

## CASE OF THE WEEK

w/o 10.30.2011 December 2 Plan Participant Notices

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 required notices for plan participants.

A recent call with an independent advisor in Colorado is representative of a common inquiry regarding important plan notices due before year end. The advisor asked: **"I have several clients who maintain 401(k) plans for their businesses. What notices are required to be given to participants before year-end and what are their deadlines?"**

### Highlights of Recommendations

- There are several plan-related participant notices that plan sponsors must distribute to participants at least 30 days before the beginning of the next plan year (i.e., no later than December 2 for a calendar year plan), including notices for
  - ✓ Qualified default investment alternatives (QDIAs);
  - ✓ Various automatic contribution arrangements; and
  - ✓ Safe harbor plans.
- QDIA notices apply to plans that invest participant contributions and account balances in QDIAs, and sponsors of these plans must provide them annually to participants no more than 90 and at least 30 days before the beginning of each plan year.
- Plans that include eligible automatic contribution arrangements (EACAs) and qualified automatic contribution arrangements (QACAs, which provide a safe harbor for nondiscrimination testing) require plan sponsors to provide annual notices to participants no more than 90 and at least 30 days before the beginning of each plan year. Plans with Automatic Contribution Arrangements (ACAs) must provide annual participant notices within "a reasonable period of time before the beginning of the plan year." In light of the guidance on EACA and QACA notice timing, most apply the no more than 90/no less than 30 day timeframe.
- 401(k) plans that have adopted safe harbor provisions must provide annual participant notices no more than 90 and at least 30 days before the beginning of the plan year. Those plan sponsors who want to *consider* adding safe harbor provisions for the next plan year are required to give a "maybe" notice (indicating that they might provide a 3% nonelective contribution during the next plan year). The participant notice is required no more than 90 and at least 30 days before the beginning of the plan year. Then, if a plan sponsor decides to give the 3% nonelective safe harbor contribution for the year, he or she must distribute a supplemental notice to participants at least 30 days before the end of the plan year.
- Note: The notices discussed above are in addition to applicable initial notices.

### Conclusion

Annual participant notices are a fact of life. Financial advisors who understand what the various notices are and when they are required 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.