



## NAGDCA NOTES

### Automatic Enrollment: Is it a Matter of Time?

A phrase that is gaining momentum throughout the defined contribution retirement industry is Automatic Enrollment. Automatic enrollment, also referred to as "passive" or "negative" enrollment, allows an employer to automatically enroll employees into its plans at a specified contribution rate and direct those salary contributions to default investments upon meeting the plan's eligibility requirements. These preset contribution percentages remain in effect until the employee instructs otherwise.

IRS Revenue Rulings 98-30 and 2000-8 outline the steps that plan sponsors must take to notify their employees of the automatic enrollment feature. Upon hire, the plan sponsor must advise employees of the following:

- "The default salary deferral percentage that will apply and be deducted from their pay.
- Their ability to change the initial default contribution, with specific instructions on how and when to do so.
- Their right and instructions on how and when to elect out of making contributions at all.
- In addition, these notifications must be made annually to all participants that remain in automatic enrollment status."

The plan sponsor is also responsible for choosing the appropriate default investment option should the plan participant not elect their own desired allocations. This is the point to which many plan sponsors feel that their fiduciary responsibility, or furthermore, liability is heightened to a degree beyond their control.

Due to the increasing push for Automatic Enrollment, many federal legislators are presenting bills which provide incentives for employers to adopt automatic enrollment provisions such as:

- an additional safe harbor provision under the nondiscrimination rules if the employer can demonstrate that a percentage of employees, ranging from 70 percent to 85 percent depending on the bill, are participating in the plan;
- reducing the employer's fiduciary liability for maintaining default investments in 401(k) accounts, and;
- explicitly preempting state regulations that may restrict automatic enrollment.

Congress may address automatic enrollment as part of the Federal Fiscal Year 2006 Budget Reconciliation legislation currently pending. There could be a vote on pension legislation in the House of Representatives in mid-December. The measure that the House may vote on is likely to include language on automatic enrollment. It could address state pre-emption issues, affecting all governmental defined contribution plans.

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The bill is also likely to exempt private and public 401 (k) plans from non-discrimination rules and provide a safe harbor for employers regarding fiduciary liability related to default investments.

There are a number of other legislative proposals that have been introduced in Congress as well. .

- H.R. 1961, introduced by Rep. Benjamin Cardin (D-MD) would automatically enroll new employees in the 401(k) plan after the date the plan is adopted, but allow existing employees to make default contributions.
- S. 875 by Sens. Bingaman (D-NM) and Olympia Snowe (D-ME), would apply the Automatic Enrollment provisions to new and existing employees, but would give existing employees a one-year delay before they take effect.
- H.R. 1508 by Rep. Rahm Emanuel (D-IL) would apply the Automatic Enrollment provisions to all employees in the plan and would require automatic enrollment to obtain any relief under the nondiscrimination safe harbor rule.

In addition, other bills include provisions bolstering employee savings in 401(k) plans by providing accelerated vesting, automatic rollover, and/or automatic escalation of employee contributions. This can be seen in S. 1819, introduced by Sen. Santorum (R-PA) where the bill would provide for an automatic escalation of the salary saved in the plan by at least 1 percent annually, up to 10 percent of salary. Under this legislation, the Department of Labor is given the authority to set default investment options that would provide a higher return than a money market fund, but protect employers from fiduciary liability for employees who fail to select their own investments.

As conversations around automatic enrollment continue to accelerate throughout the country, and especially in Washington D.C., plan administrators must ask themselves, "Is it just a matter of time until automatic enrollment becomes a reality?"

*Due to constantly changing legislation, the information found here is only an overview, and may change as discussions on automatic enrollment continue. NAGDCA and its Board of Trustees has not taken a position in favor or in opposition to the policy objectives of potential or actual legislation relating to automatic enrollment. NAGDCA and its Board of Trustees may take action to inform appropriate policy-makers of administrative and technical issues related to automatic enrollment and other legislative proposal affecting defined contribution retirement plans. You may also contact NAGDCA Project Coordinator Robert T. Hansel at [rhansel@amrms.com](mailto:rhansel@amrms.com) or 859-514-9161 for other questions regarding the NAGDCA Note.*