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**TCRS 2013-06: Reduction or Suspension of Safe Harbor Contributions – Final Regulations**

**Summary:**

On November 15, 2013, the Internal Revenue Service (“IRS”) and the Department of the Treasury (“Treasury Department”) issued final regulations regarding requirements an employer must meet to reduce or suspend safe harbor contributions to its 401(k) plan during a plan year.

For an interim period beginning November 15, 2013 up to the first Plan Year beginning on or after January 1, 2015, the requirements are different, depending upon whether the plan provides safe harbor nonelective contributions versus safe harbor matching contributions. For plan years beginning on or after January 1, 2015, the requirements are the same, regardless of what type of safe harbor contributions are being provided.

Below are six requirements that an employer must generally meet to reduce or suspend safe harbor contributions for plan years beginning on or after January 1, 2015. The following notes how the requirements may differ, depending upon the type of safe harbor contribution and the time of the amendment:

- For the period from November 15, 2013 up to the first plan year beginning on or after January 1, 2015, all six numbered requirements below apply to an employer that is reducing/suspending its safe harbor nonelective contributions, and only requirements numbered 3-6 apply to an employer that is reducing/suspending its safe harbor matching contributions.
- For plan years beginning on or after January 1, 2015, all six numbered requirements apply to employers suspending/reducing safe harbor contributions, whether nonelective or matching.

Requirements to Reduce or Suspend Safe Harbor Contributions	November 15, 2013 up to Plan Years Beginning on or after January 1, 2015		Plan Years Beginning on or after January 1, 2015	
	Safe Harbor Match	Safe Harbor Nonelective	Safe Harbor Match	Safe Harbor Nonelective
1) The employer must be operating at an economic loss as described in Internal Revenue Code (“IRC”) section 412(c)(2)(A), or	Not Required	Required (unless requirement No. 2 is met)	Required (unless requirement No. 2 is met)	Required (unless requirement No. 2 is met)
2) A statement must be provided in the “safe harbor notice” (defined below)* to participants before the beginning of the plan year that (a) the plan may be amended during the plan year to reduce or suspend the safe harbor contributions, and (b) the reduction or suspension will not apply until at least 30 days after a supplemental notice is provided.	Not Required	Required (unless requirement No. 1 is met)	Required (unless requirement No. 1 is met)	Required (unless requirement No. 1 is met)
<b>Regardless of which of the above requirements the employer uses, the employer must also:</b>				
3) Amend the plan (to suspend/reduce the safe harbor contributions and to provide that the Actual Deferral Percentage test applies for the entire plan year, using the current year testing method),	Required	Required	Required	Required
4) Provide a supplemental notice to eligible employees at least 30 days before the amendment’s effective date (explaining the consequences of the amendment, procedures for changing cash or deferral elections, and the amendment’s effective date),	Required	Required	Required	Required
5) Provide eligible employees the opportunity to change their cash or deferral elections before the reduction/suspension of the safe harbor contributions, and	Required	Required	Required	Required
6) Fund the safe harbor contributions through the amendment’s effective date.	Required	Required	Required	Required

\* The “safe harbor notice” is the notice provided to participants at least 30 days, and no greater than 90 days, before the beginning of the plan year, describing the safe harbor contributions to be made and containing other information, such as how to make cash or deferral elections.

In addition to the above, the final regulations provided guidance regarding the termination of a safe harbor plan where the final plan year is less than 12 months, as follows:

- If the plan meets the requirements of 3, 4, and 6, above, it is treated as if it meets the requirements to reduce/suspend the safe harbor contributions (and is thus subject to the Actual Deferral Percentage test), or
- If the plan termination is related to a transaction described in IRC section 410(b)(6)(C) (such as becoming, or ceasing to be, a member of a controlled group or an affiliated service group), or the employer incurs a substantial business hardship similar to that described in IRC section 412(c), and if the plan otherwise complies with the safe harbor requirements but for the 12-month plan year requirement, the plan will retain its safe harbor status.

**Background and additional information:**

On May 18, 2009, the IRS published proposed regulations providing requirements for an employer to reduce/suspend safe harbor nonelective contributions. See [TCRS Release 2009-04](#) for additional details and background.

The final regulations revised the “substantial business hardship” requirements contained in the proposed regulations from three requirements to one requirement (operating at an economic loss, the first numbered requirement, above). In addition, rather than having to operate at an economic loss to reduce/suspend safe harbor contributions, the final regulations added an optional requirement an employer could meet, instead (the second numbered requirement, above).

For purposes of uniformity, the final regulations provide that an employer wanting to reduce/suspend safe harbor matching contributions must meet the same requirements as an employer wanting to reduce/suspend safe harbor nonelective contributions. However, for an interim period, different requirements apply, as described above.

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