

Part III – Administrative, Procedural and Miscellaneous

Adding Automatic Enrollment to SIMPLE IRA Plans -- Sample Amendment

Notice 2009-67

I. PURPOSE

This notice facilitates automatic enrollment by providing a sample plan amendment that a prototype sponsor of a SIMPLE IRA plan (using a designated financial institution) can use in drafting an amendment to add an automatic contribution arrangement to the SIMPLE IRA plan.

II. BACKGROUND

Section 408(p) of the Internal Revenue Code provides rules for a SIMPLE IRA plan, which is a simplified tax-favored retirement plan for small employers. Notice 98-4, 1998-1 C.B. 269, provides guidance with respect to SIMPLE IRA plans.

An automatic contribution arrangement is an arrangement under which, in the absence of an affirmative election by an employee, a default election applies under which the employee is treated as having elected to have a portion of the employee's compensation contributed to a tax-favored retirement plan rather than paid to the employee in cash. A SIMPLE IRA plan may include an automatic contribution arrangement. See Notice 2009-66, IRB 2009-39, ____.

III. SAMPLE PLAN AMENDMENT

Sponsor Adoption. A sample plan amendment is provided in the Appendix that a prototype sponsor of a SIMPLE IRA plan (using a designated financial institution) can use in drafting an amendment to add an automatic contribution arrangement. Because the amendment is a sample amendment, prototype sponsors are not required to adopt the amendment verbatim. In fact, it may be necessary for prototype sponsors to modify the sample amendment to conform to their SIMPLE IRA plan's terms and administrative procedures. Sponsors that amend their prototype SIMPLE IRA plan documents pursuant to this notice must furnish a copy of the amendment to each adopting employer, regardless of whether the employer will utilize the automatic contribution arrangement.

Employer Adoption. An employer that wants to add an automatic contribution arrangement to its prototype SIMPLE IRA plan (using a designated financial institution) must adopt the amendment, provided by the prototype sponsor, before the effective date of the automatic contribution arrangement. The timely adoption of the amendment must be evidenced by a written document that is signed and dated by the employer and the designated financial institution.

Effect on Reliance. The adoption of the sample plan amendment (as modified, if necessary to conform to the plan's terms and administrative procedures) in accordance with the procedures described above will not result in the loss of reliance on a favorable opinion letter.

IV. MODEL FORMS

The Service expects to issue a revised Form 5305-SIMPLE, *Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) — for Use With a Designated Financial Institution*, that includes an automatic contribution arrangement.

DRAFTING INFORMATION

The principal author of this notice is Roger Kuehnle of the Employee Plans, Tax Exempt and Government Entities Division. Questions regarding this notice may be sent via email to RetirementPlanQuestions@irs.gov.

Appendix Sample SIMPLE IRA Plan Amendment

Article [] Automatic Contribution Arrangement

Section 1. Rules of Application

1.1 If this Article applies, default salary reduction contributions will be made in accordance with this Article. To the extent that any other provision of the SIMPLE IRA Plan is inconsistent with the provisions of this Article, the provisions of this Article shall govern.

1.2 Subject to the limits on salary reduction contributions contained in this SIMPLE IRA Plan, default salary reduction contributions will only be made for an Eligible Employee who: (*select either a or b*)

[] a. does not have an affirmative election regarding salary reduction contributions in effect on the effective date of the Automatic Contribution Arrangement or on the date the employee first becomes eligible to make salary reduction contributions, if later.

[] b. becomes eligible to make salary reduction contributions on or after the effective date of the Automatic Contribution Arrangement and who does not have an affirmative election regarding salary reduction contributions in effect on the date the employee first becomes eligible to make salary reduction contributions.

Default salary reduction contributions being made on behalf of an Eligible Employee will cease as soon as administratively feasible after the Eligible Employee makes an affirmative election.

1.3 The Default Percentage under the SIMPLE IRA Plan for an Eligible Employee described in Section 1.2 above is: *(Select either a or b and fill in the blanks.)*

a. Fixed. The Default Percentage is []%.

b. Increasing. The initial Default Percentage is []%, and each calendar year, beginning with the second calendar year that begins after the Default Percentage first applies to the Eligible Employee, the Default Percentage will increase by [] *(insert a number)* percentage point(s) until the Default Percentage is []%. *(Insert the highest Default Percentage that will apply.)* The increase will be effective beginning with the first pay period that begins in such calendar year.

1.4 No default salary reduction contributions will be made on an Eligible Employee's behalf until after the 60-day election period.

Section 2. Definitions

2.1 An "Automatic Contribution Arrangement" is an arrangement under which, in the absence of an affirmative election by an Eligible Employee, a certain percentage of compensation will be withheld from the Eligible Employee's pay and contributed as a salary reduction contribution to the SIMPLE IRA established under this SIMPLE IRA Plan for the Eligible Employee.

2.2 "Default salary reduction contributions" are the salary reduction contributions made to the SIMPLE IRAs of employees described in Section 1.2 above.

2.3 The "Default Percentage" is the percentage of an employee's compensation contributed to the plan as default salary reduction contributions for a calendar year. The Default Percentage is specified in Section 1.3 above.

Section 3. Modified Notice Requirement

3.1 The notice provided to Eligible Employees immediately prior to the 60-day election period must include, for employees described in Section 1.2 above, a comprehensive explanation of the employee's rights and obligations under the Automatic Contribution Arrangement, written in a manner calculated to be understood by the average employee described in Section 1.2 above.

3.2 The notice must accurately describe:

- (a) The amount of default salary reduction contributions that will be made on the Eligible Employee's behalf in the absence of an affirmative election and when default salary reduction contributions will start;
- (b) The Eligible Employee's right to elect to have no salary reduction contributions made on his or her behalf or to have a different amount of salary reduction contributions made;
- (c) How default salary reduction contributions will be invested in the absence of the Eligible Employee's investment instructions; and
- (d) If not already permitted under the SIMPLE IRA Plan, the additional period (described in Section 4 below) to make a transfer without cost or penalty from the SIMPLE IRA established for the Eligible Employee at the designated financial institution.

Section 4. Modification of Designated Financial Institution Rules

Notwithstanding any limitation on an Eligible Employee's right to transfer, without cost or penalty, the balance in his or her SIMPLE IRA maintained at a designated financial institution to another SIMPLE IRA, an employee described in Section 1.2 above may request such a transfer during the 60 days immediately following the employee's first 60-day election period under the Automatic Contribution Arrangement. This period is in addition to any other periods provided under this SIMPLE IRA Plan, and the transfer request can apply to the entire balance accrued since default salary reduction contributions were first made on the employee's behalf and to the balance attributable to future contributions, at the employee's request.

