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June 4, 2010

Internal Revenue Service  
CC:PA:LPD:DRU (Announcement 2007-59)  
Room 5203  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

Re: Follow-up to November 16, 2007 Comment Letter regarding Mid-Year Modifications to the Provisions of a Safe-Harbor Plan.

The American Society of Pension Professionals & Actuaries (ASPPA) is writing to follow-up on our comment letter, submitted on November 16, 2007 (see attached), regarding mid-year modifications to the provisions of a safe harbor plan under Internal Revenue Code §§401(k) and 401(m). ASPPA's membership believes the issues raised in our November 2007 letter continue to reflect operational concerns and impediments for plan sponsors.

ASPPA is a national organization of more than 7,000 retirement plan professionals who provide consulting and administrative services for qualified retirement plans covering millions of American workers. ASPPA members are retirement professionals of all disciplines, including consultants, investment professionals, administrators, actuaries, accountants, and attorneys. Our large and broad-based membership gives ASPPA unique insight into current practical applications of ERISA and qualified retirement plans, with a particular focus on the issues faced by small- to medium-sized employers. ASPPA's membership is diverse but united by a common dedication to the employer-sponsored retirement plan system.

### **Summary of our November 16, 2007 Comment Letter**

In response to Internal Revenue Service Announcement 2007-59, ASPPA submitted comments regarding the need for additional guidance with respect to mid-year changes to a §401(k) safe harbor plan. In summary, our November 16, 2007 letter offered the following recommendations:

- 1) ASPPA recommends that the IRS provide a list of plan modifications that may be made mid-year without affecting a plan's safe harbor status under Code §§401(k)(12) and 401(m)(11). In addition, ASPPA recommends that the IRS provide a list of those provisions that may NOT be modified mid-year without affecting a plan's safe harbor status.
- 2) ASPPA recommends that the Service clarify which provisions may be amended mid-year but would require that the plan sponsor provide a supplemental notice to participants. To the extent a supplemental notice is required, ASPPA recommends that plan sponsors be permitted to provide the updated notice within 60 days of the effective date of the modified provision.

Safe harbor plans are a very popular and commonly offered plan design. Sponsors of such plans often wish to make mid-year changes to their plan, as a result of new laws or changing financial circumstances or economic conditions. ASPPA strongly believes that many such mid-year changes should not impact safe harbor status or require a supplemental notice, but in the absence of guidance, the issue remains



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confused. Examples of common mid-year amendments that should be clarified as permissible include: (1) adding or changing the non-elective profit sharing component (e.g., amount, eligibility, or allocation method); (2) liberalizing eligibility provisions for any type of contribution; (3) adoption of permissive retroactive amendments under Revenue Procedure 2008-50 (SCP or VCP); or (4) adding a Roth 401(k) conversion feature for 2010 (if a change in law is enacted). Of course, amendments such as these would still be subject to the normal qualification requirements such as the protections of IRC §411(d)(6).

**Therefore, ASPPA recommends** that the IRS provide additional guidance, informal or otherwise, to clarify how various mid-year plan design changes are treated under the safe harbor rules.

Respectfully submitted,

/s/

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