THE EMPLOYEE BENEFIT
# Forum
current issues in retirement benefit planning

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## Weighing Automatic Plan Features

**SITUATION:** We're thinking about adding automatic enrollment and contribution increase features to our 401(k) plan but have concerns about employee resistance, especially to contribution increases.

**QUESTIONS:** Do many plans use automatic plan features, and how receptive are plan participants to them?

**ANSWERS:** According to the Plan Sponsor Council of America, in 2011 (the most recent data) 45.9% of defined contribution plans surveyed offered automatic enrollment, up from 41.8% in 2010 and 23.6% in 2006. More than half of the plans (55.2%) had an automatic contribution escalation feature in 2011. Another study by Cogent Research found 49% of plan participants surveyed wanted access to automatic contribution increases.

**DISCUSSION:** With automatic enrollment, a set percentage of the employee's compensation is withheld and then deposited in a plan account for the employee — unless the employee chooses not to participate or wants to contribute a different amount. Employees *must* be given the opportunity to opt out of participating. You also have to provide employees with an option to change the election in the future.

An automatic escalation feature gradually increases a plan participant's deferral rate over time with no effort on the part of the employee. The increases must be according to a specified schedule. And you must notify employees of the amount of the deferral increases and when increases will occur. You also have to give employees the opportunity to opt out of increases.

For many employers, automatic enrollment is an effective way to increase participation. Plans surveyed by the Defined Contribution Institutional Investment Association in 2012 saw participation rates increase from an average of 69% to an average of 81% after adopting automatic enrollment.

As for employee resistance to contribution increases, the Employee Benefit Research Institute reports that 20% of surveyed employees said they would allow annual one percentage point contribution increases up to at least 15% of salary before discontinuing the increase. Another 20% would allow increases to between 10% and 14% of salary.

**COMMENT:** Before adding automatic features to your plan, look at what you expect the automatic features to accomplish, how much the features will cost, and how you can implement them to fit your work force.

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## New In-plan Roth Conversion Opportunity

The American Taxpayer Relief Act (ATRA), signed into law early this year, includes a provision that greatly expands the ability of plan participants to convert pretax 401(k), 403(b), and governmental 457(b) accounts to after-tax designated Roth accounts. The provision is optional and can be added to any plan that allows designated Roth contributions.

Prior to ATRA, plans had the option to offer in-plan Roth rollovers. However, an amount was not eligible for rollover unless it satisfied tax law rules for distribution and was an eligible rollover distribution.

Now, a 401(k) or other plan offering designated Roth accounts can permit participants to roll over money to an in-plan Roth account without meeting the usual rollover qualification requirements.

As previously, the participant will have to pay income taxes on the taxable amount transferred to the Roth account but will owe no income tax upon ultimate distribution of the Roth money if applicable requirements are met. Look for IRS guidance ahead on these conversions.

## Making the Right Connection

Have you ever sponsored an attendance-optional enrollment meeting or retirement planning seminar for your employees and been disappointed by the turnout? You're not alone. If, like other plan sponsors, you've had this experience and wonder why your communications aren't connecting with participants, maybe you're trying to forge the wrong connection.

### "Show," Don't "Tell"

Rather than trying to connect participants to your plan by communicating the plan's features, investment choices, and how it works, try connecting the plan to participants' personal financial and retirement goals. How? A good way to start is to show, not tell.

Communications — enrollment materials in particular — commonly tell participants about how easy it is to participate in the plan; the benefits of automatic payroll deduction, tax deferral, automatic enrollment, and contribution escalation (if offered); and the mechanics of investing. An alternative approach that may better connect with participants is to encourage them to think about retirement in terms they can relate to, such as retirement lifestyle.

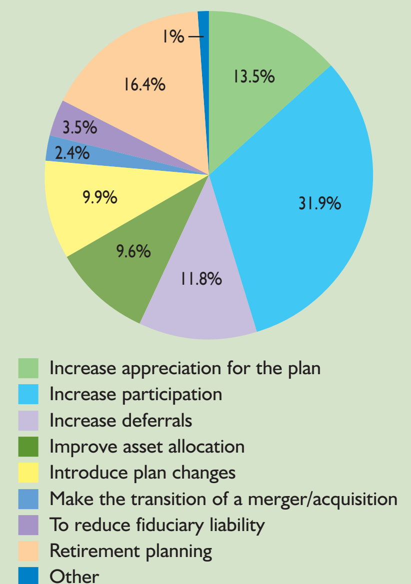
Using examples and providing calculators can help participants see how the money they're saving now translates into a potentially comfortable retirement lifestyle later. Future retirement savings of $500,000 may seem like more than enough to a young employee — until the employee understands what his or her current lifestyle may "cost" at retirement age and how much income a $500,000 nest egg might provide.

### Keep It Simple

Also, be sure to write all of your communication materials in plain, simple language and define terms participants might not know or may find confusing. You might be surprised at the number of participants who don't understand words you and your colleagues take for granted, such as bond, fund, or equities.

**Encourage participants to think about retirement in terms they can relate to, such as retirement lifestyle.**

### Why Sponsors Provide Participant Education




Source: *PSCA's 55th Annual Survey of Profit Sharing and 401(k) Plans*

# Understanding What It Means To Be a Plan Fiduciary

Many activities involved in operating a qualified retirement plan may make the person or entity performing those activities a plan fiduciary. As a plan sponsor, it's important for you and other fiduciaries of your plan to fully understand your responsibilities and the consequences of not fulfilling them.

**Who is a fiduciary?** With limited exceptions, under ERISA, a fiduciary is anyone who: exercises any discretionary authority or discretionary control over the management of the plan; exercises any authority or control with respect to management or disposition of the plan's assets; has any discretionary authority or discretionary responsibility over the administration of the plan; gives investment advice to the plan for a fee or other direct or indirect compensation or has the authority or responsibility to do so. Thus, fiduciaries may include, but aren't limited to, the plan's trustee, investment manager, administrator, administrative committee, and the plan sponsor.

**What are a fiduciary's duties?** A plan fiduciary must follow the plan documents (unless they're inconsistent with ERISA) and act solely in the interests of the plan participants and their beneficiaries and for the exclusive purpose of providing benefits to them. In addition, a plan fiduciary must act with the care, skill, prudence, and diligence that a prudent person would exercise under similar circumstances. Fiduciaries must also make sure the plan's investments are diversified (unless it's clearly prudent not to do so under the circumstances) and pay only reasonable plan expenses.

**Does the pension law prohibit any specific actions?** Yes, ERISA prohibits certain types of transactions between the plan and specified related parties (called "parties in interest"). As employer/plan sponsor/fiduciary, you are considered a party in interest to the plan. Other parties in interest include employees of the plan, any other fiduciaries (such as the plan's administrator, officer, trustee, or custodian) the plan's counsel, plan service providers, a direct or indirect owner of 50% or more of the sponsoring company, and relatives (as defined under ERISA) of 50%-plus owners.

**What transactions are prohibited?** Examples of prohibited transactions between the plan and a party in interest include selling, exchanging, or leasing property; lending money or extending credit; and furnishing goods, services, or facilities. The law contains exceptions that protect the plan in conducting necessary transactions that would otherwise be prohibited and for many dealings with financial institutions that are essential for the plan's ongoing operations. For example, a plan can hire a service provider, as long as the services are necessary to operate the plan and the contract or arrangement with the provider and the compensation paid for the services are reasonable. And plans may offer loans to participants as long as certain requirements are met.

**Are there any other prohibitions?** Fiduciaries also are prohibited from self-dealing. Various restrictions prevent a fiduciary from deriving personal gain from actions that involve the plan. Because of the complexity of the prohibited transaction rules, you should consult your plan's ERISA attorney for advice before engaging in transactions involving plan assets.

**What happens if a plan sponsor breaches its fiduciary duty?** Fiduciaries that breach their responsibilities may be personally liable to restore the plan to the condition it was in prior to the breach, including restoring any monetary losses and returning any profits made through the use of plan assets. A fiduciary also may be subject to excise taxes for violating the prohibited transaction rules.

The general information in this publication is not intended to be nor should it be treated as tax, legal, or accounting advice. Additional issues could exist that would affect the tax treatment of a specific transaction and, therefore, taxpayers should seek advice from an independent tax advisor based on their particular circumstances before acting on any information presented. This information is not intended to be nor can it be used by any taxpayer for the purpose of avoiding tax penalties.

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# RECENT DEVELOPMENTS In Benefit Plans

**New EPCRS.** The IRS has updated the Employee Plans Compliance Resolution System (EPCRS). Revenue Procedure 2013-12 contains a new procedure for 403(b) plan nonamenders, modifications to the Voluntary Correction Program (VCP) submission process, and a number of revisions, clarifications, additions, and new examples. The update generally allows a 403(b) plan sponsor to correct a failure in the same manner a qualified plan sponsor can. In addition, it requires new paperwork (IRS Forms 8950 and 8951) for VCP submissions and changes the method for correcting a matching contribution failure for an improperly excluded employee. The update is generally effective April 1, 2013.

**Disappearing Pension Plans.** As more employees consider the need for a steady retirement income payable for life, fewer employers are offering defined benefit pension plans that could provide that income. In 2011, these pension plans covered only 18% of private industry employees versus nearly twice that percentage (35%) in the early 1990s. Employers with at least 500 employees were most likely to have a pension plan.

**Asset Allocations and Economic Conditions.** 401(k) plan participants moved to more conservative asset allocations during the "Great Recession." According to the Center for Retirement Research at Boston College, the percentage of participants with current contributions invested in bonds increased dramatically from 38% in 2006 to 54.8% in 2009. Participants investing in mixed stock and bond funds also increased from 36.8% to 52.8%.

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