

Part IV. Items of General Interest

Guidance for Employers Concerned About Certain Mid-Year Changes to a § 401(k) Safe Harbor Plan

Announcement 2007-59

The Internal Revenue Service has learned that some employers have concerns about adding provisions during a plan year to their § 401(k) safe harbor plans (described in § 401(k)(12) of the Internal Revenue Code) in order to take advantage of recently effective changes to the rules for § 401(k) plans, such as a qualified Roth contribution program (as defined in § 402A) or hardship withdrawals described in part III of Notice 2007-7, 2007-5 I.R.B. 395, when the pre-year safe harbor notice required by § 401(k)(12)(D) does not include information about the added provisions.

This announcement provides that a plan will not fail to satisfy the requirements to be a § 401(k) safe harbor plan merely because of mid-year changes to implement a qualified Roth contribution program (as defined in § 402A) or the hardship withdrawals described in part III of Notice 2007-7.

Comments are requested as to whether additional guidance is needed with respect to mid-year changes to a § 401(k) safe harbor plan (other than changes described in this announcement or in § 1.401(k)-3(f) of the Income Tax Regulations (relating to mid-year amendments to become a safe harbor plan using nonelective contributions) and § 1.401(k)-3(g) (relating to mid-year amendments to suspend or reduce safe harbor matching contributions)). Written comments should be submitted by September 17, 2007. Send submissions to CC:PA:LPD:DRU (Announcement 2007-59), Room 5203, Internal Revenue Service, POB 7604 Ben Franklin Station, Washington, D.C. 20044. Comments may be hand delivered to CC:PA:LPD:DRU (Announcement 2007-59), Room 5203, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, comments may be submitted via the Internet at notice.comments@irs.counsel.treas.gov (Announcement 2007-59). All comments will be available for public inspection.

Drafting Information

The principal authors of this announcement are Roger Kuehnle of the Employee Plans, Tax Exempt and Government Entities Division and Cathy Vohs and Bill Gibbs of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this

announcement, please contact the Employee Plans taxpayer assistance answering service between 8:30 a.m. and 4:30 p.m., Eastern time, Monday through Friday at 1-877-829-5500 (a toll-free call) or Mr. Kuehnie at retirementplanquestions@irs.gov. Ms. Vohs may be reached at 202-622-6090 and Mr. Gibbs may be reached at 202-622-6060 (not toll-free calls).