



# News Release

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## THE SPARK INSTITUTE WARNS OF RISKS IN ROTH 401(k) CONVERSION LAW

SIMSBURY, CT, October 25 -- The SPARK Institute has issued a “Compliance Alert” warning of the potential risks for sponsors and participants of 401(k) and 403(b) retirement plans from a new law that permits plans that offer Roth deferrals to also offer Roth conversions inside the plans, it was announced today by Larry H. Goldbrum, General Counsel.

Goldbrum said the new law was passed at the end of September and was effective immediately, creating a sense of urgency among some plans and participants who want to take advantage of the two-year special tax treatment for 2010 conversions. “However, we urge plan sponsors to carefully consider the potential risks that Roth conversions may create for the plan as a whole, and not base their decisions solely on the potential benefits to individual highly compensated employees who may be personally interested in the 2010 special tax treatment,” he said. Goldbrum said the “Roth In-Plan Conversions Compliance Alert” is available for use by anyone in the retirement plan community and may be downloaded for free from The SPARK Institute website at <http://www.sparkinstitute.org/comments-and-materials.php>.

Goldbrum noted that even Department of Treasury officials have urged caution. In recent statements, both Mark Iwry, Senior Advisor to the Secretary of the Treasury and Deputy Assistant Secretary, and William Bortz, Associate Benefits Tax Counsel at Treasury, have suggested that plan sponsors wait for guidance before drafting any plan amendments, Goldbrum said.

The SPARK Institute Compliance Alert states that unresolved issues requiring guidance from the Treasury before they can be properly addressed by plan sponsors and record keepers are:

**Tax Withholding** – The new law does not specify whether the distribution portion of the conversion is subject to the mandatory 20 percent withholding requirement on distributions.

**Plan Amendments** – It is unclear whether a plan that does not currently allow Roth accounts can be amended to add them and the in-plan conversion feature in the remedial amendment period that is applicable for plans that already allow Roth accounts.

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**Record Keeping/Administration** – The new law does not indicate how and if plan conversion amounts must be segregated from regular Roth deferrals for record keeping purposes. Fred Reish, of the law firm of Reish & Reicher, notes that, "Logically, additional guidance should require a separate account for tracking the converted Roth amounts; however, laws are not always interpreted in logical ways and the guidance may have surprises." He suggests that "the better approach, for risk management purposes, is to wait until the guidance is issued."

Goldbrum said other issues that sponsors should consider include:

**No Recharacterization** – An in-plan Roth conversion is irrevocable and cannot be recharacterized after it is made, in contrast to a Roth IRA, which can be revoked before the participant's tax filing deadline.

**Roth IRAs** – Roth IRA rollovers remain a viable option for otherwise eligible participants who want to take advantage of the special two-year tax treatment in 2010 and involve significantly less risk for the plan and plan sponsor at this point.

"Plan sponsors should consider all these issue carefully, be mindful of the implications of the plan as a whole, and consult with legal counsel if they remain interested in permitting 2010 conversions," Goldbrum said.

The SPARK Institute represents the interests of a broad based cross section of retirement plan service providers and investment managers, including banks, mutual fund companies, insurance companies, third party administrators, trade clearing firms and benefits consultants. Through the combined expertise of its member companies, the Institute provides research, education, testimony and comments on pending legislative and regulatory issues to members of Congress and relevant government agency officials. Collectively, its members serve over 62 million participants in 401(k) and other defined contribution plans.

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