

# PLAN SPONSOR Digest

Your Challenge, Our Solutions™

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## 2008: A Year of Change

The landscape of the retirement plan industry is constantly changing. And 2008 promises more of the same. There are plan document changes in store, and the Pension Protection Act of 2006 (PPA) calls for a number of changes to defined contribution retirement plans. This article reviews the current list of 2008 changes. Of course, legislative and/or regulatory actions could create additional changes. Stay tuned.

**Restatement of Preapproved Defined Contribution Plans.** By April of 2008, the IRS will announce the release of opinion and advisory letters for preapproved defined contribution plan sponsors (i.e., master and prototype plans and volume submitter EGTRRA plans). The IRS will also announce the deadline by which all employers using such plans must amend and restate onto the approved EGTRRA plan documents. (The period is expected to be about two years.)

**Final Section 415 Regulations Plan Amendment.** The deadline for adopting the final 415 regulations is the end of the first plan year starting on or after July 1, 2007. Calendar-year plans generally must adopt this amendment by December 31, 2008. Included in these regulations are the new post-severance compensation rules.

**PPA Changes.** These are the major changes affecting defined contribution plans for the 2008 plan year.

**Direct Rollover to a Roth IRA.** Under PPA, funds from a qualified plan, such as a 401(k), may be directly rolled over to a Roth IRA. Prior to this change, the rollover went to a traditional IRA, which could then be converted to a Roth IRA. We await guidance from the IRS on the taxation and reporting of this new transaction.

**Nonspouse Beneficiary.** The IRS has changed this from an optional plan provision to one that is required. Thus, all qualified plans will operate under this PPA provision in 2008. The plan document amendment for PPA provisions is not required until 2009.

**Bonding Increase.** For non-ESOP defined contribution plans with employer securities, the bond is 10% of plan assets up to a maximum of \$1,000,000 (increased from \$500,000).

**Automatic Enrollment Plan Testing Change.** For any automatic enrollment plan subject to ADP/ACP testing, the time frame for making a refund for a failed ADP/ACP test without a 10% penalty has been extended to the end of the sixth month after the end of the plan year being tested (i.e., June 30 for a calendar-year plan).

**Automatic Enrollment 90-day Revocation Period.** An automatically enrolled employee in an eligible automatic contribution arrangement may opt out of deferring and request a withdrawal of all deferrals within 90 days of the first payroll from which deferrals were taken. In such a



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case, the plan is to return all deferrals made during that time frame (adjusted for gains or losses) to the employee, and there is no IRS penalty. We await IRS guidance to clarify operational details.

### **Qualified Automatic Contribution Arrangement (QACA).**

This new automatic enrollment plan option is generating a great deal of buzz and may become quite popular.

### **Qualified Joint and Survivor Annuity (QJSA) Option.**

New optional survivor annuity provisions must be made available under certain qualified plans. The new rule

applies only to plans subject to QJSA rules, such as defined benefit and money purchase pension plans. If the plan's normal QJSA survivor annuity payable to the spouse after the participant's death is less than 75% of the annuity payable while both spouses are alive, the plan must allow the participant to elect an optional survivor annuity with an applicable percentage of 75%. Similarly, if the plan's normal QJSA survivor annuity is greater than or equal to 75% of the annuity payable while both spouses are alive, the plan must allow the participant to elect an optional survivor annuity with an applicable percentage of 50%.

## At Long Last - QDIAs Defined

The U.S. Department of Labor (DOL) has released its final regulation on qualified default investment alternatives (QDIAs) for participant-directed plans. Using a QDIA can help you secure liability protection for the investment of employees' account assets when they have been given the opportunity to direct their investments but have failed to do so. Stand-alone stable value funds, money market funds, and guaranteed investment contracts (GICs) are notably absent from the list of approved options.

Under the regulations, a QDIA must be a mutual fund or managed by an investment manager, plan trustee, or plan sponsor who is a named fiduciary and generally cannot invest employee contributions in employer securities. The regulation clarifies that a QDIA may be offered through variable annuity contracts or other pooled income investment funds. Participants must have the opportunity to direct investments out of a QDIA as frequently as from other plan investments, but at least quarterly. Various other requirements apply.

Plan sponsors must furnish a notice to employees and beneficiaries before the first investment in the QDIA and annually thereafter. The regulations describe the information that must be included in the notice. Also, any materials, such as investment prospectuses, that the plan receives from the company providing the QDIA must be provided to participants.

According to the DOL, the regulations are effective December 24, 2007. Default investments made in stable value products prior to the effective date are "grandfathered" for purposes of liability protection.

If your plan currently has a stable value or money market fund as its default investment and you would like assistance in choosing an investment that satisfies the final regulations, or you would like help reviewing the suitability of a different current default investment, please call us. We offer a variety of investment choices for your plan.

### **DOL-APPROVED QDIAs**

- **Lifecycle funds, targeted retirement date funds,** and similar products that take into account the individual's age or retirement date
- **Balanced funds** and similar products with a mix of investments that take into account the characteristics of the group of employees as a whole, rather than each individual
- **Professionally managed accounts** and similar investment services that allocate contributions among existing plan options to provide an asset mix that takes into account the individual's age or retirement date
- **Capital preservation products,** but only for the first 120 days of participation in the plan



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