



TaxNewsFlash

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Notice 2020-86: Q&A guidance on safe harbor retirement plans

The IRS today released an advance version of Notice 2020-86 that provides guidance in a “question and answer” (Q&A) format regarding certain provisions of the “Setting Every Community Up for Retirement Enhancement Act of 2019” (SECURE Act) with respect to “safe harbor plans” under sections 401(k) and 403(b).

Background

The SECURE Act is Division O of the “The Further Consolidated Appropriations Act, 2020,” a government funding bill, and the measures that are the subject of today’s notice concern SECURE Act provisions that:

- Increased to 15% (from 10%) the maximum automatic elective deferral under an automatic enrollment safe harbor plan
- Eliminated certain safe harbor notice requirements for plans that provide safe harbor nonelective contributions
- Added new provisions for the retroactive adoption of safe harbor status for those plans

Read a [KPMG report \(December 2019\)](#) [PDF 1 MB] about the SECURE Act measures.

For these purposes, a “safe harbor 401(k) plan” is similar to a traditional 401(k) plan, but is structured in such a way that certain compliance testing can be avoided. Among other things, a safe harbor 401(k) plan must provide for employer contributions that are fully vested when made. These contributions may be employer-matching contributions, limited to employees who defer, or employer contributions made on behalf of all eligible employees, regardless of whether they make elective deferrals.

Notice 2020-86

The 13 Q&As in [Notice 2020-86](#) [PDF 181 KB] are intended to assist small businesses and other employers that maintain safe harbor plans to comply with the SECURE Act measures. The IRS notice clarifies that it is not intended to provide “comprehensive guidance” regarding these SECURE Act measures, but is intended to assist taxpayers with regard to certain issues. The IRS and

Treasury Department intend to issue regulations as guidance to implement these measures of the SECURE Act, and comments are requested by February 8, 2021.

Read a related IRS release—[IR-2020-273](#)

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