



## ALERTS

### Still Time To Make Midyear Amendments To Safe Harbor Defined Contribution Plans

August 11, 2020

#### Highlights

The IRS issued Notice 2020-52 to provide temporary relief to sponsors of safe harbor defined contribution plans who make midyear plan changes

Contributions made for highly compensated employees (HCEs) are not considered safe harbor contributions, and a midyear change that reduces only contributions for HCEs will not affect a plan's safe harbor status (although notice requirements apply)

Certain requirements are temporarily relaxed for midyear reductions or suspensions of safe harbor contributions, including the 30-day notice requirement applicable to midyear changes to safe harbor nonelective contributions

The COVID-19 pandemic caused many businesses to struggle. As a result, some plan sponsors have considered suspending, or have already suspended, safe harbor matching contributions or safe harbor nonelective contributions in 2020 to defined contribution plans (i.e., 401(k) plans and 403(b) plans that are deemed to satisfy certain nondiscrimination testing requirements because they include specified minimum matching or nonelective contribution provisions).

## RELATED PEOPLE



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In response, the IRS issued [Notice 2020-52](#), which:

1. Clarifies the requirements applicable for midyear amendments to safe harbor defined contribution plans that reduce only contributions for highly compensated employees (HCEs) and
2. Provides temporary relief from certain requirements that generally apply for midyear amendments to safe harbor defined contribution plans, specifically for plan amendments adopted between March 13, 2020 and Aug. 31, 2020, that reduce or suspend safe harbor contributions.

Generally, a plan's safe harbor provisions must remain in effect for an entire 12-month plan year, and midyear plan amendments to those provisions are not permitted unless certain requirements are satisfied. Midyear plan amendments to reduce or suspend contributions are generally permitted if the employer is operating at an economic loss or if the plan's safe harbor notice states that the plan may be amended during the plan year to suspend or reduce safe harbor contributions and advance notice of the amendment is provided.

## **Reductions for Highly Compensated Employees Only**

The Notice clarifies that a midyear change that reduces or eliminates only contributions made for HCEs is not considered a "reduction or suspension of safe harbor contributions" that would negatively impact the plan's safe harbor status. However, for purpose of the notice and election opportunity requirements that apply to safe harbor defined contribution plans, such a change is a midyear change that triggers a supplemental safe harbor notice.

Accordingly, to satisfy the safe harbor notice and election opportunity conditions for midyear plan changes which affect the required safe harbor notice content, and are not reductions or suspensions of safe harbor contributions, a supplemental safe harbor notice must be provided to HCEs to whom the midyear change applies as of the date of issuance of the supplemental safe harbor notice.

## **Midyear Reductions or Suspensions of Safe Harbor Contributions**

A plan may only be amended during a plan year to reduce or suspend safe harbor contributions if the employer (i) is operating at an economic loss for the plan year, or (ii) has included in the plan's safe harbor notice for the plan year a statement that the plan may be amended during the plan year to reduce or suspend the safe harbor contributions and that the reduction or suspension will not apply until at least 30 days after all eligible employees are provided notice of the reduction or suspension.

However, the Notice provides temporary relief related to this requirement. A plan may be amended midyear to reduce or suspend safe harbor matching contributions or safe harbor nonelective contributions without requiring economic loss or specified language in the annual safe harbor notice, if the amendment is adopted between March 13, 2020, and Aug. 31, 2020. Additionally, during the same period, a plan may be amended to

reduce or suspend safe harbor nonelective contributions without providing a 30-day notice of such reduction or suspension if such notice is provided by Aug. 31, 2020, and the amendment only applies prospectively. Note that the 30-day advance notice requirement still applies to the midyear reduction or suspension of safe harbor matching contributions because those contributions may directly affect the amount a participant chooses to defer under the plan.

## **Employer Action Steps**

### **Per the new guidance, employers should consider the following steps:**

- Consider whether amending plans in 2020 to suspend safe harbor contributions is desirable for cost savings.
- Work with employee benefits counsel to determine feasibility of design changes and applicable notice and amendment requirements.
- Discuss proposed changes with the plan's third party administrator and consider the testing implications of dropping the safe harbor design in connection with the proposed changes.
- If the desired changes are determined to be feasible, provide any required notice to participants (i.e., consider Aug. 31, 2020 deadline).
- Request that counsel amend defined contribution plan accordingly (i.e., consider Aug. 31, 2020 deadline).
- Update summary plan description accordingly.
- Consider plan design changes for plan years beyond 2020 and applicable notice and amendment requirements.

To obtain more information, please contact the Barnes & Thornburg attorney with whom you work or Lori Shannon at 312-214-5664 or [lori.shannon@btlaw.com](mailto:lori.shannon@btlaw.com).

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