

employee plans news

PROTECTING RETIREMENT BENEFITS THROUGH EDUCATING CUSTOMERS

Internal Revenue Service
Tax Exempt and Government
Entities Division

A Publication of Employee Plans

Plan Amendments to Comply with New Automatic Rollover Provisions

Automatic rollover provisions under section 401(a)(31)(B) of the Code were added by section 657(a) of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). On September 28, 2004, the Department of Labor published final regulations (69 Fed. Reg. 58017) establishing a safe harbor under which a fiduciary of an employee pension benefit plan will be deemed to have satisfied the fiduciary duties under ERISA in connection with an automatic rollover of a mandatory distribution described in section 401(a)(31). The automatic rollover provisions under section 401(a)(31)(B) become effective on March 28, 2005. [Notice 2005-5](#) provided guidance relating to the implementation of automatic rollover provisions under section 401(a)(31)(B).

Notice 2005-5 provided that plans with mandatory distributions must be amended to include the automatic rollover provisions by the end of the first plan year ending on or after March 28, 2005. The notice also provided a sample amendment that could be adopted by plans to satisfy the requirements of section 401(a)(31)(B).

Many plan sponsors have indicated a wish to comply with section 401(a)(31)(B) by reducing the mandatory cash-out amount to \$1,000 (or \$200) or by completely eliminating mandatory distribution provisions. Notice 2005-5 noted that a plan sponsor could reduce the mandatory cash-out amount or eliminate a mandatory distribution provision without violating section 411(d)(6). Plan sponsors are reminded that, under Notice 2005-5, amounts attributable to rollover contributions are included in determining whether a participant's accrued benefit is less than \$1,000 for purposes of the automatic rollover requirement of section 401(a)(31) even though those amounts are not taken into account under section 411(a)(11) in determining whether mandatory distributions are permitted.

The IRS has received questions concerning when an amendment to reduce the cash-out amount or eliminate a mandatory distribution provision must be made for plans that choose this method of complying with section 401(a)(31)(B). Except as otherwise provided in Notice 2005-5 for governmental plans and certain non-electing church plans qualifying for a delayed compliance date and in the transition relief in Q&A-9, plans must operationally comply with the requirements of section 401(a)(31)(B) beginning on March 28, 2005. For plans (other than governmental plans and certain non-electing church plans), plan amendments reflecting the plan's method of compliance with the requirements must be adopted by the end of first plan year ending on or after March 28, 2005. Thus, if a plan sponsor chooses to comply with section 401(a)(31) by providing for a mandatory distribution only when the account balance is less than \$1,000, then an amendment reflecting that provision must be adopted by the end of the first plan year ending after March 28, 2005. Similarly, if a plan sponsor chooses to amend the plan by eliminating the mandatory cash-out provision completely, such amendment must be adopted by the end of the first plan year ending on or after March 28, 2005.

For example, assume Plan A operates using the calendar year for its plan year. Plan A must adopt the sample amendment that was provided in Notice 2005-5 (or a similar amendment providing for automatic rollovers of mandatory distributions) or an amendment reducing the mandatory cash-out amendment or eliminating the mandatory distribution by December 31, 2005. Plan B operates with a plan year beginning on April 1. Plan B must adopt the sample amendment that was provided in Notice 2005-5 (or a similar amendment providing for automatic rollovers of mandatory distributions) or an amendment reducing the mandatory cash-out amendment or eliminating the mandatory distribution by March 31, 2005.

A sponsor (or volume submitter/practitioner) of a pre-approved plan may amend the plan to reduce the mandatory cash out amount to any amount that is \$1,000 or less without causing the pre-approved plan to be treated as an individually designed plan.

Plan amendments complying with the new automatic rollover provisions by reducing the mandatory cash-out amount to \$1,000 or by completely eliminating mandatory distributions must be adopted by the end of the first plan year ending on or after March 28, 2005.