



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

As a result of the ongoing Coronavirus Disease (COVID-19) pandemic, many plan sponsors have been forced to review their retirement plan contributions for 2020, including plans with nondiscrimination safe harbor plan designs (safe harbor plans). On June 29, 2020, the Internal Revenue Service (IRS) released Notice 2020-52 (the Notice), providing relief to safe harbor plans that, between March 31, 2020 and August 31, 2020, adopt an amendment to reduce or suspend safe harbor matching or nonelective contributions for the 2020 plan year.

Normally, both traditional and qualified automatic contribution arrangement (QACA) safe harbor plan designs must be adopted prior to the first day of a plan year and must remain in effect for the entire 12-month plan year, subject to certain regulatory exceptions. If an exception is not met, the following requirements must be met in order to reduce or suspend safe harbor matching or nonelective contributions in the middle of a plan year.

1. The employer must be operating at an economic loss as defined in Section 412(c)(2)(A) of the Internal Revenue Code or the annual safe harbor notice must include a statement indicating that the plan may be amended to reduce or suspend safe harbor contributions (precondition requirement). Please note that Transamerica's standard safe harbor notice does include this permissive statement.
2. Participants must be given at least 30 days prior notice of the safe harbor contribution reduction or suspension and be provided a reasonable opportunity to adjust their deferrals based on the reduction or suspension (prior notice requirement).
3. The amendment reducing or suspending safe harbor contributions must be prospective and the safe harbor contributions must be made up to the effective date of the reduction or suspension.
4. The plan must pass the Section 401(k) actual deferral percentage and Section 401(m) actual contribution percentage tests for the entire plan year using the current year testing method, as applicable.

The relief under the Notice provides that:

- If an amendment to reduce or suspend safe harbor matching or nonelective contributions is adopted between March 13 and August 31, 2020, the plan will be deemed to meet the precondition requirement.
- Reducing or suspending safe harbor *nonelective* contributions does not require a 30-day prior notice as long as:
 - the participant notice is provided on or before August 31, 2020; and
 - the plan amendment reducing or suspending nonelective safe harbor contributions is adopted on or before the effective date of the reduction or suspension.

Note that a 30-day prior notice must still be provided to participants if safe harbor *matching* contributions will be reduced or suspended.

This relief also applies to safe harbor Section 403(b) plans.

Reduction or Suspension of Safe Harbor Contributions to Highly Compensated Employees Only

The Notice also clarifies that contributions made to highly compensated employees (HCEs) are excluded from the definition of safe harbor contributions. As such, reducing or suspending such contributions does not constitute a reduction or suspension of a safe harbor contribution. However, if an amendment reduces only contributions made on behalf of HCEs, it would constitute a change to the plan's required safe harbor notice content, and would require a 30 day prior notice (and election opportunity) to the affected HCEs.

The Notice does not address the CARES Act coronavirus-related distribution rules, or participant loan relief, contained in IRS Notice 2020-50 (June 19, 2020) or the 2020 required minimum distribution relief and clarifications contained in IRS Notice 2020-51 (June 23, 2020). Please review our separate Breaking News articles on these topics.

Further updates will be provided as they become available. Please contact your Transamerica representative if you have any questions about this topic.

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