal retirement age, the annual contribution limit is increased to the lesser of (1) twice the indexed dollar limit ($36,000 for 2017) or (2) the participant’s “underutilized limitation.” A participant’s underutilized limitation is the sum of (1)
the basic limit for the taxable year (i.e., the lesser of 100% of the participant’s compensation for the taxable year or the indexed dollar amount for the taxable year ($18,000 for 2017)) plus (2) the excess of the basic limit over the amount of the annual deferrals on behalf of the participant under the plan for any prior taxable year or years (disregarding any age 50 catch-up contributions under the governmental 457(b) plan).

34. A participant’s compensation for purposes of the individual annual limit on contributions to a 457(b) plan must be one of four compensation definitions in Treasury Regulation §1.415(c)-2.

35. This dollar and income percentage limitation is an individual annual limit that applies to the total elective deferrals and Roth contributions an individual makes and any employer contributions on behalf of the individual to any 457(b) plan in which the individual participates. See Code §§457(b)(2) and 457(e)(15) and Treasury Regulation §1.457(b)-2(b). A governmental 457(b) plan is permitted, but not required, to permit age 50 catch-up contributions. Nevertheless, an age 50 catch-up does not apply for any taxable year under which a higher limitation applies under the final-three-year catch-up. See Code §§414(v)(3), 414(v)(6)(C) and 457(e)(18) and Treasury Regulation §1.414(v)-1 and 1.457(b)-4(c)(2).


37. See Treasury Regulation §§1.401(m)-1(a)(2)(i)(B), 1.401(m)-5 definition of elective deferral and 1.402(g)(1)(B)(5).

38. See Treasury Regulation §1.402A-1, Q&A-12.

39. Permitted exclusions include employees eligible to make deferrals under another 403(b) plan, a 401(k) plan or a 457(b) eligible governmental plan of the employer; nonresident aliens who do not receive any U.S. source income from the employer; students performing certain services (exempt from FICA taxation); and employees who normally work fewer than 20 hours per week and do not ever work 1,000 hours in a year. The exclusions do not include collectively bargained employees or employees who make a one-time election to participate in a governmental plan. See Treasury Regulation §1.403(b)-5(b)(4). See also D. Schwallie, “Excluding Part-Time Employees Under the 403(b) Universal Availability Rules,” 39 Journal of Pension Planning & Compliance 31 (2013).

40. See Treasury Regulation §§1.401(b)-3(c)(1) and 1.403(b)-5(b)(1).

41. See Code §401(g)(2)(B) and 403(b)(11) and Treasury Regulation §§1.401(k)-(1a)(4)(i), 1.401(k)-1(d)(3)(ii)(A), 1.401(k)-6 definition of elective contributions, 1.402(g)-1(b)(5), 1.403(b)-2(b)(7) and 1.403(b)-6(d)(2).


43. Note that Treasury Regulation §1.402A-1, Q&A-5(a), has been modified by TD 9769. See 81 Federal Register 31166 (May 18, 2016).

44. See Code §402A(c)(8) and Treasury Regulation §1.402A-1, Q&A-5(a).

45. If less than the entire amount of an eligible rollover distribution from a designated Roth account that is not a qualified distribution and not paid as a direct rollover contribution is rolled over, the part that is rolled over is deemed to consist first of the portion of the distribution that is attributable to income under Code §72(e)(8). See Treasury Regulation §1.402A-1, Q&A-5(b).

46. See Treasury Regulation §1.402A-1, Q&A-5(c).

47. See Treas. Reg. §1.402A-1, Q&A-5(a), as modified by TD 9769. A participant is permitted to choose not to apply the prior separate distribution rule to distributions made on or after September 18, 2014 and before January 1, 2016, provided a reasonable interpretation of the requirement that the preretirement amount be treated as rolled over first is used to allocate preretirement and after-tax amounts among multiple destinations. See 81 Fed. Reg. 31166 (May 18, 2016).

48. The Small Business Jobs Act of 2010 (SBJA) also amended Code §402A to allow governmental 457(b) plans to include Roth contributions for taxable years beginning after December 31, 2010. Proposed Treasury regulations, published in the Federal Register on June 22, 2016, reflect statutory changes made to Code §457 by SBJA.


50. Benefits, rights and features of nondiscrimination requirements do not apply to governmental plans. An employer match is rare in a 457(b) plan, because the annual dollar limit on contributions includes any employer contribution (including an employer matching contribution). Code §457(b) and the regulations thereunder do not contemplate non-Roth after-tax contributions, although the author understands that some governmental 457(b) plans allow them.


52. See Code §402A(c)(4)(B) and IRS Notice 2010-84, §III, Q&A-3(c).


54. See IRS Notice 2013-74, §III, Q&A-3(d).

55. See IRS Notice 2013-74, §III, Q&A-3(e).

56. See IRS Notice 2013-74, §III, Q&A-3(b).


60. See IRS Notice 2013-74, §III, Q&A-6.


63. See IRS Notice 2013-74, §III, Q&A-4.

64. See IRS Notice 2010-84, §III, Q&A-3(a) and Q&A-7.

65. See IRS Notice 2010-84, §III, Q&A-12 and Q&A-13.


