

# JUNE 2015

## P&A RETIREMENT PLAN SERVICES

### SAFE HARBOR REGULATIONS RETHOUGHT

Traditionally safe harbor contributions have been rather stringent in the sense that once adopted, there seemed to be little leeway allowing suspension or discontinuance. In 2014, the IRS issued new, final regulations of the requirements that need to be met to reduce or suspend a safe harbor contribution during a plan year. The new regulations are effective for plan years beginning on or after January 1, 2015. If the plan year is the calendar year, the new regulations apply now.

Under the new regulations, a safe harbor match or safe harbor nonelective contribution may be suspended or reduced midyear in two instances:

1. The plan sponsor is “operating at an economic loss” as defined in Code Section 412(c)(2)(A), (one determinant of whether the business is experiencing a hardship).
2. The annual safe harbor notice provided prior to the beginning of the plan year included a statement that the safe harbor contribution may be reduced or suspended during the plan year.

In addition to one of these two requirements being met, certain procedural requirements must be met as well. The procedural requirements are as follows:

1. Amend the plan prior to year end to reduce or suspend the safe harbor. The amendment should not be effective until the earlier of its adoption date or 30 days after

participants are provided the supplemental notice.

2. Provide participants with a supplemental notice explaining the consequences of the reduction/suspension.
3. Give participants a reasonable opportunity to change their deferral elections as a result of the reduction/suspension.
4. Make all safe harbor contributions through the effective date of the amendment.
5. The plan amendment must provide that the plan will satisfy ADP & ACP testing for the entire plan year using the current year testing method.
6. The plan must satisfy the top-heavy requirements.

While certain allowances have been made, the idea behind safe harbor remains the same which is to enhance the participant benefit. Although there is some new flexibility, the decision to suspend or discontinue safe harbor plan design should be thoughtfully considered.

If you have any questions about these new safe harbor regulations, please contact your P&A Retirement Plan Administrator.