

Eligible Automatic Enrollment Arrangements

An eligible automatic enrollment arrangement is a 401(k) plan that:

- Treats an employee as having elected a uniform percentage of compensation to be deducted from pay unless the employee opts out or elects an alternate percentage;
- Invests contributions in default funds that satisfy Department of Labor (DOL) regulations; and
- Satisfies the following notice requirements. Notices must be (a) provided with a reasonable period of time before the initial deferral and annually thereafter; (b) sufficiently accurate and comprehensive to apprise the employee of their rights and obligations; (c) written in a manner calculated to be understood by the average employee to whom the arrangement applies; and (d) explain the employee's right not to have deferrals made, or to have deferrals made at a different percentage; and (e) if two or more investment options are available in the plan, explain how the employee's deferrals will be invested absent the employer's election.

The Pension Protection Act of 2006 (PPA) made four changes designed to enhance the use of eligible automatic enrollment arrangements:

- Preemption of state wage garnishment laws
- Extension of the periods for making corrective distributions (6 months vs. 2 1/2 months currently)
- Addition of a 90-day period during which employees may elect to have contributions returned without penalty
- Provide fiduciaries with **ERISA §404(c)** protection for default investments

Qualified Automatic Contribution Arrangements

Plan Design Requirements:

- The initial automatic enrollment percentage in a QACA must be between 3 percent and 10 percent.
- The initial percentage must be increased to no less than 4 percent in the second year following the plan year in which deferrals are first made, 5 percent in the third year, and 6 percent in any subsequent year.
- All new employees after the date the plan is amended to become a QACA must be included. Existing employees who are either already in the plan (even at lower contribution rates than what the automatic deferral percentage would be) or who have made an affirmative election to opt out of the plan do not need to be included.
- The minimum employer contribution is either a 3 percent nonelective contribution or a matching contribution of at least 100 percent of the first 1 percent deferred and 50 percent of the next 5 percent deferred. Employer contributions must be 100 percent vested within two years.
- Notice must be provided to employees in advance of the first deferral, advising them of their right to opt out or change the contribution level and informing them how their deferrals will be invested absent direction from them.

Benefits provided for QACAs

- Are deemed to satisfy ADP and ACP tests; and
- Are not subject to top heavy rules.

Many QACAs will also want to comply with the rules for Eligible Automatic Contribution Arrangements (e.g. default investing) in order to take advantage of state-law preemption, Section 404(c) protection, and other benefits available to those arrangements.

The ERISA preemption of state wage garnishment laws is effective immediately. The **ERISA §404(c)** protection for investing in default investments consistent with DOL guidance is effective for plan years beginning January 1, 2007. All other provisions regarding automatic enrollment plans are effective for the plan year beginning January 1, 2008 or later.



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