

## Automatic 403(b) Plans *What Your Employees Need to Know*

The Pension Protection Act (PPA) and subsequent regulations guide the automation of defined contribution plans. With this guidance, plan sponsors can automatically enroll new hires and non-participants into the plan at a set contribution rate. Sponsors gain protection from fiduciary liability if they choose an appropriate default investment fund. And they are eligible to eliminate nondiscrimination testing if they elect a safe harbor design. (See “Automatic 403(b) Basics,” for an overview of automatic plan features and regulations.)

Automatic plan design requires compliance with the IRS and U.S. Department of Labor (DOL) employee notification rules. Sponsors may send separate notices, or they can combine the information required from each agency into a single document. Either way, employees must receive notice generally before eligibility, and before the start of each plan year.

### IRS Notice Requirement

PPA and resulting IRS regulations created Eligible Automatic Contribution Arrangements (EACAs) and Qualified Automatic Contribution Arrangements (QACAs). IRS regulations require plan sponsors to provide initial and annual notice under both plan types.

“EACA” plan design meets the DOL rules for the default investment fund. An EACA may allow penalty-free employee withdraws within the first 90 days following the initial contribution.

A “QACA” plan design provides a safe harbor from IRS nondiscrimination testing. A QACA can be an EACA, but isn’t required to be.

Under the regulations, Automatic 403(b) Plan sponsors must provide employees with the *initial notice* within 90 days of plan eligibility. Plans with immediate eligibility can notify new hires “as soon as practicable” following the eligibility date. Plan sponsors need to provide annual notice 30 to 90 days prior to the start of each plan year.



**The IRS requires the notification to include:**

- an explanation of the circumstances under which contributions will be made for the participant;
- the amount of the contribution;
- the participant’s right to select a different contribution amount, or to opt out of contributing; and
- information on the default investment fund in the event the participant does not select an investment.

The notice for QACA plans also needs to include information on the safe harbor design, including the employer match and vesting rules.

For EACA plans that permit penalty-free contribution withdrawals within 90 days following the first contribution, the notice must include this information.

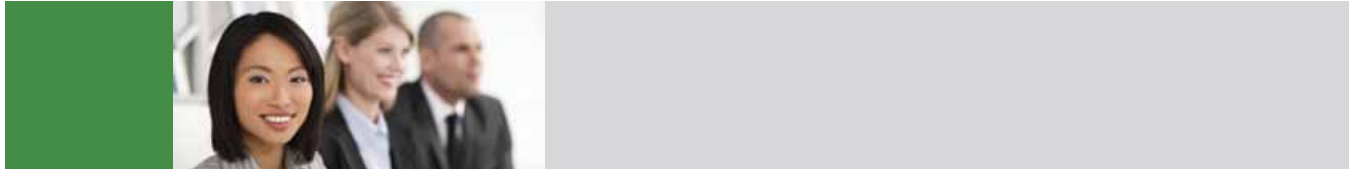
**Department of Labor Notice Requirement**

As a result of PPA, the DOL established guidance for plan sponsors on default investments. Sponsors that adopt a Qualified Default Investment Alternative (QDIA) generally receive protection from fiduciary liability in the event of investment losses. Protection is contingent in part on providing initial and annual notification to employees about the QDIA.

Employees must receive the initial notice at least 30 days prior to plan eligibility, or at least 30 days before the first QDIA investment. Employees may receive the notice on the date of plan eligibility if the plan permits penalty-free withdrawals within the first 90 days. The annual notice must occur at least 30 days in advance of the start of each plan year.

**The notice must include:**

- a description of the circumstances under which participant contributions are directed to the QDIA;
- an explanation of the participant’s right to direct the investment;
- a description of the QDIA that includes the fund’s investment objectives, risk and return characteristics, and fees and expenses;
- a description of the participant’s right to move assets from the QDIA to other investments in the plan, including related restrictions, fees or expenses; and
- an explanation of how participants can obtain information about other investment options in the plan.



## Single Notification Option

The IRS and DOL allow a single initial and annual notice that covers requirements of both agencies for automatic plans that include QDIAs. You can find a sample notice that meets both the IRS and DOL guidelines on the IRS website, at [www.irs.gov/pub/irs-tege/sample\\_notice.pdf](http://www.irs.gov/pub/irs-tege/sample_notice.pdf).

## Approved Ways to Provide Notices

Both the IRS and the DOL permit plan sponsors to provide the notice in hard copy or electronically, consistent with existing regulations on how these media may be used. The regulations specifically prohibit communicating these notices within the Summary Plan Description or Summary of Material Modification. This differs from the proposed rule, which would have permitted communicating the notices through these documents. In its final rule, the DOL raised concern that participants could easily overlook notices within these documents.