

Safe Harbor 401(k) Notice

Plan participants must be provided with a safe harbor notice not earlier than 90 days and not less than 30 days before the beginning of each plan year the safe harbor is in effect. There are special rules for new plans and new participants.

New plans. If a new 401(k) plan is established with safe harbor provisions and the plan design provides immediate eligibility for deferrals and employer contributions (as of the effective date of the plan), a safe harbor notice must be provided anytime between 90 days before the effective date of the plan and the actual effective date of the plan.

Example: An employer adopts a safe harbor 401(k) plan effective September 1, 2014. The plan design allows employees immediate eligibility and permits them to make deferrals and receive safe harbor matching contributions as of September 1, 2014. The employer must provide the safe harbor notice between June 3, 2014, and September 1, 2014.

Newly eligible participants. The same notice time frame applies to a newly eligible participant in an existing safe harbor 401(k).

Example: A safe harbor 401(k) plan has a six-months-of-service eligibility requirement. A new employee hired on March 31, 2014, will be eligible to enter the plan on October 1, 2014. The employer must provide the safe harbor notice no earlier than July 3, 2014, but no later than October 1, 2014.

Special timing rule. There is a special rule for coordinating the notice time period for newly eligible participants with the annual safe harbor notice. For safe harbor notice purposes, a new employee is defined as an individual who becomes eligible to participate after the 90th day *before* the beginning of the plan year. Thus, in a calendar-year plan, any employee who becomes eligible to participate between October 2 and December 31 may be provided with a safe harbor notice under the new employee rules (i.e., the notice must be provided no sooner than 90 days before the eligibility date but no later than the date of eligibility).

The annual safe harbor notice (sent between October 3 and December 2 each year by calendar-year plans) covers all ongoing participants. The same notice will cover employees who become newly eligible through the date the notice is provided. Under the special rule, the annual safe harbor notice may be used to satisfy the notice requirements for those who become eligible up to the last day of the plan year.