

Tough Times: *Guidance on Reducing, Suspending, or Removing Employer Contributions*

By: Scott Eggers, Director of Retirement Plan Solutions

During these unsettling economic times, many plan sponsors are assessing whether to reduce, suspend, or terminate employer contributions to their retirement plans. This assessment requires important considerations and a series of well-thought-out steps.

First, consider two important aspects:

1. **Start with the documents.** This may include the adoption agreement and safe harbor notice (if applicable). The documents will dictate the available degree of flexibility.
2. **Communication is vital.** If your company's approach is to suspend or remove the employer match, it is crucial that there not be a breakdown in communication between you (the employer), the recordkeeper, and your employees.

Second, follow the general guidelines for the reduction or removal of common employer contributions:

- **Discretionary Contribution** – This includes any contribution that is permitted under the Plan's terms without the Plan documents prescribing a specific contribution. (It could be a matching contribution. It also could be commonly considered a "profit sharing contribution".) This scenario presents a fair amount of flexibility. If there is not an existing Board or Committee resolution (or written commitment) on file, no formal action is required. If there is a resolution on file, you will need action to override it, likely in the form of a new resolution or written unanimous consent.
- **Non-Safe Harbor Contribution** – Here, the Plan document or adoption agreement expressly sets forth the amount of the contribution. In order to reduce or remove, the recordkeeper/TPA would simply need to produce an amendment.
- **Safe Harbor Nonelective Contribution AND Safe Harbor Matching Contribution** – Safe Harbor Contributions are 100% vested immediately for the employee, either in the form of a nonelective contribution (no participant deferrals required) or in the form of a matching formula. In order to have the option to reduce or suspend the Safe Harbor Contribution, your organization must meet one of two prerequisites:



1. **The “Maybe” Notice** – If the notice for this plan year (likely distributed late 2019) contains language preserving the discretion to amend the plan to reduce or eliminate the Safe Harbor Contribution during the plan year, you have the flexibility to do so; OR
2. **Operating Loss Exception** – In the absence of the “maybe” language, you can only eliminate a Safe Harbor Contribution during a plan year if you can demonstrate that your organization is “operating at an economic loss”, as defined in the Internal Revenue Code. Neither the Tax Code nor the IRS provide clear-cut rules for meeting this standard; it likely will be a facts and circumstances determination taking into account your organization’s specific situation.

If your organization can meet one of these prerequisites, you will need to:

1. Provide a supplemental notice to every eligible employee. This must be distributed at least 30 days before the suspension or reduction becomes effective.
2. Amend the plan to modify the Safe Harbor Contribution. Your organization must adopt the amendment before the suspension or reduction becomes effective.
3. Ensure the plan amendment clarifies that the plan must use the current year testing method to perform the ADP and ACP tests for the entire plan year.
4. Provide employees a reasonable opportunity to change their deferral elections prior to the reduction or suspension of the Safe Harbor Contribution.
5. Continue to fund the Safe Harbor Contribution through the date of the reduction or suspension.

Finally, consider the many variables and nuances:

Is your plan “top heavy”? Safe Harbor status may have prevented you from failing the ADP/ACP testing, but that will change if you abandon safe harbor status.

Are you planning on implementing layoffs? If so, be aware of the “partial plan termination” rules that could trigger full and immediate vesting for affected employees.

Are you prepared for “refunds”? Bear in mind that abandoning safe harbor status triggers testing, which could trigger corrective contributions to your HCEs.

If you are considering implementing the removal of employer contributions, your QPA advisors are ready to consult with you on any of these issues.



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