FAQs About Required Notices

As we move into the final months of the year, employers should be aware of various notices they may have to provide to their 401(k) plan participants before year-end. Below we answer some questions about the notices most likely to be required.

When does the safe harbor plan notice have to be distributed? If your 401(k) plan has a safe harbor design, you must provide eligible employees with a written notice at least 30 days and not more than 90 days before the beginning of every new plan year. The notice must describe your plan's safe harbor provisions and the employees' rights and obligations under the plan. For employees who become eligible to join the plan after the start of the year, notice must be provided not more than 90 days before but no later than the date the employee becomes eligible.

The safe harbor notice can be a standalone notice or combined with the automatic enrollment notice and/or with the qualified default investment alternative notice. For employers that want to combine notices, the IRS has a sample notice available on its website (*www.irs.gov/pub/irs-tege/sample_notice.pdf*).

When do we need to give participants notice of our plan's automatic enrollment feature? You must provide employees with an automatic enrollment notice when they are hired, just before they become eligible to participate in your plan, and annually at least 30 days before the beginning of the plan year. The notice must explain the employee's right to decline automatic enrollment, to make changes to the election amount, and to opt out of the plan altogether. For example, the sample notice mentioned above meets the automatic enrollment notice requirements by explaining: (1) to whom a plan's automatic enrollment features apply, (2) what amounts will be deducted from an employee's compensation and contributed to the plan, (3) what other amounts the employer will contribute to the employee's plan account, (4) when the plan account will be vested, and (5) how the employee can change his or her contributions.

What if our plan uses a qualified default investment alternative (QDIA)? Plans that use a qualified default investment alternative (QDIA) for investments made on behalf of employees and plan beneficiaries who fail to direct the investment of their 401(k) plan account balances must provide a QDIA notice. The notice must reach employees and beneficiaries at least 30 days before (1) they are eligible to participate in the plan or (2) the first investment in a QDIA is made on their behalf *or* on or before the date of eligibility if they have the opportunity to withdraw investments from the QDIA within 90 days of the first deposit. They also must receive an annual QDIA notice within a reasonable period of at least 30 days before the beginning of each plan year.

The QDIA notice must explain the employee's rights under the plan to designate how his or her contributions will be invested and, if he or she doesn't make any investment election, how the assets will be invested. The notice also must describe the QDIA, including the investment objectives, risk and return characteristics, and any fees and expenses involved. And it must explain the employee's right to transfer assets invested in the QDIA to other plan investment alternatives, as well as where to obtain information about other plan investments. Employees must be given a reasonable period after receiving the notice and before the beginning of the plan year to make investment choices.
The notice may not be provided in a summary plan description or a summary of material modifications. However, employers can provide the required description of the QDIA in a separate, simultaneously furnished document, such as the default investment's prospectus.