



Automatic Enrollment and Automatic Acceleration Features Encourage Worker Participation in Defined Contribution Plans

Promote Automatic Features in Defined Contribution Plans. Congress should encourage employers to use automatic enrollment, under which employees automatically participate in workplace retirement plans unless they opt out. Particularly among low- and moderate-income workers, automatic enrollment typically raises employee participation. Indeed, two-thirds of nonparticipants indicate they would be very or somewhat likely to remain in their employer's plan if they were automatically enrolled (EBRI, 2005 Retirement Confidence Survey).

Address Key Issues. Both the Senate Pension Security and Transparency Act (S. 1783) and the House Pension Protection Act (H.R. 2830) address a number of significant issues that cause some employers to hesitate to adopt these plan designs. Both bills direct the Department of Labor (DOL) to issue guidance on appropriate default investments and neither bill restricts that guidance to plans adopting automatic enrollment. In addition, both bills clarify that ERISA preempts state wage withholding laws to the extent they prohibit automatic enrollment. However, the final negotiated bill should clarify that the DOL guidance on default investments should not limit fiduciary relief to plans that meet the statutory and regulatory requirements under Section 404(c) of the Employee Retirement Income Security Act (ERISA). In addition, state wage withholding law preemption for plans using automatic enrollment should not be dependent upon meeting additional statutory or regulatory requirements (clean preemption). Also, these fiduciary and preemption protections should be extended to non-ERISA plans.

Provide a Usable Nondiscrimination Safe Harbor. The Council commends Congress for creating in both bills a new and separate nondiscrimination safe harbor, similar to the existing 401(k) safe harbor, for employers sponsoring automatic enrollment and automatic acceleration plan designs. The Council generally recommends the approach taken in the House bill which would limit required automatic enrollment to new employees and require either a 2 percent nonelective contribution or 50 percent matching contributions on the first 6 percent of compensation deferred by the participant. Although employers could choose to automatically enroll existing employees, by limiting required

automatic enrollment to new employees, the House bill would limit confusion and eliminate significant employee relations issues. It would also limit the number of necessary refunds when current employees belatedly realize new monies are being taken from their paychecks.

The Council recommends that two modifications be made to the House approach to the safe harbor. First, the final bill should allow the timing of automatic increases to be linked to the timing of compensation increases (the bill currently provides for increases on a plan year basis). Second, since many plans use base pay or rate of pay for plan contributions, the Council would recommend allowing increased flexibility in satisfying the Code Section 414(s) compensation test when applied to the new and existing safe harbors. Variable overtime compensation as well as bonuses could cause safe harbor plans to fail the current 414(s) testing, a fact that would not be known until after the end of the plan year. Many plan sponsors in this situation would likely reject the new safe harbor.