

WHAT YOU NEED TO KNOW

Safe Harbor Plans



Legislative Changes Impacting Safe Harbor Plans

Although the CARES Act does not impact safe harbor plan requirements, the SECURE Act, signed into law on December 20, 2019, directly impacts or requires action from plan sponsors in the following ways:

- Removing the employee annual notice requirement for safe harbor 3% nonelective contributions. However, the IRS released Notice 2020-86 stating if a plan wishes to preserve their ability to reduce or suspend their safe harbor nonelective contributions mid-year (for any reason outside of the employer operating at an economic loss) they must still provide a notice, explaining this possibility, before the beginning of each plan year. Also, plans that offer an ACP safe harbor matching contribution, in addition to the ADP safe harbor nonelective contribution, still must provide an annual notice.
- Allowing plan sponsors that do not currently have a safe harbor feature to amend their plan to include a safe harbor 3% nonelective contribution as late as December 1, 2022, for the 2022 plan year on a calendar year plan.
- Allowing plan sponsors to amend their plan to include a safe harbor 4% nonelective contribution as late as December 31, 2023, for the 2022 plan year on a calendar year plan.
- Qualified automatic contribution arrangements (QACA plans) now have a maximum 15% deferral rate.



Timeline and Requirements for Amending Safe Harbor Contributions

- Plan sponsors must notify eligible employees of a safe harbor contribution suspension 30 days prior to amending the safe harbor requirement out of the plan. Plan sponsors must allow plan participants to make elective deferral changes during this 30-day window. This may require an amendment to the plan document.
- Plan sponsors are still responsible to fund the safe harbor contribution on compensation earned between the first day of the plan year and the safe harbor removal effective date.



Frequently Asked Questions (FAQs)

I currently calculate and deposit my safe harbor contributions on an annual basis. When do I need to fund my 2021 and 2022 safe harbor contributions?

- 2021 safe harbor contributions can be deposited as late as December 31, 2022 on a calendar year plan.
- 2022 safe harbor contributions can be deposited as late as December 31, 2023 on a calendar year plan.
- The deduction date is still the plan sponsor's tax return due date, including extensions

I currently calculate and deposit my 2022 safe harbor contributions each payroll period. Can I make the deposits at a later time if I calculate and contribute a true-up at the end of the year?

Yes, for both safe harbor matching and safe harbor 3% nonelective contributions, plan sponsors can delay funding until December 31, 2023 for a calendar year plan. The deduction date is still the plan sponsor's tax return due date including extensions. Such a change may require a plan amendment, as well as a supplemental safe harbor notice, and requires plan sponsors to calculate the contribution on an annual basis.

Can I stop making safe harbor contributions entirely for 2022?

Yes, on a go forward basis, if plan sponsors meet certain conditions. Plan sponsors must *either*:

- Be operating at an economic loss as described in IRC 412(c)(2)(A) for the plan year, *or*
- Have provided a safe harbor notice to participants before the beginning of the plan year that disclosed the possibility of the contributions being reduced or suspended mid-year.

Eligible employees must receive a supplemental safe harbor notice that explains the removal, lists the effective date, and provides a reasonable period in which to change their deferral election which may require a plan amendment.

Reduction or elimination of safe harbor contributions can't be effective until the date that is 30 days after eligible employees are given the supplemental safe harbor notice, or the date of the amendment, whichever is later.

The plan sponsor will be subject to Top Heavy, ADP and ACP testing for the *entire* 2022 plan year.

Do I need to provide the employee annual notice if the safe harbor contributions may be reduced or removed mid-year?

Yes, to preserve the ability to reduce or suspend the safe harbor nonelective contributions mid-year (for any reason outside of operating at an economic loss) you must still provide a notice, explaining this possibility, before the beginning of each plan year.

Am I allowed to stop making my safe harbor matching contribution during 2022 and then amend my plan to add a safe harbor 3% nonelective contribution for 2022?

No, a safe harbor 3% nonelective contribution may not be added, if at any time during the plan year, a safe harbor matching contribution has been made.

Can I stop making my safe harbor 3% nonelective contribution during 2022 and then amend my plan later in the same plan year, to add this back in for 2022?

Yes, the IRS clarified in Notice 2020-86 that an employer may amend to reduce or suspend their safe harbor nonelective contribution during the year and then later amend to add back the safe harbor nonelective for the entire plan year.

The plan will retain the benefit of not being subject to ADP testing, and in most cases, ACP or top-heavy testing.

We're here for you.

Reach out to your FuturePlan Consultant for support and expert guidance on safe harbor plans. We're ready to help you answer client questions and make informed decisions, connecting you with ERISA experts and providing any other expert advice you may need.

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