

SUPPORTING STATEMENT
TD 9641 – Reduction or Suspension of Safe Harbor Contribution (REG-115699-09)
OMB No. 1545-2191

1. CIRCUMSTANCES NECESSITATING THE COLLECTION OF INFORMATION

This rule contains amendments to regulations relating to certain cash or deferred arrangements under section 401(k) and matching contributions and employee contributions under section 401(m). These regulations provide guidance on permitted mid-year reductions or suspensions of safe harbor non-elective contributions in certain circumstances for amendments adopted after May 18, 2009. These regulations also revise the requirements for permitted mid-year reductions or suspensions of safe harbor matching contributions for plan years beginning on or after January 1, 2015.

Sections 1.401(k)–3(g) and 1.401(m)–3(h) set forth the requirements (including a notice and timing requirement) that must be satisfied in order for a plan that satisfies the actual deferral percentage (ADP) and actual contribution percentage (ACP) tests using safe harbor matching contributions to be amended during the plan year to reduce or suspend such contributions and to satisfy ADP and ACP tests using the current year testing method.

The collection of information in these final regulations is in §1.401(k)–3(g)(2) and §1.401(m)–3(h)(2). The collection of information relates to the new supplemental notice requirements in the case of a reduction or suspension of safe harbor non-elective or matching contributions and the requirement to include additional information in the notice required by §§1.401(k)–3(d), 1.401(k)–3(g), and 1.401(m)–3(h) for certain plans that would be permitted to reduce or suspend safe harbor non-elective or matching contributions for a plan year even if the employer had not experienced a business hardship.

2. USE OF DATA

The regulations affect administrators of, employers maintaining, participants in, and beneficiaries of certain defined contribution plans that satisfy the nondiscrimination tests of section 401(k) and section 401(m) using one of the design-based safe harbors.

The notice furnished to employees will inform them that their employer will reduce or eliminate safe-harbor non-elective contributions.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

IRS Publications, Notices, and letters are to be electronically enabled on as practicable basis in accordance with IRS Reform and Restructuring Act of 1998.

4. EFFORTS TO IDENTIFY DUPLICATION

We have attempted to eliminate duplication within the agency whenever possible.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

Not applicable.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS

Not applicable.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

Not applicable.

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS AND DATA ELEMENTS

On May 18, 2009, proposed regulations (REG-115699-09) under sections 401(k) and 401(m) were published in the *Federal Register* at 74 FR 23134, which would permit the mid-year reduction or suspension of safe harbor non-elective contributions in certain circumstances.

Final regulations were published as TD 9641 on November 15, 2013, at 78 FR 68735. Comments received were summarized and addressed in the preamble of this rule.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

Not applicable.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

No personal identifiable information (PII) is collected.

12. **ESTIMATED BURDEN OF INFORMATION COLLECTION**

The collection of information is in §1.401(k)–3(g)(2) and §1.401(m)–3(h)(2). The collection of information relates to the new supplemental notice requirements in the case of a reduction or suspension of safe harbor non-elective or matching contributions and the requirement to include additional information in the notice required for certain plans that would be permitted to reduce or suspend safe harbor non-elective or matching contributions for a plan year even if the employer had not experienced a business hardship.

We estimate 5,000 employers will wish to reduce or suspend safe harbor non-elective contributions. We estimate it will take each employer two hours to inform its employees about this change. Total burden is 10,000 hours.

No. of Respondents	No. Responses Per Respondent	Total Annual Responses	Hours Per Response	Total Annual Burden (Hours)
5,000	1	5,000	2	10,000

13. **ESTIMATED ANNUAL COST TO RESPONDENTS**

Estimates of capital or start-up costs of operations, maintenance and purchase of services to provide information are not available at this time.

14. **ESTIMATED ANNUALIZED FEDERAL COST TO FEDERAL GOVERNMENT**

Not applicable.

15. **REASONS FOR CHANGE IN BURDEN**

This is a reinstatement without change of a previously approved information collection. An information collection request was submitted to the Office of Management and Budget (OMB) at the time of the proposed regulations and the collection received a preapproval and an OMB number was assigned. The collection was activated prior to the publication of the final rule and was discontinued to be later reinstated when final regulations were published. Final regulations have been published, and we wish to reinstate this information collection at this time.

16. **PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION**

Not applicable.

17. **REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE**

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulation sunsets as of the

expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

18. **EXCEPTION TO THE CERTIFICATION STATEMENT ON OMB FORM 83-1**

There are no exceptions to the certification.

Note: The following paragraph applies to all of the collection of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax return and tax return information are confidential, as required by 26 U.CS.C. 6103.