

Suspending Safe Harbor Contributions Mid-Year: A Primer for Employers

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Qualified retirement plans are generally subject to nondiscrimination testing to prevent highly compensated employees from receiving a disproportionate share of the benefits and tax-savings associated with qualified retirement plans. A qualified retirement plan with a safe harbor plan design can be deemed to satisfy certain nondiscrimination testing requirements and avoid nondiscrimination testing by making uniform prescribed

matching or non-elective contributions to plan participant accounts. Safe harbor plans are subject to additional administrative requirements, including an annual notice requirement with specific disclosures.

Suspending Safe Harbor Contributions

Generally, safe harbor contributions must be in effect for the entire plan year. Safe harbor 401(k) plan sponsors are permitted to suspend safe harbor contributions mid-year if (1) the company is operating at an economic loss for the plan year, or (2) the mandatory safe harbor notice distributed prior to the beginning of the plan year included a statement that safe harbor contributions could be eliminated mid-year.

For a safe harbor plan to suspend safe harbor contributions mid-year, [IRS Notice 2016-16](#) provides that the plan sponsor must:

- provide a supplemental notice to employees at least 30 days before the effective date of the suspension of contributions that explains that contributions will be suspended and that participants may adjust their plan contribution deferral election amounts;
- give plan participants a reasonable opportunity to change their election amounts prior to the suspension of employer safe harbor contributions;
- amend the plan document no later than the date that the change will become effective; and
- make contributions for any amounts promised prior to the effective date of the amendment.

Another option to consider, depending on plan language, would be for the plan sponsor to suspend safe harbor contributions for only highly compensated employees, allowing the plan to retain safe harbor status.

Consequences of Suspending Safe Harbor Contributions

Plans that suspend safe harbor contributions will be subject to average deferral percentage and average contribution percentage nondiscrimination testing for the entire plan year in which the contributions are suspended. The current year testing method must be used, and if the plan fails nondiscrimination testing, the plan sponsor is required to make qualified non-elective contributions to all non-highly compensated employees or remove excess contributions from the accounts of highly compensated employees to the extent required to pass the tests. Plans that depend on safe harbor contributions for an exemption to the top-heavy testing requirement also are required to pass top-heavy testing.

Resumption of Employer Contributions

Once the safe harbor matching contribution is discontinued for the year, the plan sponsor may not reinstate the safe harbor match contribution for the current plan year. Safe harbor status is lost for the entire year. This consequence makes sense because participants might reduce their elective deferral amounts when they receive the required notice informing them that the safe harbor match was suspended. If the match were later reinstated, it would be too late for the participant to recapture the missed match.

By contrast, the [Setting Every Community Up for Retirement \(SECURE\) Act](#) eliminates the advance notice requirements for providing non-elective safe harbor contributions (which are not linked to the level of contributions being made by the participant). This change allows an employer to adopt a 3 percent non-elective contribution for the year up to 30 days prior to the end of the plan year, or a 4 percent non-elective contribution for the year as late as the end of the following plan year. Unless later guidance provides otherwise, these new rules could allow a plan sponsor that suspends a non-elective safe harbor contribution to choose to reinstate it within that same plan year by the above deadlines. Note that the rules do not permit a plan sponsor that suspends a safe harbor matching contribution mid-year to implement retroactively a non-elective safe harbor contribution for the same year.

When the plan sponsor amends the plan to eliminate the safe harbor match, the plan sponsor may also want to consider adding a provision allowing for a discretionary matching contribution. That provision would allow the plan sponsor to later choose to provide a matching contribution without the need to make another amendment to the plan document this year and would give the employer until the 2020 filing extension deadline of the employer's 2020 tax return (September 15, 2021, for calendar year partnerships and S corporations; October 15, 2021, for calendar year corporations) to make a final decision as to whether to make the discretionary matching contribution and the amount of the contribution.

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