

EB Flash: IRS Issues Temporary Relief, Guidance For Mid-Year Amendments To Safe Harbor 401(k) Plans

Employee Benefits Alert

06.30.2020

On June 29, 2020, the Internal Revenue Service (IRS) issued [Notice 2020-52](#), which provides temporary relief and other guidance to plan sponsors who wish to reduce or suspend contributions to their safe harbor 401(k) plans.¹

In general, 401(k) plans that utilize a safe harbor matching or nonelective contribution as an alternative to ADP/ACP nondiscrimination testing (so-called "safe harbor 401(k) plans") must have the requisite safe harbor plan provisions in the plan document before the beginning of the plan year, and those provisions generally must remain in effect throughout the entire 12-month plan year. In addition, employees must receive a "safe harbor" notice that describes the safe harbor contribution and other aspects of the plan design, including any non-safe harbor contributions. Employers are restricted in their ability to amend a safe harbor 401(k) plan mid-year in a manner that reduces or suspends the safe harbor contribution or changes any other provisions described in the notice.

In recognition of the financial challenges resulting from the COVID-19 pandemic, Notice 2020-52 provides temporary relief related to certain mid-year amendments that reduce or suspend safe harbor contributions and guidance related to the reduction or suspension of contributions affecting only highly compensated employees (HCEs).

Relief for Mid-Year Amendments to Reduce or Suspend Safe Harbor Contributions

In general, an employer may adopt a mid-year amendment to reduce or suspend the safe harbor matching or nonelective contribution only under certain conditions: (1) the employer reserved the right to reduce or suspend the contribution in that year's safe harbor notice or is operating at an economic loss (determined under certain pension funding requirements); (2) the employer amends the plan on a prospective basis and provides that ADP and, if applicable, ADP testing will be satisfied on a current year basis; and (3) the employer provides employees a supplemental notice at least 30 days before the amendment takes effect, and provides employees a reasonable opportunity to change their deferral elections prior to the reduction or suspension.

Notice 2020-52 allows a mid-year amendment to reduce or suspend safe harbor matching or nonelective contributions even if the employer did not reserve the right to do so in the safe harbor notice or is not operating at an economic loss. The relief is limited to an amendment adopted between March 13, 2020 and August 31, 2020. In the case of the reduction or suspension of a safe harbor nonelective contribution, the advance supplemental notice requirement is waived if the amendment is adopted on a prospective basis and the supplemental notice is provided no later than August 31, 2020.

Clarification of Requirements for Reducing or Suspending Contributions Made on Behalf of Highly-Compensated Employees

In general, an employer may adopt a mid-year amendment that impacts plan provisions described in the safe harbor notice (other than the safe harbor match or nonelective contribution) if (1) the employer adopts the amendment on a prospective basis, and (2) the employer provides employees an updated safe harbor notice and an opportunity to change their deferral elections between 30 to 90 days before the amendment takes effect, subject to certain exceptions if it is not practical to do so. [Notice 2016-16](#) provides further details about the circumstances under which these mid-year amendments are permitted.

[Notice 2020-52](#) clarifies that a mid-year amendment that reduces only contributions made on behalf of HCEs is treated as a mid-year change affecting a plan's required safe harbor notice content, subject to [Notice 2016-16](#), and not a mid-year amendment to the safe harbor contribution. Therefore, this mid-year amendment is permitted as long as an updated safe harbor notice and an

election opportunity are provided to HCEs to whom the mid-year change applies, determined as of the date of issuance of the updated safe harbor notice, pursuant to Notice 2016-16.

The nine-page text of Notice 2020-52 is [posted here](#).

¹The temporary relief and other guidance provided in Notice 2020-52 apply to Code section 403(b) plans that apply the Code section 401(m) safe harbor rules pursuant to Code section 403(b)(12).

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