

IRS Issues Safe Harbor Plan Guidance on Sections 102 and 103 of the SECURE Act

December 15, 2020

The IRS recently issued Notice 2020-86 (the “**Notice**”), which provides guidance through a series of questions and answers with respect to Sections 102 and 103 of the Setting Every Community Up for Retirement Enhancement Act of 2019 (the “**SECURE Act**”). Section 102 of the SECURE Act increases the maximum automatic elective deferral percentage for automatic enrollment safe harbor plans from 10% to 15% (provided, however, that the maximum automatic deferral rate remains 10% during the initial period of automatic elective contributions). Notably, the Notice clarifies that a QACA safe harbor 401(k) plan is not required to increase the maximum percentage, so long as the percentage is (i) applied uniformly, (ii) does not exceed 15% (or 10% during the initial period of automatic elective contributions), and (iii) satisfies certain other minimum percentage requirements as described in Code Section 401(k)(13)(C)(iii). The Notice also clarifies that, if a plan incorporates the maximum qualified percentage of compensation by reference to the Code and wishes to continue applying the maximum qualified percentage of 10%, the plan should be amended on or before the plan amendment deadline as specified in Section 601(b) of the SECURE Act to provide that the plan’s maximum qualified percentage is 10%, retroactive to the first day of the first plan year beginning after December 31, 2019. Section 103 of the SECURE Act eliminates certain safe harbor notice requirements for certain plans that provide for safe harbor nonelective contributions and adds new provisions for the retroactive adoption of safe harbor status for those plans. In particular, the Notice clarifies that Section 103 of the SECURE Act does not eliminate safe harbor notice requirements for traditional safe harbor 401(m) plans. The Notice, including the full series of questions and answers, is available [here](#).