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IRS Issues Guidance for Mid-Year Reduction/Suspension of Safe Harbor Contributions

By John Lucas and David Alderson

The IRS has issued [Notice 2020-52](#) which clarifies the requirements for a mid-year amendment to a safe harbor 401(k) or 401(m) plan that reduces or suspends contributions made only on behalf of highly compensated employees (HCEs). The notice also provides temporary relief in connection with the ongoing COVID-19 pandemic from certain requirements that would normally apply to a mid-year amendment that reduces or suspends safe harbor contributions made to non-highly compensated employees (NHCEs), provided the amendment is adopted between March 31, 2020, and August 31, 2020.

General Rule for Mid-Year Changes to SH Plans

[Regulation 1.401\(k\)-3\(g\)](#) provides that a safe harbor plan may be amended during the plan year to reduce or suspend future safe harbor matching contributions or safe harbor non-elective contributions if the plan is also amended to provide that the ADP test will be satisfied for the entire plan year in which the reduction or suspension occurs (using the current year testing method) and if certain other requirements are satisfied. Those other requirements are that the employer must either (1) be operating at an economic loss, or (2) have 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 safe harbor contributions and that the reduction or suspension will not apply earlier than 30 days after all eligible employees are provided notice of the reduction or suspension (this notice statement is commonly referred to as "maybe language.") Pursuant to Notice 2016-16, the reduction or suspension of safe harbor contributions may be effective no earlier than the later of the date the amendment is adopted or 30 days after eligible employees are provided the supplemental notice, and the eligible employees must be given a reasonable opportunity (including a reasonable period after receipt of the supplemental notice) prior to the reduction or

suspension of safe harbor contributions to change their cash or deferred elections. Similar rules regarding the ACP test and safe harbor matching contributions are provided in [Regulation 1.401\(m\)-3\(h\)](#).

Reducing or Suspending Contributions Made Only to HCEs

Some safe harbor plans want to reduce or eliminate only those safe harbor contributions given to HCEs, leaving the contributions to NHCEs intact. Notice 2020-52 explains how the above mid-year amendment rules apply in this situation.

As Notice 2020-52 reminds us, though a plan may give safe harbor contributions to HCEs, those contributions technically are not safe harbor contributions under the Code and regulations. Therefore, the rules for eliminating or suspending safe-harbor contributions mid-year do not apply if the change is being applied only to HCEs. In other words, the safe harbor contributions made to HCEs can be eliminated or suspended regardless of the employer's economic situation or whether the safe harbor notice for the plan year included "maybe language."

However, while contributions made on behalf of HCEs are not safe harbor contributions for purposes of a mid-year amendment, the plan is still subject to the supplemental notice requirements of Notice 2016-16. So, to satisfy the notice and election opportunity conditions of Notice 2016-16, an updated safe harbor notice and an election opportunity must be provided to HCEs to whom the mid-year change applies, determined as of the date of issuance of the updated notice.

Temporary COVID-19 Relief for Reducing or Suspending Safe Harbor Contributions

Notice 2020-52 provides a temporary exemption from the conditions that normally would apply to a plan wishing to reduce or suspend safe harbor matching

contributions or safe harbor non-elective contributions midyear. Under the Notice, if such an amendment is adopted between March 13, 2020, and August 31, 2020, the plan does not have to satisfy the requirement that the employer either is operating at an economic loss, or had included “maybe language” in the plan’s safe harbor notice.

In addition, for an amendment that reduces or suspends safe harbor **non-elective contributions**, if the amendment is adopted between March 13, 2020, and August 31, 2020, the plan is not required to provide a supplemental notice to eligible employees at least 30 days before the reduction or suspension is effective, as long as (1) the supplemental notice is provided no later than August 31, 2020, and (2) the plan amendment that reduces or suspends safe harbor non-elective contributions is adopted no later than the effective date of the reduction or suspension of safe harbor non-elective contributions.

This relief from the notice requirements does not apply to a plan amendment which reduces or suspends safe harbor **matching contributions**. That type of amendment would still need to provide a 30-day advance notice and an election opportunity before the reduction or suspension could take effect.

The guidance and relief provided under Notice 2020-52 applies to 403(b) plans that use the 401(m) safe harbor rules.

If you have any questions about reducing or suspending your plan’s safe harbor contributions, we encourage you to contact the Findley consultant you normally work with, or contact John Lucas at [615.665.5329](tel:615.665.5329) or John.Lucas@findley.com, or David Alderson at [615-665-5366](tel:615-665-5366) or David.Alderson@finley.com.