End of 2013 Plan Year

Pension Analyst

Compliance Bulletin

Prudential
Bring Your Challenges

Many defined contribution plan sponsors must annually "notice" their participants

Sponsors of defined contribution plans with certain features are required to provide annual notices to participants. Generally, these annual notices are in addition to any initial notices the plan sponsor may be required to provide on or before an employee's eligibility date for the plan feature (e.g., ADP/ACP Safe Harbor, QACA, EACA and QDIA). Previously, Prudential Retirement published several *Pension Analysts* that describe the *initial* notice requirements applicable to newly eligible participants for Traditional ADP/ACP Safe Harbors, QACAs and EACAs and QDIAs. As the 2013 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 2014 plan year. This publication provides a summary of the *annual* notice requirements for those notices, including timing, recipients, contents, and method of delivery.

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.

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.

©2013, The Prudential Insurance Company of America, and its related entities.
Prudential, the Prudential logo, the Rock symbol and Bring Your Challenges are service marks of Prudential Financial, Inc., and its related entities, registered in many jurisdictions worldwide.

Timing	Recipients	Contents	Delivery methods
Traditional ADP/ACP Safe Harbor Notice **QACA (Qualified 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.	Must be sufficiently accurate and comprehensive and written in a manner calculated to be understood by the average eligible employee. For QACA Notice, required contents include those items required under the Traditional ADP/ACP Safe Harbor design plus additional items. SPD may be cross-referenced for some, but not all, required items. May be combined with: • EACA Notice • ACA Notice • QDIA Notice.	In writing or electronically, in accordance with IRS electronic media rules. A paper version may not be posted on a bulletin board or left in a central work location.
Traditional ADP/ACP Safe Harbor Contingent Notice **QACA (Qualified Automatic Contribution Arrangement) Contingent 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.	Must be sufficiently accurate and comprehensive and written in a manner calculated to be understood by the average eligible employee. For QACA Notice, required contents include those items required under the Traditional ADP/ACP Safe Harbor design plus additional items. SPD may be cross-referenced for some, but not all, required items. May be combined with: • EACA Notice • ACA Notice • QDIA Notice.	In writing or electronically, in accordance with IRS electronic media rules. A paper version may not be posted on a bulletin board or left in a central work location.

©2013, The Prudential Insurance Company of America, and its related entities.
Prudential, the Prudential logo, the Rock symbol and Bring Your Challenges are service marks of Prudential Financial, Inc. and its related entities, registered in many jurisdictions worldwide.

Timing	Recipients	Contents	Delivery methods
Traditional ADP/ACP Safe Harbor Follow-Up Notice **QACA (Qualified Automatic Contribution Arrangement) Follow-Up Notice**			
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 nonelective contributions will be made for the plan year. May be combined with the standard or Contingent Notice for the next plan year. May also be combined with QDIA Notice.	In writing or electronically, in accordance with IRS electronic media rules. A paper version may not be posted on a bulletin board or 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 • ACA Notice • QDIA Notice.	In writing or electronically, in accordance with IRS electronic media rules. A paper version may not be posted on a bulletin board or 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 who 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 combined 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. It may be possible (depending on the nature of an employer's workforce) to provide notices electronically without advance affirmative consent of affected participants and beneficiaries. Any plan sponsor who is interested in such approach should discuss it with its own legal counsel with particular focus on unclear requirements of the IRS rule. A paper version may not be posted on a bulletin board or left in a central work location.

©2013, The Prudential Insurance Company of America, and its related entities.
Prudential, the Prudential logo, the Rock symbol and Bring Your Challenges are service marks of Prudential Financial, Inc. and its related entities, registered in many jurisdictions worldwide.

Timing	Recipients	Contents	Delivery methods
QDIA (Qualified Default Investment Alternative) Notice			
At least 30 days before the first day of the plan year.	All participants and beneficiaries who may have assets defaulted in a QDIA.	Must be written in a manner calculated to be understood by the average plan participant. Fee and expense information may be provided in a separate document furnished simultaneously with the QDIA Notice. May be combined with: • Traditional ADP/ ACP Safe Harbor Notice • Traditional ADP/ ACP Safe Harbor Contingent Notice • QACA Notice • QACA Contingent Notice • EACA Notice.	May be provided 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. It may be possible (depending on the nature of an employer's workforce) to provide notices electronically without advance affirmative consent of affected participants and beneficiaries. Any plan sponsor who is interested in such approach should discuss it with its own legal counsel with particular focus on unclear requirements of the IRS rule. May be distributed with other materials being furnished to participants and beneficiaries, but as a separate stand-alone notice. A paper version may not be posted on a bulletin board or left in a central work location. May not be included in an SPD or an SMM.

Compliance Bulletin by Prudential Retirement
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.

©2013, The Prudential Insurance Company of America, and its related entities.
Prudential, the Prudential logo, the Rock symbol and Bring Your Challenges are service marks of Prudential Financial, Inc. and its related entities, registered in many jurisdictions worldwide.