

Internal Revenue Service (IRS) Provides Relief for Mid-year Changes to Safe Harbor Plans

IRS Notice 2016-16 (the Notice) provides relief for most mid-year changes* to a safe harbor plan**. The Notice outlines: 1) changes that are prohibited; 2) changes that alter the safe harbor notice content that are permitted when certain conditions are met; 3) changes that don't alter the safe harbor notice that are permitted with no conditions; and changes covered by existing regulations that remain unchanged. The new guidance is effective for changes made on and after January 29, 2016.

PROHIBITED MID-YEAR AMENDMENTS

Mid-Year Amendment Type	Conditions	Examples
<p>What mid-year changes cannot be made to Safe Harbor plans? Mid-year changes prohibited under Notice 2016-16.</p>	<p>The Notice lists certain mid-year changes that are prohibited unless required by applicable law such as a change mandated by a statutory law change or court decision.</p>	<ul style="list-style-type: none"> • Increase to the number of years of service required for an employee to have a non-forfeitable right to their safe harbor contribution account balance under a Qualified Automatic Contribution Arrangement (QACA) • Reduction in the number or otherwise narrow the group of employees eligible to receive safe harbor contributions • Changing the type of safe harbor plan (e.g., a change from traditional safe harbor to a QACA) • Modifying or adding a formula used to determine matching contribution or the definition of compensation used to determine matching contributions, if the change increases the amount of matching contributions. <u>Exception:</u> This prohibition does not apply if at least 3 months prior to the end of the plan year 1) the change is adopted, ii) the safe harbor notice and election opportunity are provided and iii) the change is retroactively effective for the entire plan year.

PERMITTED MID-YEAR AMENDMENTS

Mid-year amendment type	Conditions	Examples
<p>When is a revised notice and new election period required? Notice 2016-16 permits changes that alter the content of the plan's safe harbor notice if each participant is furnished with an updated Safe Harbor Notice and an opportunity to change his/her contribution election.</p>	<p><u>Updated Safe Harbor Notice***</u> - Furnish participants with updated safe harbor notice describing the change and its effective date within a reasonable period before the effective date of the change. Timing is deemed to be satisfied if notice is provided not less than 30 days or more than 90 days before the effective date (exceptions apply).</p> <p><u>Election Opportunity</u> - Each participant who is required to receive the updated safe harbor notice must be given a reasonable opportunity before the effective date of the amendment (and after receipt of the notice) to make a change to his/her deferral election or post-tax contribution election. A 30 day election period is deemed to be reasonable (exceptions apply).</p>	<ul style="list-style-type: none"> • Add age 59 ½ withdrawal option • Change to the vesting schedule • Change to compensation definition
<p>When is a revised notice and new election period NOT required? Changes to provisions that are not required to be described in the safe harbor notice are permitted under Notice 2016-16.</p>	<p>No special conditions apply, including an updated safe harbor notice (even if the changed provision was described in the safe harbor notice) and no election opportunity is required. Other applicable law does apply (e.g., anti-cutback rules, general nondiscrimination and anti-abuse rules).</p>	<ul style="list-style-type: none"> • Changing the plan entry from quarterly to monthly • Adding in-plan Roth rollovers or transfers
<p>Does Notice 2016-16 supersede all prior guidance relative to changes to a plan's safe harbor provision? Changes addressed in the safe harbor regulations are not affected by Notice 2016-16.</p>	<p>The requirements outlined in the regulations must be met. The guidance in the Notice does not change those requirements.</p> <p>Proceed with caution here as there are more extensive requirements to be met (e.g., ADP/ACP testing, participant notices, funding, etc.),</p>	<ul style="list-style-type: none"> • Adoption of a safe harbor plan • Short plan year or plan year change • Suspend/reduce safe harbor contributions • Plan termination • Other applicable law (e.g., anti-cutback rules, general nondiscrimination and anti-abuse rules).

***A mid-year change is defined as:**

- A change that is first effective during a plan year, but not effective at the beginning of the plan year or
- A change that is effective as of the beginning of the plan year, but is adopted after the beginning of the plan year

****The Notice applies to:**

- Traditional safe harbor plans
- QACAs
- 403(b) plans that apply the 401(m) safe harbor rules

*****Safe harbor notice content requirements include:**

- Description of safe harbor contribution formula
- Description of any other contributions under the plan and conditions under which they are made
- Plan to which the safe harbor contribution will be made, if different from the plan containing the cash or deferral arrangement
- Amount and type of compensation that can be deferred
- How to make cash or deferral elections, including any administrative requirements
- When deferral elections can be made
- Description of withdrawal and vesting provisions
- How to get additional information

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