

CASE OF THE WEEK

w/o 10.23.2011 401(k) Plan Conversion to Safe Harbor

Our ERISA consultants on the Columbia Management Learning Center Resource Desk regularly receive calls from financial advisors on a broad array of technical topics related to IRAs and qualified retirement plans. For example, we routinely guide Columbia Management's financial advisor partners through the rules related to establishing safe harbor 401(k) plans.

A recent call with an independent advisor in Massachusetts is representative of a common inquiry regarding converting an existing 401(k) plan to a safe harbor design. The advisor asked: **"My client, who maintains a standard 401(k) plan on a calendar year basis, has chronic nondiscrimination testing issues and is considering converting his plan to a safe harbor design. What are his options at this point?"**

Highlights of Recommendations

- Plan sponsors with existing standard 401(k) plans may only amend their plans to a safe harbor design on a prospective basis, meaning as of the beginning of the next plan year; no mid-year conversions are permitted. (There is one exception to this rule, however, that applies if the sponsor lays the appropriate groundwork, which will be explained in detail later).
- There are two ways your client could have a safe harbor 401(k) plan for 2012. He could
 - 1) Execute a safe-harbor plan amendment now (effective 01/01/2012) and distribute the proper participant notices between 30 and 90 days before the beginning of the plan year (i.e., no later than December 2, 2011, for a calendar year plan); or
 - 2) Provide participants with a "maybe" notice (explained next) and decide sometime in 2012 to have the plan be a safe harbor plan.
- If your client wants the flexibility to add a safe harbor plan design to his 401(k) plan sometime in 2012, he can provide a notice (i.e., the maybe notice) to plan participants between 30 and 90 days before the beginning of the plan year (i.e., no later than December 2, 2011 for a calendar year plan), that the sponsor *may* provide a 3% nonelective safe harbor contribution in 2012. Then, your client has the flexibility to decide up until 30 days before the end of 2012 (i.e., by December 1, 2012) to commit to the 3% safe harbor nonelective contribution and provide a supplemental notice to participants that he will be making the safe harbor contribution for 2012.

Conclusion

Amendments to implement safe harbor plan designs can be complicated. The above example is just one scenario involving an existing 401(k) plan adding a standard safe harbor design. Financial advisors who understand the nuances of the safe harbor set-up rules set themselves apart from the average advisor and, thereby, win more clients and retirement plan business. As always, the Columbia Management Learning Center is available to help.