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## Internal Revenue Service

### IRS Launches Pilot Questionnaire for Governmental Plans

Twenty five governmental plan sponsors, selected randomly, have been sent pilot questionnaires by the IRS.

<http://www.irs.gov/retirement/article/0,,id=204168,00.html> Completion of the pilot questionnaire is voluntary. According to the questionnaire, the purpose is to educate the IRS, governmental plan sponsors, administrators and the public with information about critical tax compliance and tax administration issues and concerns. In addition, the goal is to enhance the IRS' voluntary compliance programs.

Information requested in the pilot questionnaire includes the following areas:

1. demographic information;
2. plan documents, including interaction with the IRS on determination and voluntary compliance matters;
3. plan provisions
4. plan operations;
5. plan communications;
6. plan administration;
7. retirement systems; and
8. general questions and opportunities for the respondent to provide feedback and additional information.

After feedback from the pilot questionnaire has been analyzed, the questionnaire will be finalized and is expected to be distributed later in 2009.

### Regulations on Automatic Contribution Arrangements Finalized

The final Automatic Contribution Arrangement regulations were published in the February 24, 2009 edition of the Federal Register. <http://edocket.access.gpo.gov/2009/pdf/E9-3716.pdf> The final regulations are substantially the same as the regulations proposed on November 8, 2007 but include many administrative clarifications and simplifications. In addition, the final regulations reflect statutory changes made by the Pension Protection Act of 2006 (PPA) and the Worker, Retiree and Employer Recovery Act of 2008 (WRERA). Because the final regulations eliminate uncertainty around the interpretation of certain key provisions, they may encourage more plan sponsors to add this feature.

<sup>1</sup>Appendix A includes a chart featuring a side-by-side comparison of the key features of an Eligible Automatic Contribution Arrangement (EACA) and a Qualified Automatic Contribution Arrangement (QACA). The bolded areas reflect clarifications made by

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<sup>1</sup> A special thank you to ING Qualified Plan Consulting (Qualified Plan News No. 2009-4) for this chart.

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the final regulations. The effective date for QACAs is for plan years beginning on or after January 1, 2008 and the effective date for EACAs is for plan years beginning on or after January 1, 2010.

Note that the final regulations only apply to automatic contribution arrangements that are intended to be a QACA or an EACA. They do not apply to any other automatic contribution arrangements.

Key points include the following:

- EACAs are no longer required to comply with the Qualified Default Investment Arrangement (QDIA) regulations.
- EACAs are not required to cover all eligible employees; however, such plans may not use the extension from 2 ½ to 6 months for distributing excess contributions under a failed ADP/ACP test, to avoid the 10% penalty.
- Confirmation that an EACA must be in place for the entire plan year.
- Confirmation that QACAs may only exclude eligible employees who have an affirmative election in effect immediately before the QACA is effective.

## Winter Edition of *Retirement News for Employers* Published

The Winter Edition of *Retirement News for Employers* [http://www.irs.gov/pub/irs-tege/rne\\_win09.pdf](http://www.irs.gov/pub/irs-tege/rne_win09.pdf) includes information on fixing a failure to limit participant contributions to a 401(k) plan. In addition, Monika Templeman, Director of EP Examinations, states that the following mistakes have been identified in many plan audits:

- Failure to timely amend plan documents to conform to current laws.
- Failure to notify employees, vendors and tax professionals of changes made to plan documents or changes to the operation of the plan.
- Failure to follow the plan terms relating to participation and eligibility requirements.
- Failure to timely deposit employee deferrals.

The IRS encourages employers to sign up for this free publication by going to the Retirement Plans Community web page and selecting “Newsletters” in the left pane or by clicking on the link <http://www.irs.gov/retirement/content/0,,id=154836,00.html>.

## Department of Labor

### Reporting and Disclosure Guide Updated

The Department of Labor (DOL) published a revised *Reporting and Disclosure Guide for Employee Benefit Plans*. <http://www.dol.gov/ebsa/pdf/rdguide.pdf> As stated in the Introduction, this Guide has been prepared by the DOL’s Employee Benefits Security Administration (EBSA) with assistance from the Pension Benefit Guaranty Corporation (PBGC). It is intended to be used as a quick reference tool for certain basic reporting and disclosure requirements under the Employee Retirement Income Security Act of 1974 (ERISA).

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## APPENDIX A

### AUTOMATIC CONTRIBUTION ARRANGEMENTS FINAL REGULATIONS

(Bolded sections represent changes/clarifications in the final regulations)

	ELIGIBLE AUTOMATIC CONTRIBUTION ARRANGEMENT (EACA)	QUALIFIED AUTOMATIC CONTRIBUTION ARRANGEMENT (QACA)
<b>Description</b>	<ul style="list-style-type: none"> <li>➤ Encourage plan participation and retirement savings by automatically enrolling eligible employees if they fail to make an affirmative election to participate or not participate. Must meet EACA regulations.</li> </ul>	<ul style="list-style-type: none"> <li>➤ Encourage the use of automatic enrollment by providing a program that combines automatic enrollment with a reduced safe harbor contribution to eliminate ADP/ACP testing. Must meet QACA regulations and 401(k) safe harbor rules.</li> </ul>
<b>Eligible Plans</b>	<ul style="list-style-type: none"> <li>➤ Available under 401(k), 403(b), 457(b) plans.</li> </ul>	<ul style="list-style-type: none"> <li>➤ Available for 401(k) plans.</li> </ul>
<b>Covered Employees</b>	<ul style="list-style-type: none"> <li>➤ <b>An EACA need not cover all eligible employees, but the document must state which employees will be covered and whether an employee who makes an affirmative election remains covered under the EACA.</b></li> <li>➤ <b>An EACA that does not cover all eligible employees (e.g., covers new hires only) may not take advantage of the extended 6 month correction period for distribution of excess contributions under a failed ADP/ACP test (to avoid 10% penalty).</b></li> <li>➤ Employees must be permitted to “opt out” or participate at a different percentage.</li> </ul>	<ul style="list-style-type: none"> <li>➤ <b>All eligible employees must generally be included</b>, but may exclude current employees who make an affirmative election to participate or not participate prior to the date the QACA becomes effective.</li> <li>➤ <b>Plan may specify that affirmative election expires and participant must re-elect or will be automatically enrolled (e.g., after the end of a plan year or after suspension for hardship withdrawal).</b></li> <li>➤ Employees must be permitted to “opt out” or participate at a different percentage.</li> </ul>
<b>Uniform Percentage of Compensation</b>	<ul style="list-style-type: none"> <li>➤ Percentage of compensation that is automatically deferred must be uniform (exceptions apply) unless employee “opts out”. <b>However, the percentage may vary for groups that are disaggregated into separate plans for coverage purposes (e.g., union groups or multiple employer plans).</b></li> </ul>	<ul style="list-style-type: none"> <li>➤ Uniform percentage of compensation automatically deferred unless employee “opts out” (exceptions apply).</li> </ul>
<b>Elective Deferral Percentage</b>	<ul style="list-style-type: none"> <li>➤ Any amount elected by the employer and stated in the plan document.</li> <li>➤ The first elective deferral is made within a reasonable time after the employee receives the initial notice (as described below) and has the opportunity to opt out or to elect a different deferral percentage.</li> </ul>	<ul style="list-style-type: none"> <li>➤ Unless an eligible employee elects otherwise, the employee is treated as having elected to make deferrals equal to a percentage of compensation (“qualified percentage”) of at least:                             <ul style="list-style-type: none"> <li>➤ 3% during the period ending on the last day of the first plan year following the first automatic contribution</li> <li>➤ 4% for the second plan year</li> <li>➤ 5% for the third plan year and</li> <li>➤ 6% for any subsequent plan year</li> </ul> </li> <li>➤ The automatic contribution percentage cannot exceed 10% and must be applied uniformly to all “eligible employees”.</li> <li>➤ <b>Default percentage may increase mid-year (e.g., for salary increase) when certain conditions are met, if the plan permits.</b></li> </ul>

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	ELIGIBLE AUTOMATIC CONTRIBUTION ARRANGEMENT (EACA)	QUALIFIED AUTOMATIC CONTRIBUTION ARRANGEMENT (QACA)
		<ul style="list-style-type: none"> <li>➤ An employee for whom no default contributions have been made for an entire plan year can be automatically re-enrolled at the first year percentage, regardless of any prior default contribution amount (e.g., a rehired employee), if the plan permits.</li> <li>➤ Default contributions are based on the safe harbor compensation definition (414(s)) for plan years beginning on and after January 1, 2010 (i.e., compensation may be limited to the employee's period of participation).</li> <li>➤ The default contribution must become effective no later than the earlier of: 1) the 2<sup>nd</sup> payroll date after the notice is provided or 2) the first payroll date that occurs at least 30 days after the notice is provided.</li> </ul>
Employer Contributions	<ul style="list-style-type: none"> <li>➤ Any matching contribution or profit sharing contribution elected in the plan document.</li> </ul>	<p>Sponsor must elect one of the following <b>and provide the contribution to ALL eligible employees (not just those that are automatically enrolled):</b></p> <p><u>Match:</u></p> <ul style="list-style-type: none"> <li>➤ 100% of the first 1% of compensation deferred <b>AND</b></li> <li>➤ 50% of the next 5 % of compensation deferred.</li> <li>➤ Must be made to all non-highly compensated employees (NHCEs) who make elective deferrals.</li> <li>➤ The rate of the match does not increase as an employee's rate of elective deferrals increases.</li> <li>➤ The rate of match on deferrals for highly compensated employees (HCEs) cannot be greater than the rate of match on the same rate of deferrals for NHCEs.</li> </ul> <p><b>OR</b></p> <p><u>Non-elective Contribution</u> that is 3% of compensation of each eligible employee, even if the employee has elected not to make deferral contributions.</p> <p><u>Vesting</u> – All employer safe harbor contributions must be 100% vested after two years of service.</p>
Default Fund	<ul style="list-style-type: none"> <li>➤ Default fund is <b>not required</b> to meet DOL Qualified Default Investment Alternative (QDIA) regulations.</li> </ul>	<ul style="list-style-type: none"> <li>➤ Same as EACA.</li> </ul>
Corrective Distributions	<ul style="list-style-type: none"> <li>➤ Plan may permit employees to elect return of deferrals (adjusted for gain or loss), i.e., “corrective distributions”, within first 90 days.</li> </ul>	<ul style="list-style-type: none"> <li>➤ Available if the plan meets all the requirements of an EACA.</li> </ul>

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	<b>ELIGIBLE AUTOMATIC CONTRIBUTION ARRANGEMENT (EACA)</b>	<b>QUALIFIED AUTOMATIC CONTRIBUTION ARRANGEMENT (QACA)</b>
	<ul style="list-style-type: none"> <li>➤ Any related employer match is forfeited.</li> <li>➤ <b>Employer match is not required to be made if the corrective distribution is taken before the match is allocated, if plan permits.</b></li> <li>➤ <b>Plan may specify a withdrawal period that is less than 90 days, but no less than 30 days.</b></li> <li>➤ <b>The 90 day withdrawal period starts when the first deferral is deducted from pay.</b></li> <li>➤ <b>The amount of the distribution is equal to the amount of the default contributions made through the effective date of the permissible withdrawal election.</b></li> <li>➤ <b>The effective date of the election must be no later than the earlier of 1) the 2<sup>nd</sup> payroll date after the distribution is elected, or 2) the first pay date that is at least 30 days after the election.</b></li> <li>➤ <b>Must be processed and distributed in the same manner and time as any another plan distribution.</b></li> <li>➤ <b>Distribution fee may not be higher than the fee for any other distribution.</b></li> <li>➤ <b>Taxable in the year distributed and the 10% early withdrawal penalty does not apply.</b></li> </ul>	
<b>Notice Requirement</b>	<ul style="list-style-type: none"> <li>➤ Initial and Annual EACA notices apply with specific content requirements.</li> <li>➤ <b>Distributed only to covered employees as defined in the plan.</b></li> <li>➤ Annual notice distributed within a reasonable period before start of the plan year (e.g., at least 30 but not more than 90 days prior).</li> <li>➤ Newly eligible employees, distribute no earlier than 90 days and no later than eligibility date, <b>or as soon as practicable, but prior to the pay date of the pay period in which the employee is first eligible.</b></li> <li>➤ <b>The employee must have reasonable time, after receiving the notice, to opt out or elect a different deferral percentage.</b></li> </ul>	<ul style="list-style-type: none"> <li>➤ Initial and Annual QACA notices apply and content must describe automatic contribution and safe harbor aspects.</li> <li>➤ Notices are distributed only to covered employees.</li> <li>➤ Annual notice distributed within a reasonable period before start of plan year (e.g., at least 30 but not more than 90 days prior).</li> <li>➤ Newly eligible employees, distribute no earlier than 90 days and no later than eligibility date, <b>or as soon as practicable, but prior to the pay date of the pay period in which the employee is first eligible.</b></li> <li>➤ <b>The employee must have reasonable time after receiving the notice to opt out or elect a different deferral percentage.</b></li> </ul>
<b>Distribution of Excess Contributions</b>	<ul style="list-style-type: none"> <li>➤ Distribution deadline for excess ADP/ACP contributions under an EACA plan extended to 6 months following plan year end (to avoid 10% excise tax) <b>only if all eligible employees are covered under the EACA.</b></li> <li>➤ Excess amounts are taxable in the year distributed.</li> <li>➤ Gap period interest is eliminated for excess distributions</li> </ul>	<ul style="list-style-type: none"> <li>➤ No testing needed since plan complies with ADP/ACP safe harbor rules.</li> </ul>
<b>Hardship</b>	<ul style="list-style-type: none"> <li>➤ All amounts are available, if permitted by the plan.</li> </ul>	<ul style="list-style-type: none"> <li>➤ Elective deferrals are available, if permitted by</li> </ul>

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	<b>ELIGIBLE AUTOMATIC CONTRIBUTION ARRANGEMENT (EACA)</b>	<b>QUALIFIED AUTOMATIC CONTRIBUTION ARRANGEMENT (QACA)</b>
<b>Withdrawals</b>		the plan. <b>Safe harbor employer contributions may only be withdrawn at age 59 ½ (if permitted), termination of employment, death, disability or plan termination.</b>
<b>Full Plan Year</b>	➤ <b>An EACA must be in effect for the full 12 month plan year.</b>	➤ Same as EACA, however exceptions apply for newly established plans, a change of plan year and plan terminations.
<b>State Law Preempted</b>	➤ ERISA preempts any state withholding law that would restrict or prohibit automatic enrollment.	➤ Same as EACA.
<b>Effective Date</b>	➤ Final regulations are effective for plan years beginning on and after January 1, 2010.	➤ Final regulations are effective for plan years beginning on and after January 1, 2008.

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