



Pension Analyst

Compliance Bulletin

End of 2008 Plan Year

Participants must be “noticed”

Several defined contribution plan designs and provisions require plan sponsors to provide annual notices to participants. As the 2008 plan year is nearing its end, it is important to look ahead at the notices that may need to be provided before the start of the 2009 plan year. This publication provides a summary of those notice requirements, including timing, contents, method of delivery, and support provided by Prudential Retirement.

Notices, notices, notices

The **Traditional ADP/ACP Safe Harbor Notice** is required for 401(k) and 403(b) plans that are designed to satisfy the original Small Business Job Protection Act of 1996 (SBJPA) ADP/ACP Safe Harbor design rules, providing either a 3% employer nonelective contribution or a specific schedule of employer matching contributions, which are subject to 100% immediate vesting and specific withdrawal restrictions.

The **Traditional ADP/ACP Safe Harbor Contingent Notice** is required when a plan sponsor wants to preserve the ability to adopt the 3% employer nonelective contribution Safe Harbor design before the end of the plan year.

The **Traditional ADP/ACP Safe Harbor Follow-Up Notice** is required when a plan sponsor has provided the Contingent Notice and decides to adopt that Safe Harbor design for the plan year.

The **QACA (Qualified Automatic Contribution Arrangement) Notice** is required for 401(k) and 403(b) plans that are designed to satisfy the Pension Protection Act of 2006 (PPA) automatic enrollment and escalation safe harbor plan design, providing either a 3% employer nonelective contribution or a specific schedule of employer matching contributions, which are subject to 100% vesting upon completion of two years of service and specific withdrawal restrictions.

The **EACA (Eligible Automatic Contribution Arrangement) Notice** is required for 401(k) and 403(b) plans that are designed to permit penalty-free distributions of “accidental” automatic deferrals and/or to provide a six-month period to distribute excess contributions and excess aggregate contributions without imposition of the 10% excise tax.

The **ACA (Automatic Contribution Arrangement) Notice** is required for 401(k) and 403(b) plans that want to guarantee ERISA preemption of state wage withholding laws that prohibit involuntary wage withholding.

The **QDIA (Qualified Default Investment Alternative) Notice** is required for participant-directed defined contribution plans, including 403(b) plans, that intend to comply with the Department of Labor’s (DOL) safe harbor rules for default investments.

Some plan designs may require multiple notices and some of these notices may be combined. The following chart summarizes the requirements that apply to each of these notices. In some cases, the IRS has provided sample notices to help plan sponsors meet these notification requirements. Prudential Retirement has also created some sample notices that plan sponsors may use as a base for developing their own plan-specific notices. In addition, plan sponsors may contact their Prudential representative for additional assistance, if needed.

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Timing	Recipients	Contents	Delivery methods	Support
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Traditional ADP/ACP Safe Harbor Notice

<p>Within a “reasonable period” before the first day of the plan year.</p> <p>Safe harbor is at least 30 and no more than 90 days before the first day of the plan year.</p>	<p>Eligible employees.</p>	<p>Must be sufficiently accurate and comprehensive and written in a manner calculated to be understood by the average eligible employee.</p> <p>SPD may be cross-referenced for some, but not all, required items.</p> <p>May be combined with QDIA Notice.</p>	<p>In writing or electronically, in accordance with IRS electronic media rules.</p> <p>May not be posted on a bulletin board and left in a central work location.</p>	<p>A sample notice is available on Prudential’s Plan Sponsor Website. Plan sponsors must customize this sample document to reflect their specific Plan provisions. Plan sponsors may contact their Prudential representative for additional assistance, if needed.</p>
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Traditional ADP/ACP Safe Harbor Contingent Notice

<p>Within a “reasonable period” before the first day of the plan year.</p> <p>Safe harbor is at least 30 and no more than 90 days before the first day of the plan year.</p>	<p>Eligible employees.</p>	<p>Must be sufficiently accurate and comprehensive and written in a manner calculated to be understood by the average eligible employee.</p> <p>SPD may be cross-referenced for some, but not all, required items.</p> <p>May be combined with QDIA Notice.</p>	<p>In writing or electronically, in accordance with IRS electronic media rules.</p> <p>May not be posted on a bulletin board and left in a central work location.</p>	<p>A sample notice is available on Prudential’s Plan Sponsor Website. Plan sponsors must customize this sample document to reflect their specific Plan provisions. Plan sponsors may contact their Prudential representative for additional assistance, if needed.</p>
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Traditional ADP/ACP Safe Harbor Follow-Up Notice

<p>No more than 30 days before the last day of the plan year.</p>	<p>Eligible employees.</p>	<p>Must state that safe harbor nonelective contributions will be made for the plan year.</p> <p>May be combined with the Contingent Notice for the next plan year.</p> <p>May also be combined with QDIA Notice.</p>	<p>In writing or electronically, in accordance with IRS electronic media rules.</p> <p>May not be posted on a bulletin board and left in a central work location.</p>	<p>A sample notice is available on Prudential’s Plan Sponsor Website. Plan sponsors must customize this sample document to reflect their specific Plan provisions. Plan sponsors may contact their Prudential representative for additional assistance, if needed.</p>
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Timing	Recipients	Contents	Delivery methods	Support
QACA (Qualified Automatic Contribution Arrangement) Notice				
<p>Within a “reasonable period” before the first day of the plan year.</p> <p>Safe harbor is at least 30 and no more than 90 days before the first day of the plan year.</p>	Eligible employees.	<p>Must be sufficiently accurate and comprehensive and written in a manner calculated to be understood by the average eligible employee.</p> <p>Required contents include those items required under the Traditional ADP/ACP Safe Harbor design plus additional items.</p> <p>SPD may be cross-referenced for some, but not all, required items.</p> <p>May be combined with:</p> <ul style="list-style-type: none"> • EACA Notice • ACA Notice • QDIA Notice. 	<p>In writing or electronically, in accordance with IRS electronic media rules.</p> <p>May not be posted on a bulletin board and left in a central work location.</p>	<p>A Sample Notice is available on the IRS Website. Plan sponsors must revise this Sample to properly reflect their own plan designs.</p> <p>Plan sponsors may contact their Prudential representative for additional assistance, if needed. Upon request, Prudential can prepare customized notices, for a fee.</p>

EACA (Eligible Automatic Contribution Arrangement) Notice

<p>Within a “reasonable period” before the first day of the plan year.</p> <p>Safe harbor is at least 30 and no more than 90 days before the first day of the plan year.</p>	Eligible employees.	<p>Must be sufficiently accurate and comprehensive and written in a manner calculated to be understood by the average eligible employee.</p> <p>Content requirements cannot be satisfied by cross-referencing SPDs.</p> <p>May be combined with:</p> <ul style="list-style-type: none"> • QACA Notice • ACA Notice • QDIA Notice. 	<p>In writing or electronically, in accordance with IRS electronic media rules.</p> <p>May not be posted on a bulletin board and left in a central work location.</p>	<p>A Sample Notice is available on the IRS Website. Plan sponsors must revise this Sample to properly reflect their own plan designs.</p> <p>Plan sponsors may contact their Prudential representative for additional assistance, if needed. Upon request, Prudential can prepare customized notices, for a fee.</p>
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Timing	Recipients	Contents	Delivery methods	Support
ACA (Automatic Contribution Arrangement) Notice				
Within a “reasonable period” of at least 30 days before the first day of the plan year.	Eligible employees.	<p>Required contents vary, depending on whether automatic contributions are invested in a QDIA, or not. In either situation, the notice must be written in a manner calculated to be understood by the average plan participant.</p> <p>May be combined with:</p> <ul style="list-style-type: none"> • QACA Notice • EACA Notice. 	<p>In writing or electronically, in accordance with either DOL electronic media rules or IRS electronic media rules.</p> <p>May not be posted on a bulletin board and left in a central work location.</p>	<p>The DOL has not provided a model or sample ACA notice, but portions of the Sample Notice provided on the IRS Website may be appropriate if a QDIA is used.</p> <p>Plan sponsors may contact their Prudential representative for additional assistance, if needed. Upon request, Prudential can prepare customized notices, for a fee.</p>

QDIA (Qualified Default Investment Alternative) Notice

At least 30 days before the first day of the plan year.	All participants and beneficiaries who may have assets invested in a QDIA.	<p>Must be written in a manner calculated to be understood by the average plan participant.</p> <p>Fee and expense information may be provided in a separate document furnished simultaneously with the QDIA Notice.</p> <p>May be combined with:</p> <ul style="list-style-type: none"> • Traditional ADP/ ACP Safe Harbor Notice • Traditional ADP/ ACP Safe Harbor Contingent Notice • QACA Notice • EACA Notice. 	<p>May be provided in writing or electronically, in accordance with either DOL electronic media rules or IRS electronic media rules.</p> <p>May be distributed with other materials being furnished to participants and beneficiaries, but as a separate stand-alone notice.</p> <p>May not be posted on a bulletin board and left in a central work location.</p> <p>May not be included in an SPD or an SMM.</p>	<p>The DOL has not provided a model or sample QDIA notice, but has approved the Sample Notice provided on the IRS Website.</p> <p>Prudential Retirement has also developed a variety of sample notices that plan sponsors may customize to reflect their plan designs. Upon request, Prudential can prepare customized notices, for a fee.</p>
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The Pension Analyst is published by Prudential Retirement, a Prudential Financial business, to provide clients with information on current legislation and regulatory developments affecting qualified retirement plans. This publication is distributed with the understanding that Prudential Retirement is not rendering legal advice. Plan sponsors should consult their attorneys about the application of any law to their retirement plans.