

Special Edition
September 2009

Retirement News for Employers

Tax Information for Sponsors of Retirement Plans
Internal Revenue Service Tax Exempt and Government Entities

Retirement & Savings Initiatives: Helping Americans Save for the Future

On September 5, 2009, as part of the [Retirement & Savings Initiatives](#), the IRS and Treasury issued four notices and three revenue rulings to promote retirement plan savings. The notices provide sample amendments to add an [automatic enrollment feature](#) (also known as an automatic contribution arrangement) to [401\(k\)](#) and [SIMPLE IRA plans](#), guidance on using an automatic contribution arrangement (ACA) in SIMPLE IRA plans and two updated safe harbor explanations (§402(f) notices) for eligible rollover distributions (ERDs). The revenue rulings clarify the rules on increasing ACA [default contribution percentages](#) and on contributing unused vacation and sick pay to a retirement plan, both annually and upon termination of employment.

[Notice 2009-65](#), *Adding Automatic Enrollment to Section 401(k) Plans -- Sample Amendments* – Provides two sample plan amendments for adding an automatic enrollment feature to a 401(k) plan. Plan sponsors or employers may use the first sample amendment to add a basic ACA and the second sample amendment to add an [eligible automatic contribution arrangement](#) (EACA) to their plans. They may modify these amendments to conform to their specific plan terms and administrative procedures.

These sample amendments must be adopted by the later of the end of the plan year in which the amendment is effective or, if applicable, the last day of the first plan year beginning on or after January 1, 2009. A later deadline may apply to [governmental plans](#). Evidence of the amendment's timely adoption is a written document signed and dated by the employer. Affected employees must receive notice about the features of the amended plan within a reasonable period **before** the amendment is effective.

[Notice 2009-66](#), *Automatic Enrollment in SIMPLE IRAs* – Provides guidance, in the form of questions and answers, on including an ACA in a SIMPLE IRA plan. Some of the issues addressed include:

- The plan may increase the default contribution percentages for an employee based on the number of years or portions of years for which default contributions have been made for the employee;
- The employer must, in addition to satisfying the [SIMPLE IRA plan notice requirements](#), provide [certain additional information](#) to an eligible employee; and
- The plan may provide that default contributions be made only for those employees who are first eligible under the SIMPLE IRA plan on or after the ACA's effective date and who do not make an affirmative election (including an affirmative election of zero).

[Notice 2009-67](#), *Adding Automatic Enrollment to SIMPLE IRA Plans -- Sample Amendment* – Contains a sample amendment that prototype sponsors of a SIMPLE IRA plan (using a designated financial institution) may use to draft an amendment to add an ACA to their plans. Prototype sponsors may tailor the sample amendment to their plan's terms and administrative procedures. Sponsors must furnish a copy of the amended prototype SIMPLE IRA plan document to each adopting employer, regardless of whether the employer will use an ACA.

An employer that wishes to add an ACA to its prototype SIMPLE IRA plan (using a designated financial institution) must adopt the amendment, provided by the prototype sponsor, before the ACA's effective date. Evidence of the employer's timely adoption of the amendment consists of the written document signed and dated by the employer and the designated financial institution.

[Notice 2009-68](#), *Safe Harbor Explanation – Eligible Rollover Distributions* – Contains two updated safe harbor models that an employer plan may give to ERD recipients to satisfy §402(f) notice requirements. Plans may use the first model notice for recipients of ERDs from non-designated Roth accounts and the second explanation for recipients of ERDs from designated Roth accounts. These updated model notices reflect changes in the law and simplify the presentation and description of an ERD recipient's options. They also explain rules that apply in special situations such as when the distribution is to a surviving spouse or other beneficiary. Plans may tailor each model notice to their terms and administrative procedures. They may immediately use these model notices or continue to use the prior §402(f) notices contained in [Notice 2002-3](#), as appropriately modified for law changes, on a transition basis through the end of 2009.

[Revenue Ruling 2009-30](#), *Automatic Contribution Increases under Automatic Contribution Arrangements* – Explains how 401(k) plans may permit automatic increases in an eligible employee's default contribution percentage based on future increases in the employee's base pay. The revenue ruling provides two examples on how a 401(k) plan can structure these increases. A 401(k) plan may increase an eligible employee's default contribution percentage on a date other than the first day of a plan year without violating the qualified percentage requirements (including uniformity and minimum percentage requirements) for [qualified automatic contribution arrangements](#) (QACAs) or the uniformity requirement for EACAs.

[Revenue Ruling 2009-31](#), *Annual Paid Time Off Contributions*—Provides that qualified plans may be amended to permit [certain](#) annual contributions of the dollar equivalent of an employee's unused paid time off. An employee is not required to recognize these contributions as gross income until distributed from the plan.

[Revenue Ruling 2009-32](#), *Paid Time Off Contributions at Termination of Employment*— States that a qualified plan may, under [certain circumstances](#), allow employees upon termination of employment to contribute the dollar equivalent of unused paid time off to the plan. However, these contributions, taking into account any other contributions, prior deferrals and prior annual additions, cannot violate the nondiscrimination requirements of [§401\(k\)](#), the annual addition limits under [§415\(c\)](#) or the annual elective deferral limits under [§401\(a\)\(30\)](#). These contributions are not includible in the participant's gross income until distributed from the plan.

Visit IRS.gov for additional information and resources about the [retirement savings initiatives](#).

Rollovers from Employer Plans to Roth IRAs

[Notice 2009-75](#), *Rollovers from Employer Plans to Roth IRAs*, released on September 8, 2009, describes the tax consequences of rolling over an [eligible rollover distribution](#) (ERD) from qualified plans (such as [401\(k\)](#) or [profit-sharing](#)), [403\(a\) annuity plans](#), [403\(b\) plans](#) or [457\(b\) governmental plans](#) to a [Roth IRA](#). It explains that an individual must include in his or her gross income amounts, other than after-tax contributions, that are part of the ERD rolled over to a Roth IRA. However, when an individual rolls over an ERD from a [designated Roth account](#), regardless of whether it is a [qualified distribution](#), this rollover is **not includible** in his or her gross income.

Prior to January 1, 2010, only individuals meeting the income and filing status [eligibility requirements](#) may roll over an ERD from an eligible employer plan (other than from a designated Roth account) to a Roth IRA. Individuals who do not meet the eligibility requirements may roll over the ERD into a non-Roth IRA. The non-Roth IRA can then be [converted](#) to a Roth IRA in 2010, when the income and filing status eligibility requirements will be eliminated.

Now Online:

- **The IRS Retirement Plans Navigator**

The IRS has launched a new site www.retirementplans.irs.gov to encourage small-business owners to establish retirement plans for their employees. The site will help employers choose the right plan for their business and has information and resources on maintaining plans and correcting plan errors.

- **Life Events that Can Affect Retirement Savings**

Starting a job, marriage, divorce, retirement, death – major [life events](#) affect your retirement planning. Learn more about how major life events may influence your retirement.

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