

## New Guidance From IRS Provides Mid-Year Changes To Safe Harbor 401(k) Plans

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*Wesley Covert*  
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Prior to the Internal Revenue Services' (IRS) recent issuance of Notice 2016-16 (the Notice), employers that sponsored safe harbor 401(k) retirement plans were uncertain about whether any mid-year changes to their plans would invalidate the plans' safe harbor status. As long as certain conditions in the Notice are met, mid-year amendments to safe harbor 401(k) plans will not violate the Internal Revenue Code's (the Code) safe harbor rules. Specifically, a plan must provide an updated safe harbor notice to each employee describing the mid-year change and its effective date "within a reasonable period" before the effective date of the change. This timing requirement is deemed to be satisfied if the updated safe harbor notice is provided at least thirty days (and not more than ninety days) before the effective date of the change. Employees who receive the notice must be given at least thirty days to make a change to their deferral elections. Finally, the Notice identifies four prohibited mid-year changes which include: (1) an increase in the vesting requirements for safe harbor contributions under a qualified automatic contribution arrangement; (2) a reduction of the group of individuals eligible to receive safe harbor contributions (unless otherwise permitted by the Code); (3) a change in the type of safe harbor plan; and (4) a modification to the formula used to determine matching contributions in certain circumstances. If an employer is contemplating a mid-year change to its safe harbor 401(k) plan, they should confirm that the change is permitted under the Notice.

### **Attorneys**

Wesley H. Covert

### **Practice Areas**

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