

### **IRS Issues Sample Notice That Plan Sponsors Can Use To Satisfy Notice Requirement For Automatic Enrollments and Default Investments in Certain Retirement Plans**

The IRS posted a **Sample Notice** { <http://www.irs.gov/pub/irs-tege/se111507.pdf> } that plan sponsors may use to inform participants about the adoption of a “qualified automatic contribution arrangement” (QACA) for a 401(k) plan and an “eligible automatic contribution arrangement” (EACA) regarding certain other individual account plans. The Sample Notice was issued in connection with recently published proposed regulations on QACAs and EACAs. These arrangements were enacted by the Pension Protection Act of 2006 and are effective for plan years beginning after December 31, 2007, e.g., January 1, 2008 for a calendar year plan.

Under a QACA, nondiscrimination requirements applicable to a 401(k) Plan are deemed to be satisfied if the plan automatically enrolls eligible participants in the plan at specified contribution levels and the employer makes minimum contributions to the plan. Under a QACA, a participant must be permitted to opt out of the plan.

Under an EACA, a participant can elect to withdraw his or her default pretax contributions made to a Section 401(k), Section 403(b) plan or to a Section 457(b) eligible governmental plan if the election to withdraw is made within ninety days after the employee’s first automatic contribution. An EACA is defined as an arrangement under a qualified retirement plan, a Section 403(b) plan, or a Section 457(b) eligible governmental plan that provides for automatic participant contributions equal to a uniform percentage of compensation and that invests such contributions in accordance with the DOL qualified default investment alternative (QDIA) regulations regarding the default investment of participant contributions in the absence of investment direction by the participant. A fiduciary of a plan that complies with the DOL regulations will not be liable for any loss, or by reason of any breach, that occurs as a result of such investments. The QDIA regulations are effective December 24, 2007. (See, the *Employer Spotlight* dated November 7, 2007 for a discussion of these regulations.)

For all of these provisions to comply with the law, the plan sponsor must provide participants with a notice that sets forth their rights and obligations under the arrangements. Employers adopting a QACA and/or an EACA must furnish a notice to participants at least 30 days (and no more than ninety days) before the beginning of each plan year. Note that for new employees, the timing requirement is satisfied if the notice is provided no more than ninety days before the employee becomes eligible to participate in the plan and no later than the date the employee becomes eligible to participate in the plan

***If you are going to amend your plan to implement these arrangements in 2008 and your plan operates on the calendar year, you must provide participants with a notice on or before December 1, 2007.***

The Sample Notice issued by the IRS is for a hypothetical plan. Therefore, the Sample Notice must be modified to reflect the specific terms and operation of each plan. Note that the Sample Notice also contains language that will satisfy a plan sponsor’s information requirements under the DOL’s final QDIA regulations.

If you have questions about the IRS Sample Notice, the recently proposed IRS regulations, or the DOL final rules regarding QDIAs, please do not hesitate to contact Denise Trujillo at [dtrujillo@mckennalong.com](mailto:dtrujillo@mckennalong.com) or Pat Tate at [ptate@mckennalong.com](mailto:ptate@mckennalong.com).