

FAQs: Can I Suspend the Safe Harbor Contribution?



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Can I Suspend my Safe Harbor Nonelective or Matching Contribution?

If your plan's safe harbor notice contains language to the effect that the employer retains the right to reduce or suspend the safe harbor contribution (NOTE: All plans on the RMS document have this language in the safe harbor notice), then the safe harbor may be reduced or suspended mid-year for *any reason*. Without this language in the safe harbor notice, a plan may only reduce or suspend the safe harbor nonelective or matching contribution if the company is operating at an economic loss.

How do I Suspend my Safe Harbor Contribution?

The plan must be amended to reflect the suspension of the safe harbor contribution. In addition, a notice must be given to plan participants explaining that the contribution has been suspended. This notice must be provided at least 30 days PRIOR to the effective date of the suspension. If the plan uses a safe harbor matching contribution, then during the 30-day notice period, employees must be allowed to change their deferral election before the suspension goes into effect, even if the plan would not normally allow a deferral change at that time. Note that while the recently passed SECURE Act no longer requires safe harbor nonelective plans to provide a safe harbor notice for ADP purposes, we are still advising clients who wish to suspend their nonelective contribution to provide a notice to announce the suspension. Our opinion on this issue may change as we receive more guidance, but our advice for now is for clients to err on the side of caution by providing the notice and funding for the 30-day notice period.

What Happens if I Suspend my Safe Harbor Contribution?

- The plan will be subject to ADP/ACP testing for the entire year.
- When the contribution is funded, it must be calculated on compensation/deferrals from the beginning of the plan year up through the date of the amendment.
- If the plan is top heavy and normally relies on the safe harbor contribution for an exemption to the top heavy test, the plan may no longer rely on the safe harbor top heavy exemption.

What if the Plan is Terminated?

If the plan is terminated DUE TO CIRCUMSTANCES RELATED TO BUSINESS HARDSHIP, the safe harbor status is preserved. The safe harbor contribution must be funded for the period up through the date of plan termination, but the plan will not be subject to ADP/ACP testing for the plan year and the top heavy exemption will still apply. A business hardship means the employer



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is operating at an economic loss; there is substantial unemployment or underemployment in the industry concerned; and the sales and profits of the industry concerned are depressed or declining.

What if I Just Reduce the Safe Harbor Contribution?

Even if the reduced safe harbor contribution still meets the safe harbor contribution formula, ADP/ACP testing will apply because the plan did not use a uniform formula for the entire plan year.

If I Suspend the Contribution, can I Restart the Contribution Later in the Year if Circumstances Improve and Still Retain Safe Harbor Status if I “Make Up” the Contribution?

In the case of a safe harbor matching contribution, because the employees may have changed their deferral elections based on the notice informing them of the cessation of the match, safe harbor status is lost for the entire year. Although the employer may “make up” the match, employees cannot effectively “make up” deferrals for pay periods that have already passed.

In the case of a safe harbor nonelective contribution, because the SECURE Act eliminated the requirement for a safe harbor notice for ADP purposes, and allows for retroactive adoption of a safe harbor nonelective contribution, we believe that an employer COULD stop/restart the contribution during the year and meet safe harbor status as long as the contribution is funded for the entire plan year. However, we are advising clients who are considering this approach to seek independent ERISA counsel on this matter.



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