Retirement Guidance

LOCKTON RETIREMENT SERVICES

IRS EASES PROHIBITION ON MIDYEAR SAFE HARBOR PLAN AMENDMENTS

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Historically, safe harbor 401(k) plans proved too rigid and inflexible for plan sponsors needing to make even the most minor amendments. The general rule prevents safe harbor plans from being amended after the plan year starts, and any amendments made after then may only be effective for the next plan year. Presumably the IRS believed that the required safe harbor notice, provided 30-90 days before the beginning of the plan year, is a promise to employees making deferral decisions that the plan will not change. Employers involved in mergers and acquisitions, or those looking to expand plan coverage, found themselves stuck until the next plan year. Realizing the impracticability of this rigid stance, the IRS recently released guidance that would provide well needed flexibility.

Requirements for Making a Midyear Amendment

IRS Notice 2016-16, issued on January 29, provides guidance on how some midyear changes to safe harbor plans, under certain restrictions, would not violate the nondiscrimination testing protection safe harbor plans enjoy. To avoid violations, midyear changes must:

- Be disclosed to participants with a description of the midyear change and its effective date.
- An updated notice must be provided to every participant entitled to receive the safe harbor annual notice 30 to 90 days before the change's effective date.
- No notice is required, however, if the required midyear change information and the effective date were provided in the annual safe harbor notice.
- Each affected employee must be given a 30-day window after receipt of the updated notice and before the effective date of the amendment to make deferral election changes.

Midyear Amendments That Remain Prohibited

The IRS is not opening the door to all midyear amendments, though. The IRS carved out four midyear changes that plans cannot make unless they are specifically required by law or a court decision. These prohibited changes are:

- Increases in the number of completed years of service required for an employee to become vested;
- Reductions in, or other narrowing of, the group of employees eligible to get safe harbor contributions;
- Changing from a traditional safe harbor plan to a Qualified Automatic Contribution Arrangement (QACA) safe harbor; and
- Modification to the formula used to determine matching contributions if it increases matching contribution amounts, or one that permits discretionary matching contributions.

Notice 2016-16 is effective for midyear changes made on or after January 29, 2016, thus employers can immediately take advantage.

LOCKTON'S TAKE

It is not uncommon for employers to acquire new groups of employees and then find no way to immediately include them as participants in the safe harbor plan, sometimes leaving entire companies without retirement benefits. This, along with the inability to make even minor routine changes, left many employers frustrated and angry. After missing the opportunity to address this with its 2013 guidance, the IRS has finally recognized plan sponsors' struggle. The IRS message is clear: Employers can move forward with many midyear amendments and preserve their nondiscrimination testing safe harbor.

If you have any questions about your Safe Harbor plan, amendments or corrections, please contact your Lockton Retirement Services Team.