HICKS NOTES

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IRS PROVIDES GUIDANCE ON MID-YEAR CHANGES TO SAFE HARBOR PLANS

In IRS Notice 2016-16, the IRS has provided guidance that specifies permissible mid-year amendments to safe harbor plans and the notice requirements for changes made after January 29, 2016. This notice outlines the changes allowed provided the participants are given a new notice and the ability to change their 401(k) deferral elections. This guidance is expected to give employers more flexibility to change certain parts of their plan mid-year and not disrupt their safe harbor status. These rules apply to 401(k) and 403(b) plans.

As usual, the rules allow for more generous benefits to be given in a plan year, but do not allow for cutbacks without first funding the safe harbor contributions to the change date.

The following changes have existing rules that are NOT included in these regulations and still have to follow the old regulations.

1. Amending a plan to a short plan year.
2. Adopting a safe harbor plan after the beginning of the plan year (permitted under 1.401(k)-3(f)).
3. Reduction or suspension of safe harbor contributions or changes to a non-safe harbor plan status (1.401(k)-3(g) and 1.401(k)-1(m)-3(h)).

Generally, these existing rules require the plan sponsor to fund the safe harbor contributions up to the date of the amendment. Then, the plan must be tested under the non-safe harbor ADP, ACP and top heavy rules for the year in which the change has occurred.

Notice 2016-16 specifically outlines four prohibited mid-year changes unless required by a change in the law or court decision. These are:

1. A change to increase the number of years of service required for a participant to become vested under a QACA (Qualified Automatic Contribution Arrangement).
2. A change to reduce the number of employees eligible to receive a safe harbor contribution.
3. A change to the type of safe harbor plan; going from a 401(k) to a QACA.
4. A change to increase matching contributions, add discretionary contributions or change the definition of compensation used to determine matching contributions, unless (i) the amendment is adopted at least three months prior to the end of the plan year, (ii) is retroactive for the entire plan year, and (iii) the updated safe harbor notice and election opportunity was provided.

Since these all are considered a cutback of one form or another, they are not allowed under the new rules.

The Notice also discusses seven examples of mid-year changes including:

1. An increase of safe harbor non-elective contributions from 3% to 4%.
2. A reduction of safe harbor non-elective contributions from 4% to 3%.
3. Increasing a match from 4% to 5% retroactive to January 1st of the plan year. (This one I think we will see if employers are having a good year and want to increase their match mid-year.)
4. Amendment allowing age 59½ in-service withdrawals.
5. A QACA 401(k) changing its default investment.
6. An employer changes traditional 401(k) safe harbor plan to QACA safe harbor plan.
7. Changing entry dates from monthly to quarterly or similar entry date for employees who are not already eligible to participate in the safe harbor plan.

All changes require a notice distributed to participants giving them a reasonable time, typically 30 days, to change their 401(k) election.

In conclusion, these rules continue to evolve and change. By using a competent professional who is proactively monitoring your clients' plans and their design needs, your clients may be able to take advantage of these new rules to help their plan fulfill its designed purposes.

SPRING BRINGS NEW DEADLINES

We have updated our compliance calendar for 2016. Every month has a requirement to review for planning and compliance purposes. The deadlines between now and April 1st are shown below.

February 29

- File Forms 1099-R with IRS (if paper) to report participant distributions made during 2015

March 15

- Process corrective distributions for failed 2015 ADP/ACP tests without 10% excise tax.
- File corporate tax returns, extension, and/or contribution deadline for deductibility (without extension).

March 31

- Electronic Filing of Forms 1099-R with IRS to report participant distributions made during 2015.

April 1

- Required minimum distribution (RMD) beginning date for participants attaining age 70½ during 2015.

To view the entire calendar, click here.