

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

Section 401(k)(3)(A)(ii) sets forth a special nondiscrimination test for 401(k) plans. Section 401(k)(12) provides a safe harbor alternative to the regular 401(k) nondiscrimination test. Section 401(m)(2)(A) sets forth a special nondiscrimination test for matching contributions made in a defined contribution plan. Section 401(m)(11) provides an alternative way to satisfy the nondiscrimination requirements of section 401(m)(2)(A).

One of the requirements of the safe harbor alternative is to furnish either matching contributions or nonelective contributions to employees. The final regulations allow an employer to reduce or suspend safe harbor nonelective contributions or matching contributions if it is operating at an economic loss described in section 412(c)(2)(A) for the plan year.

The final regulations permit an employer to reduce or suspend safe harbor nonelective contributions without regard to the financial condition of the employer if notice is provided to participants before the beginning of the plan year which discloses the possibility that the contributions might be reduced or suspended mid-year. The notice must also provide that a supplemental notice will be provided to plan participants if a reduction or suspension does occur and that the reduction or suspension will not apply until at least 30 days after the supplemental notice is provided. These provisions are found in 1.401(k)-3(g)(1)(ii)(A)(2) and 1.401(k)-3(g)(ii)(B).

The final regulations also permit matching contributions to be reduced or suspended under a mid-year amendment if the notice provided to participants before the beginning of the plan year discloses that the contributions might be reduced or suspended mid-year, that participants will receive a supplemental notice if that occurs, and that the reduction or suspension will not occur until at least 30 days after the supplemental notice is provided. These provisions are found in 1.401(k)-3(g)(1)(i)(A)(2) and 1.401(k)-3(g)(1)(i)(B).

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.

In response to the *Federal Register* notice published July 15, 2014, at 79 FR 41361, for the renewal of this information collection, we received no comments.

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

There were no changes made to the information collection since the previous OMB approval.

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

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.C.S.C. 6103.