

Mid-Year Amendments to Safe Harbor Plans Pursuant to Notice 2014-19 with Respect to the Windsor Decision

Notice 2014-37

I. PURPOSE

This notice provides guidance on an amendment to reflect the outcome of United States v. Windsor, 570 U.S. ___, 133 S.Ct. 2675 (2013), that is adopted after the beginning of a plan year and is effective during a plan year (“mid-year amendment”) to a plan described in § 401(k)(12) or (13) (“§ 401(k) safe harbor plan”) or § 401(m)(11) or (12) (“§ 401(m) safe harbor plan”) of the Internal Revenue Code pursuant to Q&A-8 of Notice 2014-19, 2014-17 I.R.B. 979 (April 21, 2014).

II. BACKGROUND

Notice 2014-19 provides guidance on the application (including the retroactive application) of the Windsor decision and the holdings of Rev. Rul. 2013-17, 2013-38 I.R.B. 201 (Sept. 16, 2013), to retirement plans qualified under § 401(a).

Q&A-8 of Notice 2014-19 provides:

Q-8. What is the deadline to adopt a plan amendment pursuant to this notice?

A-8. The deadline to adopt a plan amendment pursuant to this notice is the later of (i) the otherwise applicable deadline under section 5.05 of Rev. Proc. 2007-44, or its successor, or (ii) December 31, 2014. Moreover, in the case of a governmental plan, any amendment made pursuant to this notice need not be adopted before the close of the first regular legislative session of the legislative body with the authority to amend the plan that ends after December 31, 2014.

Under § 1.401(k)-3(e)(1) of the Treasury Regulations, a § 401(k) safe harbor plan must be adopted before the beginning of the plan year and be maintained throughout a full 12-month plan year, except as otherwise provided in § 1.401(k)-3(g) (relating to the reduction or suspension of safe harbor contributions) or in guidance of general applicability published in the Internal Revenue Bulletin. Under § 1.401(m)-3(f)(1), similar rules apply to § 401(m) safe harbor plans, including § 403(b) plans. The IRS has been asked whether a § 401(k) or (m) safe harbor plan may adopt a mid-year amendment pursuant to Q&A-8 of Notice 2014-19.

III. QUESTION AND ANSWER

May a sponsor of a § 401(k) or (m) safe harbor plan adopt a mid-year amendment pursuant to Q&A-8 of Notice 2014-19?

Yes. A plan will not fail to satisfy the requirements to be a § 401(k) or (m) safe harbor plan merely because the plan sponsor adopts a mid-year amendment pursuant to Q&A-8 of Notice 2014-19.

IV. EFFECT ON OTHER DOCUMENTS

Notice 2014-19 is amplified by providing further guidance with respect to safe harbor plan mid-year amendments.

V. DRAFTING INFORMATION

The principal authors of this notice are Angelique Carrington of the Employee Plans, Tax Exempt and Government Entities Division, and Jeremy Lamb of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice, contact Ms. Carrington at *RetirementPlanQuestions@irs.gov* or Mr. Lamb at (202) 317-6700 (not a toll-free call).