

LEGAL UPDATES

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# SECURE Act: Relaxed Requirements for Safe Harbor 401(k) Plans

## Key point

The Setting Every Community Up for Retirement Enhancement (SECURE) Act eases some of the regulation of 401(k) safe harbor plans (which are exempt from certain nondiscrimination testing) to provide employer flexibility and make those plans more attractive.

On December 20, 2019, the SECURE Act was signed into law, generally effective as of January 1, 2020. In this Alert, our attorneys address changes to the rules applicable to 401(k) safe harbor plans. Previously, we described the changes to minimum required distributions and provided a general overview of some of the key SECURE Act provisions affecting individuals and small business owners. Additionally, this week we outlined the new part-time eligibility rules for 401(k) plans.

There are two types of safe harbor plans: (1) nonelective contribution plans, where the employer makes a nonelective contribution equal to at least 3% of compensation for each eligible participant, and (2) matching contribution plans, where the employer makes a specified level of matching contribution for each eligible participant.

## How does the SECURE Act affect the Annual Safe Harbor Notice Requirements?

Prior to the SECURE Act, safe harbor plans had to distribute an annual notice describing the safe harbor contributions to participants before the beginning of each plan year. The SECURE Act eliminates this requirement for nonelective contribution plans; matching contribution plans still must provide this annual notice. However, nonelective plans that utilize certain automatic

contribution features – i.e., a “qualified default investment alternative” – will still need to provide annual notices before the beginning of each plan year. Also, it is not clear whether nonelective safe harbor plans that also provide matching contributions will be exempt from the requirement to distribute an annual notice.

### **How does the SECURE Act affect the timing of adoption of nonelective safe harbor contributions?**

Under pre-SECURE Act law, the employer had to adopt safe harbor contribution provisions prior to the beginning of the plan year (i.e., a safe harbor contribution could not be added midyear). The SECURE Act allows the employer to amend the plan to adopt the 3% nonelective contribution for the year until 30 days prior to the end of the plan year (December 1 for calendar-year plans). In addition, the employer can amend the plan to provide for a safe harbor nonelective contribution for a plan year as late as the end of the following plan year – but in that case, the employer must contribute 4% (rather than 3%) of compensation for each eligible participant. These provisions allow employers to wait and see if nondiscrimination testing is passed for a year before deciding whether to refund elective deferrals (and forfeit matching contributions) or make a 4% nonelective contribution. Again, no changes were made to the matching contribution requirement.

### **How does the SECURE Act impact QACA automatic contributions?**

Finally, prior to the SECURE Act, so-called “qualified automatic contribution arrangement” (QACA) safe harbor plans could not require an automatic contribution greater than 10%. These QACA plans require a minimum automatic salary deferral contribution and automatic annual escalation of salary deferral contributions. In exchange, the required employer contribution is lower than for traditional safe harbor plans and the plan is permitted to vest the match over two years. The SECURE Act permits the employer to raise the automatic contribution limit to 15%; however, the limit remains 10% for the participant’s first year.

### **When do we need to amend our 401(k) plan?**

Although the general deadline to amend retirement plans to bring them into compliance with the SECURE Act is the last day of the first plan year beginning on or after January 1, 2022 (December 31, 2022 for calendar-year plans), employers that add a nonelective safe harbor contribution or change the maximum automatic contribution will need to adopt the amendment by the end of the plan year that the amendment goes into effect (or the end of the following plan year for the 4% nonelective contribution).

### **Contact us**

If you have questions about the new SECURE Act safe harbor contribution rules and how they impact your business or you require an assessment of your employee benefits programs, please contact Patricia Martin, Molly Callender Hobbs or any member of our Employee Benefits & Executive Compensation team. We are closely following the SECURE Act and will apprise you of key developments.