



Pension Analyst

Compliance Bulletin

End of 2009 Plan Year

Participants must be “noticed”

Several defined contribution plan designs and provisions require plan sponsors to provide annual notices to participants. As the 2009 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 2010 plan year. This publication describes the annual notices after initial notices have been provided. Prudential Retirement published separate *Pension Analysts* that described the initial notice requirements for [Traditional ADP/ACP Safe Harbors](#), [QACAs and EACAs](#) and [QDIAs](#). 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 **QACA 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 **QACA Follow-Up Notice** is required when a plan sponsor has provided the QACA Contingent Notice and decides to adopt the QACA safe harbor design for the plan year.

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.

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Some plan designs may require multiple notices and some of these notices may be combined or packaged together in one mailing. The following chart summarizes the requirements that apply to each of these notices.

Unless otherwise directed, Prudential Retirement will prepare Plan-specific notices for all affected plans for plan sponsor review and approval. Plan sponsors may then distribute these notices themselves or may use Prudential’s distribution service, which is available for an additional fee. 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, which are available on the [Plan Sponsor Website](#). Annual notices that were approved and used in 2008 can be used as a base for the 2009 annual notices. However, they will need to be updated to incorporate current information

Timing	Recipients	Contents	Delivery methods
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 packaged 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>
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 packaged 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>
Traditional ADP/ACP Safe Harbor Follow-Up Notice			
<p>At least 30 days before the last day of the plan year in which the safe harbor is effective.</p>	<p>Eligible employees.</p>	<p>Must state that safe harbor nonelective contributions will be made for the plan year.</p> <p>May be packaged with the Contingent Notice for the next plan year.</p> <p>May also be packaged 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>

Timing	Recipients	Contents	Delivery methods
<p>QACA (Qualified Automatic Contribution Arrangement) Notice</p> <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. <p>May be packaged with:</p> <ul style="list-style-type: none"> • 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>

QACA (Qualified Automatic Contribution Arrangement) 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>	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. <p>May be packaged with:</p> <ul style="list-style-type: none"> • 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>
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Timing	Recipients	Contents	Delivery methods
QACA (Qualified Automatic Contribution Arrangement) Follow-Up Notice			
Safe harbor is at least 30 days before the last day of the plan year in which the safe harbor is effective.	Eligible employees.	Must state that safe harbor employer nonelective contributions will be made for the plan year. May be combined with the standard or contingent safe harbor notice for the next plan year. May also be packaged with the QDIA Notice .	In writing or electronically, in accordance with IRS electronic media rules . May not be posted on a bulletin board and left in a central work location.
EACA (Eligible Automatic Contribution Arrangement) Notice			
Within a “reasonable period” before the first day of the plan year. Safe harbor is at least 30 and no more than 90 days before the first day of the plan year.	Eligible employees, unless the plan provides otherwise.	Must be sufficiently accurate and comprehensive and written in a manner calculated to be understood by the average eligible employee. Content requirements cannot be satisfied by cross-referencing SPDs. May be combined with: • QACA Notice . May be packaged with: • ACA Notice • QDIA Notice .	In writing or electronically, in accordance with IRS electronic media rules . May not be posted on a bulletin board and left in a central work location.
ACA (Automatic Contribution Arrangement) Notice			
Within a “reasonable period” of at least 30 days before the first day of the plan year.	Any participant that did not make an affirmative election at the plan’s current default deferral rate.	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. May be packaged with: • QACA Notice • EACA Notice .	In writing or electronically, in accordance with either DOL electronic media rules or IRS electronic media rules . DOL permits certain notices to be provided under IRS electronic media rules. As a result, notices could be provided electronically without advance affirmative consent of affected participants and beneficiaries. Prudential suggests that any plan sponsor who is interested in such approach discuss this matter with its own legal counsel. May not be posted on a bulletin board and left in a central work location.

Timing	Recipients	Contents	Delivery methods
<p>QDIA (Qualified Default Investment Alternative) Notice</p> <p>At least 30 days before the first day of the plan year.</p>	<p>All participants and beneficiaries who may have assets invested in a QDIA.</p>	<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 packaged 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>DOL permits certain notices to be provided under IRS electronic media rules. As a result, notices could be provided electronically without advance affirmative consent of affected participants and beneficiaries. Prudential suggests that any plan sponsor who is interested in such approach discuss this matter with its own legal counsel.</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>



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.