Have the Rules for Safe Harbor 401(k) Notices Changed?

Facts

My company sponsors a safe harbor 401(k) plan and every year my TPA sends me a reminder to distribute a notice to participants. It's not the biggest hassle but I've wondered if it's really necessary that this same information be provided to participants each and every year.

Question

I've heard rumors that the rules recently changed and that I can now take this annual notice off my to-do list. Is this true?

Answer

Sort of. Kind of. Maybe. Not exactly the resounding "yes" you were looking for, we know. Although "no more safe harbor notices" makes for a great soundbite, the devil is in the details as usual.

Let's start with the easy part. The rule change you referenced comes from the SECURE Act, which was signed into law in December 2019. However, for plans that provide a safe harbor matching contribution, the notice requirement remains the same as it was. That is, participants must receive notice within a reasonable time before the start of the plan year; the generally accepted definition of reasonable is 30 days before the start of the plan year. In addition to status quo on the notices, safe harbor matching plans remain subject to the same pre-SECURE Act implementation deadlines. *If you're wondering what your plan's options are for adding a safe harbor provision, we've got you covered here.*

Safe harbor non-elective plans are where things get a little more interesting. SECURE removes the requirement for plans that use the safe harbor non-elective contribution to provide annual notices to participants. We can hear you starting to cheer with this news but there's a caveat. If the plan also provides for a discretionary matching contribution, you must continue to distribute the safe harbor notice annually (just as you always have).

This "little" caveat really serves to take the air out of the balloon when it comes to this "change." Reason being, it has long been considered a "best practice" for plans that provide safe harbor nonelective contributions to also allow for a discretionary match. The primary reason has to do with plan forfeitures and suspense accounts. If those amounts are allocated as discretionary matching contributions, the allocation can be done in a manner that preserves a plan's top-heavy exemption; whereas, allocating as profit sharing contributions can mean:

1. losing your top-heavy exemption, and
2. ending up with a number of participants carrying small balances in your plan that just end up getting eaten up by fees.

Since neither of these is a desirable scenario, it's generally an advisable defensive maneuver to layer a discretionary match provision on top of the safe harbor nonelective provision. Unfortunately, though, that now means plan sponsors are stuck with the same annual notice as in the past.

Don't be too down about this news! We will continue to prepare your safe harbor notices for you each year, and with momentum building for greater flexibility in providing plan information electronically, distributing the notices should also become easier. Although we are not holding our breath…maybe, just maybe…we'll get some future relief when it comes to safe harbor non-elective notices for those plans that also offer a discretionary match. Until then, know your DWC team will be keeping watch and reading so that we're ready to share all the latest with you!

For more information, please visit the resource centers on our website for Safe Harbor 401(k) Plans and the SECURE Act.

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