

## IRS Liberalizes Rules for 2020 Mid-Year Reductions in Safe Harbor Contributions – However, Affected Plan Sponsors May Need to Act Fast

In Notice 2020-52, the Internal Revenue Service liberalized certain limitations on a plan sponsor's ability to reduce or suspend contributions to the sponsor's safe harbor 401(k) or 403(b) plan. The relief is limited, however, to amendments adopted between March 13, 2020 and August 31, 2020. The temporary relief is being provided "[d]ue to the unprecedented nature of the COVID-19 pandemic . . . ."

Without the relief provided in Notice 2020-52, sponsors of safe harbor plans generally may reduce the sponsor's non-elective or matching safe harbor contributions during a plan year only if, among other requirements, the plan sponsor expressly reserved the right to do so in the safe harbor notice that the sponsor distributed to eligible employees prior to the start of the current plan year, or the plan sponsor is operating at an economic loss during the current year. When otherwise permitted, a reduction in safe harbor contributions can be effective no earlier than the later of the date the amendment is adopted or 30 days after eligible employees are provided with a detailed supplemental notice that describes the effects of the amendment, the procedures eligible employees must follow to change their own contributions, and other related information. Also, if a permitted mid-year amendment is adopted and implemented, ADP and ACP testing, as applicable, must be performed under the current year testing method and each applicable test must be satisfied for the entire plan year. (Plans intended to satisfy the requirements of Internal Revenue Code section 403(b) are not subject to ADP testing.)

Notice 2020-52 provides temporary relief with respect to the circumstances under which safe harbor contributions can be reduced or suspended mid-year. Specifically, the plan sponsor may reduce or suspend safe harbor contributions mid-year (in 2020) even if the sponsor did not reserve the right to do so in the original safe harbor notice and even if the sponsor is not operating at an economic loss.

This temporary relief is conditioned upon the plan sponsor's adoption of an appropriate plan amendment between March 13, 2020 and August 31, 2020. Further, with respect to nonelective safe harbor contributions, the amendment must be adopted on or before the date the reduction or suspension will be effective and notice of the reduction or suspension must be provided to eligible employees no later than August 31, 2020. With respect to safe harbor matching contributions, notice of the reduction or suspension must be provided to eligible employees at least 30 days before the reduction or suspension will be effective. Full-year ADP and ACP testing will apply, as noted above.

If you have any questions about this information memo, please contact [Stephen Daley](#), any [attorney](#) in our [Employee Benefits and Executive Compensation practice](#) or the attorney at the firm with whom you are regularly in contact.



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