

Employee Plans News

Issue 2013-9, December 9, 2013

Safe harbor 401(k) final regulations change the circumstances under which you can [reduce or suspend](#) safe harbor contributions during the plan year

Saver's credit gives low-and-moderate-income workers a [tax credit](#) for their contributions to IRAs and employer-sponsored retirement plans

Mark your calendar - don't miss these retirement plan [deadlines](#)

Internal controls protect your retirement plan - having [formal procedures](#) in place to review your plan will help you find and prevent errors

Form 8955-SSA filers: both FIRE (Filing Information Returns Electronically) and FIRE Test will be offline from Dec. 13, 2013 – Jan. 20, 2014, for yearly updates – you can file:

- [Form 8955-SSA](#) on paper at any time,
- electronically, but must be prior to Dec. 13, or
- an extension to not miss the filing deadline and then file electronically after Jan. 20

The IRS Advisory Council's (IRSAC) [annual report](#) makes recommendations on a wide range of tax administration matters

Reducing or Suspending Safe Harbor 401(k) Matching and Nonelective Contributions Midyear

Final Treasury Regulations [T.D. 9641](#) (generally effective November 15, 2013):

- allow you to reduce or suspend 401(k) plan safe harbor nonelective contributions midyear if you
 - are “operating at an economic loss,” or
 - have previously given a reduction/suspension notice to participants;
- beginning with plan years after 2014, permit you to suspend or reduce 401(k) safe harbor matching contributions midyear only under the same circumstances that apply to safe harbor nonelective contributions; and
- authorize the IRS to publish any other midyear changes that may be made to 401(k) safe harbor plans in future guidance published in the Internal Revenue Bulletin.

When you may reduce or suspend safe harbor contributions midyear

Nonelective safe harbor contributions

The final regulations allow you to reduce or suspend safe harbor nonelective contributions midyear if you:

- are operating at an economic loss for the plan year (IRC Section 412(c)(2)(A)) or have provided participants a potential reduction/suspension statement (see below), and
- meet the procedural requirements below.

Under the 2009 Proposed Treasury Regulations ([REG-115699-09](#)), you could only reduce or suspend nonelective safe harbor contributions midyear if you:

- incurred a substantial business hardship (comparable to a substantial business hardship under IRC Section 412(c)), and
- met the procedural requirements of the 2009 Proposed Treasury Regulations.

See [Reducing or suspending safe harbor nonelective contributions](#) in cases of substantial business hardship (*Employee Plans News*, May 2009).

Potential reduction/suspension statement

The statement informing participants of a potential reduction/suspension of safe harbor contributions must be included in the annual safe harbor notice you give to participants before the plan year. It must inform them that:

1. you may amend the plan during the year to reduce or suspend your safe harbor plan contributions, and
2. the amendment wouldn't be effective until at least 30 days after you've given participants a supplemental notice.

Matching safe harbor contributions

For plan years beginning after 2014, the final regulations allow you to reduce or suspend safe harbor matching contributions midyear only if you're operating at an economic loss or had included a potential reduction/suspension statement (see above) in your annual safe harbor notice to participants, and you meet the procedural requirements below.

For plan years beginning before 2015, to reduce or suspend safe harbor matching contributions midyear, you only have to meet the procedural requirements below.

Procedural requirements for reducing or suspending safe harbor contributions midyear

If you meet the circumstances for a midyear reduction/suspension of safe harbor contributions, to actually reduce or suspend safe harbor contributions during the year, you must follow these procedural requirements:

1. Adopt a plan amendment before the end of the plan year to reduce or suspend safe harbor contributions. This amendment shouldn't be effective earlier than:
 - its adoption date, or
 - 30 days after you give participants the supplemental notice.
2. Give participants a supplemental notice explaining the consequences of the amendment that reduces or suspends your plan's matching or nonelective contributions, the procedures for changing their salary deferral elections (and their employee contribution elections, if applicable) and the effective date of the amendment.
3. Give participants a reasonable opportunity after they receive the supplemental notice and before the change is effective to change their salary deferral elections (and their employee contribution elections, if applicable).
4. Make all safe harbor contributions through the effective date of the amendment.
5. The amendment must provide that the plan will pass the actual deferral percentage test (and the actual contribution percentage test, if required) for the entire plan year in which you reduce or suspend the safe harbor contributions using the current year testing method.
6. The plan must satisfy the top-heavy requirements.

Midyear safe harbor plan termination

The final regulations made no changes to the rules for terminating safe harbor 401(k) plans midyear. Generally, to terminate a safe harbor 401(k) plan midyear, you must satisfy the rules for safe harbor plans through the date of termination and take steps similar to the procedural requirements above, except you aren't required to give participants a supplemental notice or an opportunity to change their contribution elections.

However, you only have to satisfy the rules for safe harbor plans through the date of termination, and adopt an amendment terminating the plan, if the termination is because of a:

- substantial business hardship under IRC Section 412(c); or
 - merger, acquisition or other event that qualifies for the coverage transition rules of IRC Section 410(b)(6)(C).
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Internal Controls Protect Your Retirement Plan

Formal review procedures can help you find and prevent mistakes in administering your plan. Mistakes left uncorrected could endanger your plan's tax-favored status.

What are internal controls?

Internal controls are business processes designed to detect and prevent mistakes in your retirement plan.

Internal controls should include procedures for:

1. **Plan operations review** - verify that you operate your plan according to its written terms
2. **Plan document updates** - meet with your benefits professional to see if the plan document needs updating for:
 - law changes
 - changes in plan operations

The exact procedures will depend on your organization, your [plan type](#) and its features.

Plan operations review

Periodically review your plan operations to ensure that you're following the terms of your written plan.

- Were loans and distributions made according to your plan rules?
- Were all [eligible employees](#) timely included in your plan?

Regular review enables you to quickly detect and correct any mistakes.

Plan document updates

A few months before your next plan year begins, check with your benefits advisor to see if you must amend your plan to reflect law changes or operational changes you want to make.

Learn more:

- [Update a plan](#)

Examples of internal control procedures

- Compare salary deferral election forms with the amounts deducted from employees' wages
- Verify the types of compensation used for allocations, deferrals and testing
- Check that plan service providers received accurate compensation and ownership records
- Monitor annual contribution and compensation [limits](#)
- Verify that years of service were accurately determined for eligibility and vesting
- Verify marital status and spousal consent for plan distributions
- Ensure participants received required minimum distributions

Additional resources

- [A Plan Sponsor's Responsibilities](#) – tips to keep your plan running smoothly.
- [A Guide to Common Qualified Plan Requirements](#)
- [Correct your retirement plan errors](#)
- [Internal controls phone forum presentation](#)
- [Internal controls are essential in retirement plans](#) – common mistakes in internal controls