

Q&A: MID-YEAR CHANGES TO SAFE HARBOR 401(K) PLANS UNDER IRS NOTICE 2016-16

I. Is the change a change to (i) the items of information that are required to be set forth in the pre-plan year safe harbor notice (including such non-plan document items as contact information), or (ii) the plan (document) generally?

YES Go to II

NO The change is permitted, subject to other applicable constraints (e.g., 411(d)(6)).

II. Was the change either (i) adopted mid-year, or (ii) effective mid-year (even if adopted prior to the plan year)?

YES Go to III

NO The change is permitted, subject to other applicable constraints (e.g., 411(d)(6)).

III. Is it one of the explicitly prohibited changes? That is, does it:

- result in the adoption of a short plan year or any other change in plan year (except as permitted by 1.401(k)-3(e)(2), (3) and (4) and 1.401(m)-3(f)(2), (3) and (4))?
- result in the mid-year conversion to safe harbor plan status (except as permitted by 1.401(k)-3(f) and 1.401(m)-3(g))?
- reduce or suspend safe harbor contributions (except as permitted by 1.401(k)-3(g) and 1.401(m)-3(h))?
- in the case of a Qualified Automatic Contribution Arrangement (QACA), increase the number of years of service needed for a participant to acquire a fully vested right to his or her safe harbor contribution account balance?
- reduce or narrow the group of employees eligible for the safe harbor? (Please note: a change to a plan's eligibility service crediting or entry date rules that only affects employees who are not already eligible for the safe harbor is permitted)
- make a mid-year change to the type of safe harbor (e.g., traditional to QACA or vice versa)?

YES **STOP** The change is prohibited (except to the extent allowed under the regulations, in the case of the first three bullet points).

NO Go to IV

- (i) modify or add a formula to determine matching contributions, or modify the definition of compensation used for matching contributions, if the result (in either case) is to increase the amount of matching contributions, or (ii) add a discretionary matching contribution provision, unless (in either case) the change is adopted at least three months before the end of the plan year on a retroactive basis for the full plan year and certain other conditions described in Section III.D.4 of the Notice are met?

IV. Does it change any of the required items of information provided in the pre-plan year safe harbor notice (i.e., disregard any items of information not required in the notice that the sponsor opted to include)?

YES The updated notice and election requirements of Section III.C of Notice 2016-16 must be met. This generally means that an updated notice describing the change must be provided 30-90 days before its effective date, and employees must be allowed to change their deferral election before the effective date.

NO The change is permitted without any further action (i.e., without the provision of any updated notice or election period).