



IRS Provides Relief for Safe Harbor Contribution Changes

Guidance for reducing or suspending contributions.

July 2020

KEY POINTS

- IRS temporary relief provides flexibility for mid-year reductions or suspensions of safe harbor contributions.
 - The relief temporarily relaxes the conditions for mid-year reductions or suspensions, including notice requirements.
 - The relief applies to amendments adopted between March 13, 2020 and August 31, 2020.
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On June 29, 2020, the Internal Revenue Service (“IRS”) issued Notice 2020-52, which provides employers with more flexibility during the COVID-19 pandemic for mid-year reductions or suspensions of safe harbor contributions. Under this temporary relief, a plan can reduce or suspend matching or nonelective contributions even if the plan does not meet certain regulatory requirements.

The relief also applies to the requirement to send “supplemental notice” informing participants in advance of such reduction or suspension, as long as the supplemental notice is provided no later than August 31, 2020. The relief applicable to supplemental notices is limited to reductions or suspensions of safe harbor nonelective employer contributions (i.e., not applicable to safe harbor matching contributions).

Background

Safe harbor plans must provide certain levels of employer matching or nonelective contributions and meet other requirements (including the requirement to provide notice regarding the safe harbor plan design and other features) to be exempt from nondiscrimination testing.

In order to reduce or suspend safe harbor contributions mid-year, the employer must either:

- Be operating at an economic loss (defined by reference to Internal Revenue Code section 412(c)(2)(A)) for the plan year; or
- Have included in their safe harbor notice a provision indicating their ability to reduce or suspend safe harbor contributions with 30 days advance notice to eligible participants.

Assuming the plan meets these requirements, the plan must provide 30 days advance notice (referred to as a “supplemental notice”) to participants and adopt an amendment prior to the effective date of the reduction or suspension. The supplemental notice must describe:

- The consequences of the amendment that reduces or suspends future safe harbor contributions;
- The procedures for changing their cash or deferred elections and, if applicable, their employee contribution elections; and
- The effective date of the amendment.

In addition to these requirements, the plan must be amended to provide that the Actual Deferral Percentage (“ADP”) test will be satisfied for the entire plan year in which the reduction or suspension occurs using the current year testing method (it would be most efficient to include this amendment with the reduction/suspension amendment).

Relief for Mid-Year Reductions or Suspensions

The Notice provides that a plan can adopt an amendment between March 13, 2020, and August 31, 2020, to reduce or suspend safe harbor matching or nonelective contributions mid-year, even if the plan does not meet the regulatory requirements of either:

- Operating at an economic loss; or
- Having included a disclosure in the safe harbor notice indicating the employer’s ability to reduce or suspend safe harbor contributions with 30 days advance notice to participants.

The Notice also provides relief from the 30-day advance supplemental notice requirement for reductions or suspensions of safe harbor nonelective contributions. To be eligible for relief, the plan must adopt an amendment between March 13, 2020, and August 31, 2020 (but no later than the effective date of the reduction or

suspension), and the supplemental notice must be provided no later than August 31, 2020.

Notably, the relief does not apply to the timing for providing a supplemental notice when reducing or suspending safe harbor matching contributions “because matching contribution levels communicated to employees directly affect employee decisions regarding elective contributions.”

Clarification of Requirements for Reducing HCE Contributions

The Notice also clarifies that contributions made on behalf of highly compensated employees (“HCEs”) are not safe harbor contributions. Accordingly, a mid-year change that reduces only contributions made on behalf of HCEs is not a reduction or suspension triggering the requirements outlined above. However, such a change would trigger the need to send an updated safe harbor notice sufficiently in advance of the change (so that affected HCEs have an opportunity to modify their contribution elections).

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