

THE EMPLOYEE BENEFIT Forum

current issues in retirement benefit planning



Depositing Employee Contributions

SITUATION: Our company is considering hiring a payroll provider. We want to make sure that any new payroll processing procedures we implement will give us enough time to deposit participant contributions to our 401(k) plan in a timely manner.

QUESTION: What are the deadlines for depositing participant contributions?

ANSWER: Plan sponsors have a fiduciary responsibility to make deposits of participant contributions on a timely basis. The U.S. Department of Labor (DOL) has issued guidelines to help clarify timelines for plan sponsors.

DISCUSSION: Generally, participant contributions include all amounts paid by participants or withheld by the employer from participants' wages as contributions. Under the DOL guidelines, sponsors must deposit all such amounts as of the earliest date they can reasonably be segregated from the employer's general assets. However, it cannot be later than the 15th business day of the month following the withholding (or the date the plan sponsor receives the amount). That is the latest date and is not a safe harbor deadline. If the contributions can reasonably be segregated from the employer's general assets before then, the contributions should be deposited into the plan trust at that earlier time.

For plans with fewer than 100 participants at the beginning of the plan year, there is a safe harbor deadline. Participant contributions need to be deposited no later than the seventh business day following the date they are received or withheld by the employer. Meeting this deadline is sufficient even if the plan sponsor can reasonably segregate the amounts from general assets within seven business days.

To help prevent late deposits, plan sponsors may want to review and document the steps taken to process their payroll. If late deposits do occur, plan sponsors should take corrective measures. The participant contributions should be deposited as soon as possible, along with any missed earnings on the late deposits to be allocated to the accounts of affected participants. Plan sponsors may also want to use the voluntary correction programs provided by the DOL and the IRS. Finally, it may be useful to review any procedures already in place with the goal of identifying changes that can be made to prevent a recurrence.

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IRS Guidance on Midyear Changes to Safe Harbor Plans

IRS Notice 2016-16 provides guidance to plan sponsors on midyear amendments to safe harbor 401(k) plans or safe harbor 401(k) notices. The new guidance broadens the permissible types of midyear plan amendments, generally allowing them where certain conditions are satisfied unless specifically prohibited in the notice. The permissible amendments include those made effective after the first day of a plan year and retroactive amendments adopted after the end of a plan year.

If the amendment is to a provision that was addressed in a safe harbor notice, then an updated safe harbor notice is required within a reasonable time — generally 30 to 90 days before the effective date of the change. In addition, plan participants must be given a reasonable period of time to change their deferral elections.

Amendments still impermissible include:

- Changing the type of safe harbor plan; for example, from a traditional safe

harbor plan to a qualified automatic contribution arrangement (QACA)

- Extending the vesting schedule for QACA safe harbor contributions
- Decreasing the number or otherwise narrowing the group of employees eligible to receive safe harbor contributions*

* This prohibition does not apply to an otherwise permissible change under eligibility service credit rules or entry date rules made with respect to employees who are not already eligible to receive safe harbor contributions under the plan.

Then and Now

The Plan Sponsor Council of America recently published its *58th Annual Survey of Profit Sharing and 401(k) Plans* detailing its findings for the 2014 plan year. A comparison of selected 2014 plan-year data with the corresponding numbers for the 2004 plan year shows some interesting changes over the period.

	2004 Plan Year*	2014 Plan Year**
Participation Rate	83.2%	87.2%
Participant Pretax Deferrals – 401(k)		
Lower Paid (% of Salary)	5.4%	5.8%
Higher Paid (% of Salary)	6.7%	6.9%
Average Company Contributions % of Total Annual Payroll (Eligible Participants)		
401(k)	2.9%	3.2%
401(k)/Profit Sharing	5.6%	5.5%
Average Number of Investment Options		
Company Contributions	17	19
Participant Contributions	18	19
Automatic Enrollment	10.5%	52.4%
Loan Availability	80.6%	86.9%
Participants with Loans	24.0%	14.6%
Plans Permitting In-service Distributions (Excluding Hardship Withdrawals)	61.2%	74.0%
Plans Offering Investment Advice	56.6%	29.7%
Participants Who Utilize Investment Advice When Offered	27.6%	21.6%
Professionally Managed Alternative Offered	20.3%	33.7%

* 48th Annual Survey of Profit Sharing and 401(k) Plans, Profit Sharing/401(k) Council of America

** 58th Annual Survey of Profit Sharing and 401(k) Plans, Plan Sponsor Council of America

A comparison of selected 2014 plan-year data with the corresponding numbers for the 2004 plan year shows some interesting changes



Receiving a Compliance Check Letter

Compliance checks conducted by the IRS Employee Plans Compliance Unit (EPCU) are not audits or examinations. Nonetheless, plan sponsors that receive a compliance check letter should take care to respond to the IRS and provide the requested information in a timely manner.

What is a compliance check? A compliance check is a plan review to determine whether recordkeeping and reporting requirements are being met. The IRS sometimes does a compliance check to resolve conflicts regarding information reported on various forms, such as Form 5500 or Form W-2. Plan sponsors with late or incomplete returns also could be contacted for a compliance check.

How does the IRS develop ideas for compliance check projects? The EPCU develops project ideas from various internal and external sources. If the EPCU finds that the issue affects a significant number of plan filings, then a compliance check may take place. An example of a project would be looking at plans reporting significantly higher end-of-year assets than beginning-of-year assets but with no contributions, transfers, or rollovers into the plan.

What happens during a compliance check? The plan sponsor will receive a compliance check letter stating that it is a review and not an audit. The letter may request that specific information be provided within a specified number of days. In its response, the plan sponsor can include any documentation or material to support the information provided. There is no penalty if a plan sponsor does not respond to a compliance check, but the plan may then be subject to an audit. (Note that the IRS might still choose to conduct a formal audit if a plan sponsor responds.)

If a plan is not in compliance, how can the problem be resolved? The plan sponsor may be able to correct any errors found during a compliance check by using the Employee Plans Compliance Resolution System (EPCRS).

The Self-Correction Program (SCP), which is part of the EPCRS, is available for correcting certain operational problems. To use the SCP, the plan must have practices and procedures in place designed to promote and facilitate compliance. If an operational mistake is “significant,” it must be corrected within two years of the end of the plan year in which the error occurred. There is no fee for self-correction. The SCP is not available for correcting problems with the plan document.



If the plan’s ability to qualify for tax-favored status is at risk and the plan is not being audited, the plan sponsor can apply for IRS approval of its proposed correction methods under the Voluntary Correction Program (VCP), another program available through the EPCRS. However, the IRS charges a compliance fee for using the VCP. The fee can vary based on the number of plan participants.

What kinds of compliance projects are currently underway? The projects cover a range of issues. For example, the asset mismatch project targets plans that may have misreported the dollar amount of assets in their Form 5500 filings. The data analysis verification project is aimed at plans for which the pension feature codes on Form 5500 were missing, inconsistent, or incomplete.

Are the results of previous compliance projects available? Information on EPCU projects is available at www.irs.gov/Retirement-Plans/Employee-Plans-Compliance-Unit-EPCU. In addition to providing details on completed projects, the IRS provides information about continuous projects, current projects, and projects approved for further development. Moreover, there is general background information on the EPCU and other material that plan sponsors may find useful.

The general information in this publication is not intended to be nor should it be treated as tax, legal, investment, accounting, or other professional advice. Before making any decision or taking any action, you should consult a qualified professional advisor who has been provided with all pertinent facts relevant to your particular situation.

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RECENT DEVELOPMENTS In Benefit Plans

DOL Fiduciary Rule Finalized.

The U.S. Department of Labor (DOL) issued its final version of the rule governing those who provide investment advice to retirement plans, plan sponsors, plan fiduciaries, plan participants and beneficiaries, individual retirement accounts (IRAs), and IRA owners. The new rule requires all who provide retirement investment advice to abide by a fiduciary standard and put their clients' best interests first. The changes will be phased in, with full compliance due to

begin January 1, 2018.

Communicating About Benefits.

A recent study by the International Foundation of Employee Benefit Plans showed that 65% of organizations surveyed believe that educating employees about their benefits is a high priority. The strategies with the highest success rates are communicating by life stage (81%), year-round communication (79%), and leveraging word-of-mouth (75%). Topics with the highest success rates include information on retirement benefits (83%),

financial literacy (77%), and health care benefits (75%).

Deciding When to Retire. Being happy at work can be a significant factor in predicting an individual's retirement age. According to a report from the Center for Retirement Research at Boston College, nonfinancial rewards keep some workers in the work force and influence others to retire. In particular, nonfinancial factors such as personal growth and meaningful relationships directly affect one's choice to retire.