THE EMPLOYEE BENEFIT
Forum
current issues in retirement benefit planning

The Paragon Alliance Group LLC
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Failure To Provide a Timely Safe Harbor Notice

SITUATION: We had a very busy fourth quarter last year and somehow missed sending out 401(k) plan safe harbor notices for 2015.

QUESTIONS: Can this mistake be corrected? And if so, how?

ANSWER: The purpose of the safe harbor notice is to make sure eligible employees understand how safe harbor contributions will be made and what the employees must do to receive them. When a safe harbor notice is not timely delivered, the appropriate correction method depends on how each individual is affected.

DISCUSSION: Generally, safe harbor notices must be sent to employees at least 30 days but no more than 90 days before the beginning of a plan year. Newly eligible employees should receive the notice on or before their eligibility date (no earlier than 90 days before). The safe harbor notice provides important information about employer contributions, deferrals and elections, and vesting and withdrawal provisions, along with other details.

Here are two scenarios that illustrate how the lack of a timely safe harbor notice might affect an employee's plan participation with suggested corrections for both.

Scenario 1: Ann is an eligible employee who is not making elective deferrals. Ann did not receive the safe harbor notice or any other information about the plan. Ann was not informed of her ability to make elective contributions when she was eligible and should be treated as an *excluded employee* for correction purposes. As such, she should receive a corrective employer contribution.

Scenario 2: Art is currently making elective deferrals. The plan's failure to provide him with a safe harbor notice didn't prevent him from making a timely election regarding his elective deferrals. In this instance, the problem is an administrative glitch that can be fixed by making procedural changes. No corrective contribution is required for Art.

Failure to provide timely safe harbor notices is a fairly common operational error that can be corrected using the IRS's Self-Correction Program (SCP) or Voluntary Correction Program (VCP). To make sure it doesn't happen again, employers should review the procedures they have in place for issuing notices. The IRS suggests that employers create a calendar that includes the due dates for sending notices and completion dates for important tasks.

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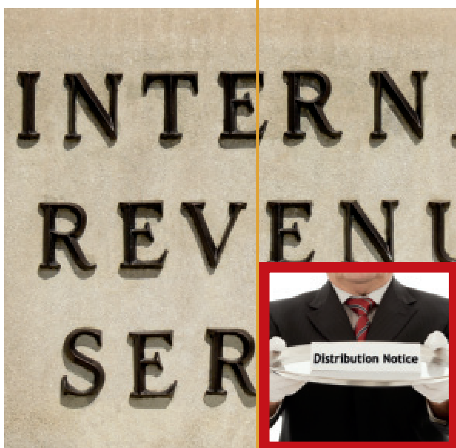

New Model Distribution Notice

401(k) and various other retirement plans must provide recipients of eligible rollover distributions with a written notice explaining the available distribution options and the income-tax consequences of each. The IRS recently revised its model distribution notices (one for payments from traditional non-Roth accounts and the other for payments from designated Roth accounts) to update them for changes in the law and to make certain other clarifying changes.

The updated model explanations:

- Discuss rollovers of eligible distributions to multiple retirement accounts when those distributions include both after-tax and pretax amounts
- Address rollovers of plan distributions to a designated Roth account in the same plan
- Clarify that payments of certain automatic enrollment contributions requested to be withdrawn within 90 days of a participant's first contribution are ineligible for rollover
- Explain that amounts distributed to pay health insurance premiums after receiving unemployment compensation for 12 consecutive weeks are excepted from the 10% early withdrawal tax penalty

Is Your Plan Competitive?

A recent survey of profit sharing and 401(k) plans by the Plan Sponsor Council of America* identified trends in plan design and their popularity among plan sponsors. The following survey highlights can help you see how your retirement plan measures up against other retirement plans.

Company Contributions

- Companies contributed an average of 4.7% of pay to their plans in 2013, a jump from 4.5% in 2012 and 4.1% in 2011.
- In the 80.1% of plans that provide for a match on employee contributions, 98.1% of the employers made matching contributions in 2013.

Investments

- The average number of funds offered by plans in 2013 was 19, unchanged from the prior two years.
- Two thirds (66.6%) of plans offered a target date fund.
- Over one third (37.2%) of plans offered an emerging market fund.
- Less than 10% of plans offered a lifetime income option to participants.

Participant Contributions

- Almost 89% of eligible employees had an account balance.
- The percentage of eligible employees who contributed to their plan in 2013 stood at 80.3%.
- The average account balance increased by 18.2% compared to 2012.
- Over one fifth (21.8%) of plans provided a suggested saving rate to employees, with 18.8% of plans suggesting 6% and 46.5% suggesting a rate higher than 6%.

Automatic Enrollment

- Over half (50.2%) of all plans had an automatic enrollment feature.
- Plans with an automatic enrollment feature had participation rates that were about 10 percentage points higher than plans without this feature.

* *57th Annual Survey of Profit Sharing and 401(k) Plans*, Plan Sponsor Council of America, 2014

The average number of funds offered by plans in 2013 was 19 . . . .

Record Retention — The "Paper" Trail

As plan sponsors are well aware, the pension law (ERISA) includes specific reporting and disclosure obligations with respect to qualified retirement plans. A lesser known fact is that ERISA also has specific requirements regarding the retention of plan records. Below we answer questions you and other plan sponsors may have about retaining records and the importance of a record retention policy.

Why would we need a record retention policy? A retirement plan, by its very nature, generates a large amount of documentation. Some records should be retained indefinitely. Others may be disposed of in time. Having an established document retention system that allows plan records to be reviewed, updated, and preserved or disposed of in an organized fashion fosters good administration and helps the plan comply with pension law. Such a system can also make required documents readily accessible for IRS review, if requested.

Who is responsible for retaining plan records? Under ERISA, the plan administrator — which is often the plan sponsor — is ultimately responsible for maintaining the plan's records.

What records do we need to keep? The list is long. First, you need to keep all records that support the information included in your plan's Form 5500 filings and other reports and disclosures. These supporting documents essentially include whatever records a government auditor might need to verify the accuracy of the original report or disclosure. You also need to keep records used to determine eligibility for plan participation and any plan benefits to which employees and beneficiaries may be entitled. Records include:

- The original signed and dated plan document, plus all original signed and dated plan amendments
- Employee communications including Summary Plan Descriptions, Summaries of Material Modifications, and anything else describing the plan that you provide to plan participants
- The determination, advisory, or opinion letter for the plan
- All financial reports
- Copies of Form 5500
- Payroll records used to determine eligibility and contributions, including details supporting any exclusions from participation
- Evidence of the plan's fidelity bond
- Documentation supporting the trust's ownership of the plan's assets
- Documents relating to plan loans, withdrawals, and distributions
- Nondiscrimination and coverage test results
- Employee personal information, such as name, Social Security number, date of birth, and marital/family status
- Employment history, including hire, termination, and rehire dates (as applicable) and termination details
- Officer and ownership history and familial relationships
- Election forms for deferral amount, investment direction, beneficiary designation, and distribution request
- Transactional history of contributions and distributions

How long do we need to keep the records? Generally, you should keep records used for IRS and DOL filings for *at least* six years after the filing date. Retain records relevant to the determination of benefit entitlement indefinitely (basically, permanently).

The general information in this publication is not intended to be nor should it be treated as tax, legal, investment, accounting, or other professional advice. Before making any decision or taking any action, you should consult a qualified professional advisor who has been provided with all pertinent facts relevant to your particular situation.

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Section 125 Cafeteria Plans	Governmental Filings	Strategic Planning

RECENT DEVELOPMENTS In Benefit Plans

Use of Target Date Funds. Recently hired employees are increasingly investing in balanced funds, such as target date funds, in their 401(k) plans. According to a recent study by the Employee Benefit Research Institute and the Investment Company Institute, 51% of plan participants who were employed for two or fewer years held target date funds in their 401(k) accounts. On the other hand, only 25% of participants with more than 30 years of tenure held target date funds.

Index Funds Included in Many Plans' Investment Lineups. A study by the Investment Company Institute and BrightScope found that nearly 85% of 401(k) plans offered index funds in 2012, an increase from 77.1% in 2006. Index funds held nearly a quarter of 401(k) plan assets.

Do Catch-up Provisions Increase Deferrals? In response to higher deferral limits, 401(k) participants age 50 and older who are constrained by the maximum deferral level increase their contributions by about $540 to $1,020 more than similar workers under age 50 increase their contributions. This is according to a working paper from the Center for Retirement Research at Boston College. The paper observed that maximum contributors tend to be high earners.

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