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IRS Issues Guidance on Mid-Year Amendments to Certain Safe Harbor Plans

BY JOHN IEKEL | JUNE 29, 2020

PRACTICE MANAGEMENT

As plans contemplate changes to safe harbor plans in the midst of the COVID-19 pandemic, the IRS has provided some guidance and relief for certain plans.

The IRS on June 29 issued guidance that clarifies the requirements that apply to a mid-year amendment to a safe harbor 401(k) or 401(m) plan that reduces only contributions made on behalf of highly compensated employees HCEs. The guidance is contained in **Notice 2020-52**.

Under Treas. Reg. §1.401(k)-3(a), contributions made on behalf of HCEs are not included in the definition of safe harbor contributions. Accordingly, says the IRS, a mid-year change that reduces only contributions made on behalf of HCEs is not a reduction or suspension of safe harbor contributions described in Treas. Reg. §1.401(k)-3(g) and Treas. Reg. §1.401(m)-3(h).

However, the IRS in Notice 2020-52 says that a mid-year change that reduces only contributions made on behalf of HCEs would be a mid-year change to a plan's required safe harbor notice content for purposes of **Notice 2016-16**. Therefore, in order 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 safe harbor notice.

Temporary COVID-Related Relief

Notice 2020-52 also provides temporary relief in connection with the COVID-19 pandemic from certain requirements that would otherwise apply to a mid-year amendment to a safe harbor 401(k) or 401(m) plan adopted between March 13, 2020 (the date of the **Presidential Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease Outbreak**), and Aug. 31, 2020 that reduces or suspends safe harbor contributions.

The notice explains that if a plan amendment that reduces or suspends safe harbor nonelective contributions during a plan year is adopted between March 13, 2020, and Aug. 31, 2020, then the plan will not be treated as failing to satisfy the requirements of Treas. Reg. §1.401(k)-3(g)(1)(ii) or Treas. Reg. §1.401(m)-3

(h)(1)(ii) just because a supplemental notice is not provided to eligible employees at least 30 days before the reduction or suspension of safe harbor nonelective contributions is effective. This applies as long as:

1. the supplemental notice is provided to eligible employees no later than Aug. 31, 2020, and
2. the plan amendment that reduces or suspends safe harbor nonelective contributions is adopted no later than the effective date of the reduction or suspension of safe harbor nonelective contributions.

Notice 2020-52 does not provide relief regarding the timing of supplemental notices for a mid-year reduction or suspension of safe harbor matching contributions under Treas. Reg. §1.401(k)-3(g)(1)(i) or Treas. Reg. §1.401(m)-3(h)(1)(i). The IRS says this is because matching contribution levels communicated to employees directly affect employee decisions regarding elective contributions (and, if applicable, employee contributions).

403(b) Plans

Notice 2020-52 applies to 403(b) plans that apply the Section 401(m) safe harbor rules under Internal Revenue Code Section 403(b)(12).

To Be Published

Notice 2020-52 will appear in *Internal Revenue Bulletin* 2020-29 on July 13, 2020.

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