

COVID-19 AND SAFE HARBOR PLANS

What You Need to Know



Legislative Changes Impacting Safe Harbor Plans

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.
- 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, 2020, for the 2020 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, 2021, for the 2020 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 2019 and 2020 safe harbor contributions?

- 2019 safe harbor contributions can be deposited as late as December 31, 2020 on a calendar year plan.
- 2020 safe harbor contributions can be deposited as late as December 31, 2021 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 2020 safe harbor contributions each payroll period. Can I keep the safe harbor provision, but make the deposits at a later time?

Yes, for both safe harbor matching and safe harbor 3% nonelective contributions, plan sponsors can delay funding until December 31, 2021 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 still remove my safe harbor contributions for 2020?

If you want to retain the plan's safe harbor status, the plan can be amended to prospectively exclude highly compensated employees (HCEs) from receiving safe harbor for the remainder of the plan year. A notice is required to explain the removal, its effective date, and a reasonable period must be available for HCEs to change their deferral elections.

Otherwise, to remove safe harbor entirely, plan sponsors can amend the plan on a go forward base if they 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** 2020 plan year.

Am I allowed to remove my safe harbor *matching* contribution during 2020 and then amend my plan to add a safe harbor 3% *nonelective* contribution for 2020?

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 remove my safe harbor 3% *nonelective* contribution during 2020 and then amend my plan later in the same plan year, to add this back in for 2020?

There are currently no regulations that prohibit such an amendment; however, there is also no *guidance*. Plan sponsors should ensure the 3% nonelective contribution satisfies the 3% requirement for *the entire year*.



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