Prenger & Profitt, LLC
Retirement Plan Solutions

Allowable Rollovers Beginning January 1, 2016

ROLLOVER	IRA		Simple IRA		Roth IRA		SEP		Simple 401(k)		Safe Harbor 401(k)		403(b)		Governmental 457		Qualified Plan	
TO	2001	2016	2001	2016	2001	2016	2001	2016	2001	2016	2001	2016	2001	2016	2001	2016	2001	2016
FROM																		
IRA	Y	Y	N	N	Y[1]	Y[1]	Y	Y	N	N[5]	N	Y	N	Y	N	Y	N	Y
SIMPLE IRA	Y[2]	Y[2]	Y	Y	Y[1]	Y[1]	Y[2]	Y	N	N[2,5]	N	Y	N	Y	N	Y	N	Y[2]
Roth IRA	N	N	N	N	Y	Y	N	N	N	N	N	N	N	N	N	N	N	N
SEP	Y	Y	Y[2]	Y[2]	Y[1]	Y[1]	Y	Y	N	N[5]	N	Y	N	Y	N	Y	N	Y
SIMPLE 401(k)	Y	Y	Y[2]	Y[2]	N	N[4]	Y	Y	N[5]	N[5]	Y	Y	N	Y	N	Y	Y	Y
Safe Harbor 401(k)	Y	Y	Y[2]	Y[2]	N	N[4]	Y	Y	N[5]	N[5]	Y	Y	N	Y	N	Y	Y	Y
403(b)	Y	Y	Y[2]	Y[2]	N	N[4]	N	Y	N	N[5]	N	Y	Y	Y	N	Y	N	Y
Governmental 457	N	Y	N	N	N	N[4]	N	Y	N	N[5]	N	Y	N	Y	Y	Y	N	Y
Qualified Plan	Y	Y	Y[2]	Y[2]	N	N[4]	Y	Y	N[5]	N[5]	Y	Y	N	Y	N	Y	Y	Y
After-tax Contributions in Qualified Plan	N	Y	N	N	N	N[4]	N	Y	N	N[5]	N	Y[3]	N	N	N	N	N	Y[3]
After-tax Contributions in IRA	Y	Y	N	N	N	N[4]	N	N	N	N	N	N	N	N	N	N	N	N

Note: A surviving spouse may roll over distributions into a tax-qualified retirement plan, 403(b) plan, or governmental 457 plan. Hardship distributions cannot be rolled over.

The rules relating to non-governmental 457 plans have not been changed by EGTRRA.

1. Only if the taxpayer's adjusted gross income (AGI) for the tax year does not exceed $100,000 and the taxpayer is not married filing separately. [Code Sec. 408A (c)(3)(B)]
2. Only after the individual has participated in the SIMPLE plan for two years [Code Sec. 408 (c)(d)(3)(G)(ii)]
3. Only through direct trustee-to-trustee transfer.
4. However, a distribution that is rolled over to a traditional IRA may then be rolled over to a Roth IRA, if the individual otherwise could roll over from the traditional IRA to a Roth IRA.
5. Under Code Sec. 401(k)(11)(B)(i)(III), amounts received under a SIMPLE 401(k) plan may not be rolled over to another SIMPLE 401(k) plan because a SIMPLE 401(k) plan may only receive elective and matching contributions.

401(k)(11)(B) Contribution requirements-

401(k)(11)(B)(i) In general-The requirements of this subparagraph are met if, under the arrangement-

401(k)(11)(i)(I) an employee may elect to have the employer make elective contributions for the year on behalf of the employee to a trust under the plan in an amount which is expressed as a percentage of compensation of the employee but which in no event exceeds $6,000.

401(k)(11)(B)(i)(II) the employee is required to make a matching contribution to the trust for the year in an amount equal to so much of the amount the employee elects under subclause (1) as does not exceed 3 percent of compensation for the year, and

401(k)(11)(B)(i)(III) no other contributions may be made other than contributions described in subclause (I) or (II)

Under Code Sec. 401(k)(11)(B)(i)(III), amounts received under a SIMPLE 401(k) plan may not be rolled over to another SIMPLE 401(k) plan because a SIMPLE 401(k) plan may only receive elective and matching contributions.

401(k)(11)(B) Contributions requirements-

401(k)(11)(B)(i) In general-The requirements of this subparagraph are met if, under the arrangement-

401(k)(11)(B)(i)(I) an employee may elect to have the employer make elective contributions for the year on behalf of the employee to a trust under the plan in an amount which is expressed as a percentage of compensation of the employee but which in no event exceeds $6,000.

41(k)(11)(B+A3)(i)(II) the employer is required to make a matching contribution to the trust for the year in an amount equal to so much of the amount the employee elects under subclause (1) as does not exceed 3 percent of compensation for the year, and

401(k)(11)(B)(i)(III) no other contributions may be made other than contributions described in subclause (1) or (II).

Further Rev. Proc. 97-9 says, "Generally no contributions may be made during a year to a plan using the 401(k) SIMPLE provisions, other than those contributions described in section 2.03 below.

.03 Under a plan containing the 401(k) SIMPLE provisions, each employee may elect to make salary reduction contributions for a year of up to $6,000. The employer must make either a matching contribution equal to the employee's salary reduction contributions, limited to 3% of the employee's compensation for the year, or a nonelective contribution for all eligible employees equal to 2% of the employee's compensation for the year. All amounts contributed under 401(k) SIMPLE provisions must be nonforfeitable at all times."

However the model amendment is Appendix A of Rev. Proc. 97-9 appears to allow for rollovers:

SECTION III. CONTRIBUTIONS

3.3 Limitation on Other Contributions

(a) General rule- No employer or employee contributions may be made to this plan for the year other than salary reduction contributions described in section 3.1, matching or nonelective contributions described in section 3.2 and rollover contributions described in §1.402(c) of the Income Tax Regulations.

When Congress wrote EGTRRA, it could have amended Code Section 401(k)(B)(i)(III) to allow rollovers to SIMPLE 401(k) plans. Congress did not make that amendment. IRS appears to have exceeded its authority by allowing a plan to adopt a provision that is not permissible under the Code. Until there is some clarification or further guidance it appears that the Code does not actually permit such a rollover.