

Employee Benefits Advisory

November 8, 2010

2010 Year-End Reminders for Qualified Defined Contribution Plan Sponsors

As the end of 2010 approaches, we wanted to remind sponsors of qualified defined contribution plans, such as 401(k) plans and profit sharing plans, of certain year-end disclosures that may be required to be provided by December 1, 2010 (for calendar year plans). The list provided below is not intended to be exhaustive. Please contact one of our experienced Employee Benefits attorneys to answer any questions you may have.

Notice	Description of Notice	Distribution Requirements	Deadline for Delivering Notice
Safe Harbor 401(k) Plan Annual Notice	<ul style="list-style-type: none"> Provides information about the features of the safe harbor 401(k) plan including, among other things, the safe harbor nonelective contribution or matching contribution formula under the plan. 	<ul style="list-style-type: none"> 401(k) plans containing safe harbor 401(k) plan provisions. Deliver to participants and eligible employees. 	<ul style="list-style-type: none"> At least 30 days (but no earlier than 90 days) before the beginning of each plan year.
Qualified Default Investment Alternative (QDIA) Notice	<ul style="list-style-type: none"> Provides an explanation of QDIA rights and obligations including, among other things, circumstances in which an account will be 	<ul style="list-style-type: none"> Participant-directed defined contribution plans designed to comply with QDIA requirements. Deliver to participants and eligible employees. 	<ul style="list-style-type: none"> At least 30 days before the beginning of each plan year.

	invested in the QDIA and rights to direct QDIA invested accounts to other investments.		
401(k) Automatic Enrollment Notice	<ul style="list-style-type: none"> Provides information about automatic enrollment including, among other things, deferrals that will be made for a participant absent an affirmative election and investment of contributions absent an investment election. 	<ul style="list-style-type: none"> 401(k) plans with automatic enrollment provisions. Deliver to participants and eligible employees. 	<ul style="list-style-type: none"> At least 30 days (but no earlier than 90 days) before the beginning of each plan year.
Employer Stock Diversification Notice	<ul style="list-style-type: none"> Provides information about rights to divest amounts invested in employer stock and reinvest these amounts in other investment options (called diversification rights). 	<ul style="list-style-type: none"> Defined contribution plans that hold publicly traded employer stock. Deliver to participants. 	<ul style="list-style-type: none"> No later than 30 days before the first date on which diversification rights can be exercised.¹

¹ Since participants can often exercise employer stock diversification rights immediately, it is generally recommended that this notice be provided at least 30 days before the beginning of each plan year. In addition, this notice should also be posted to the plan sponsor's website.

How to Provide the Required Notice(s)

You can combine two or more of the above notices into a single document if you time delivery of the combined notice appropriately. For example, you could deliver a combined annual safe harbor 401(k), automatic enrollment and QDIA notice during November as part of your open enrollment process (assuming the plan uses a calendar year plan year). Combining the notices into one document may help you to avoid an administratively burdensome and potentially costly separate mailing for each notice. The above notices may also be distributed electronically, subject to certain IRS and/or DOL standards. Please keep in mind that you can not satisfy the above notice requirements in an SPD (even if you distribute the SPD annually).

Consequences of Missing the Applicable Notice Deadline

The IRS generally takes the position that failure to timely provide an annual safe harbor 401(k) plan notice for a given plan year causes the plan to lose its status as a safe harbor 401(k) plan for that plan year. This loss of status means that the plan must satisfy the nondiscrimination testing requirements from which it would otherwise be exempt for that plan year (e.g., ADP and/or ACP tests). There may be other consequences, including penalties, for failure to provide the annual automatic enrollment notice. Failure to timely provide the QDIA notice results in the loss of the plan sponsor's, plan administrator's, or investment committee members' fiduciary protection for investment losses for amounts defaulted to the QDIA during the time period for which the notice was not provided. Fiduciary protection is restored only for amounts invested in the QDIA after you meet the notice requirements.

With a team of attorneys who are highly experienced in the employee benefits field, MLA can provide answers to questions about these year-end notices.

CONTACTS

If you have questions or need assistance complying with these requirements, please contact any of the McKenna Long & Aldridge LLP attorneys or public policy advisors with whom you regularly work. You may also contact:

Ann Murray
404.527.4940

Sam Choy
404.527.8561

Leah Singleton
404.527.4649

Stacey Stewart
404.527.8383

Nell Czura Schiller
404.527.4151

© Copyright 2010, McKenna Long & Aldridge LLP, 303 Peachtree Street, Suite 5300, Atlanta, GA 30308

About McKenna Long & Aldridge LLP

McKenna Long & Aldridge LLP is an international law firm with 475 attorneys and public policy advisors. The firm provides business solutions in the areas of complex litigation, corporate, environmental, energy, and climate change, finance, government contracts, health care, intellectual property and technology, international law, public policy and regulatory affairs, and real estate. To learn more about the firm and its services, log on to <http://www.mckennalong.com>.

Subscription Info

If you would like to be added or removed from this mailing list, please email information@mckennalong.com.

*This **Advisory** is for informational purposes only and does not constitute specific legal advice or opinions. Such advice and opinions are provided by the firm only upon engagement with respect to specific factual situations. This communication is considered Attorney Advertising.