

Automatic Rollovers –A Quick Look EGTRRA amended §401(a)(31)(B) of the IRC to require that mandatory distributions of more than \$1,000 from a plan qualified under §401(a) be paid in a direct rollover to an individual retirement plan or an individual retirement annuity if the participant does not make an affirmative election to have the amount paid in a direct rollover to an eligible retirement plan or to receive the distributions directly. Both the IRS and DOL issued guidance with respect to this issue. This document will review some of the considerations which must be addressed in responding to this issue.

Note: This material is for the sole purpose of providing general information and does not under any circumstances constitute legal advice. You should seek the advice of counsel when applying the requirements to your plans.

Plan Sponsor	IRS Notice 2005-5	DOL 2550.404a-2
<p>Action Items</p> <p>Amend the plan to provide for the mandatory rollovers or eliminate them. Note that Q &A 12 of IRS Notice 2005-05 provides that employers can avoid compliance with the automatic rollover requirements by amending the plan to eliminate all mandatory distributions or alternatively, all mandatory distributions of more than \$1,000 without violating the anti-cutback provisions of §411(d) (6).</p> <p>Note: <i>Plan amendments for plans, other than governmental plans and certain non-electing church plans, must be adopted by the end of the first plan year ending after March 28, 2005.</i></p> <p>Update SPD/SMM and distribute</p> <p>Update 402(f) notice</p> <p>Select IRA provider(s) and enter into a written agreement(s)</p> <p>Establish procedures</p>	<p>Operational Compliance</p> <p>Qualified plans and nongovernmental 403(b) plans must apply the new requirements to mandatory distributions made on or after March 28, 2005.</p> <p>Note: if plan doesn't have procedures set up by March 28, 2005 including establishing individual retirement plans to accept automatic rollovers, the plan may delay making mandatory distributions while such procedures are finalized. However, the automatic rollover of all delayed mandatory distributions must be made on or before 12/31/2005.</p> <p>A governmental plan must be in operational compliance with the new requirements by the close of the first regular legislative session beginning on or after January 1, 2006 of the legislative body with the authority to amend the plan.</p> <p>A non-electing church plan for which the authority to amend the plan is held by a church convention must be in operational compliance with the new requirements by the date which is 60 days after the close of the earliest church convention occurring on or after January 1, 2006.</p> <p>Plan Amendments Note: <i>sample good faith amendments are provided in the Notice. Plan amendments for plans, other than governmental plans and certain non-electing church plans, must be adopted by the end of the first plan year ending after March 28, 2005.</i></p>	<p>DOL Safe Harbor</p> <p>DOL regulations provide a safe harbor under which a fiduciary of an employee benefit plan subject to Title I of ERISA will be deemed to satisfy his or her fiduciary duties under 404(a) of ERISA in connection with the rollover of a mandatory distribution if the following conditions are met:</p> <ul style="list-style-type: none"> • The present value of the vested accrued benefit does not exceed \$5,000 Reminder: IRS §411(a)(11) permits the exclusion of rollover contributions from other plans in the determination of the \$5,000 threshold. • The rollover is made to an individual retirement plan or an individual retirement annuity. There are neither maximums nor minimums in terms of the number of individual retirement plan providers to a plan or multiple plans of an employer. • The fiduciary enters into a written agreement with an individual retirement plan provider that provides: <ul style="list-style-type: none"> ○ The rollover will be invested in an investment product designed to preserve principal and provide a reasonable rate of return whether or not the return is guaranteed consistent with liquidity. ○ The investment product selected seeks to maintain over the term of the investment the dollar value that is equal to the amount invested. ○ The investment product selected is offered by a state or federally regulated financial institution. • All fees and expenses of the individual retirement plan do not exceed the fees and expenses charged by the provider

	<p>Qualified plans and nongovernmental 403 (b) plans must adopt good faith amendments reflecting the automatic rollover requirements by the end of the first plan year ending on or after March 28, 2005. (12/31/2005 for calendar year plans).</p> <p>A governmental plan must adopt good faith amendments to reflect the new requirements by the close of the first regular legislative session beginning on or after January 1, 2006 of the legislative body with the authority to amend the plan.</p> <p>A non-electing church plan must adopt good faith plan amendments by the date which is 60 days after the close of the earliest church convention, with the authority to amend the plan, occurring on or after January 1, 2006.</p> <p>Participant Communication</p> <p>The participant must be notified in writing that if the participant doesn't make an election with respect to his/her account balance, the distribution will be paid to an IRA. The IRA trustee or custodian must be identified in the notice. The notice can be included in the 402(f) notice or issued separately.</p> <p>Note: this is in addition to the DOL safe harbor requirement that the SPD/SMM be updated.</p> <p>The plan administrator may use the participant's most recent mailing address in the records of the employer and plan administrator.</p> <p>Impact of Rollover Accounts in the Plan</p> <p>Rollover account balances maintained by the plan may be disregarded in determining whether the \$5,000 (or \$1,000 if so elected) threshold has been exceeded. However, Q&A 14 provides that rollover amounts are subject to the automatic rollover requirements of §401(a)(31)(B).</p>	<p>for comparable individual retirement plans established for reasons other than the receipt of the automatic rollover distribution.</p> <ul style="list-style-type: none"> • The participant has a right to enforce the terms of the contract against the individual retirement plan provider. • Participants have been furnished an SPD or SMM that describes the plan's automatic rollover provisions including an explanation that the mandatory distribution will be invested in an investment product designed to preserve principal and provide a reasonable rate of return and liquidity. • Both the fiduciary's selection of an individual retirement plan and the investment of funds can not result in a prohibited transaction. Note: The DOL has issued a Class Exemption allowing certain plan sponsors to select their own products and services for automatic rollovers (e.g., banks, financial institutions).
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