



## **IRS Grants 401(k) Safe Harbor Suspension Relief**

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# IRS Grants 401(k) Safe Harbor Suspension Relief

On June 29, 2020, the Internal Revenue Service (“IRS”) released Notice 2020-52 (“IRS Notice”) which grants certain COVID-19 related relief to retirement plan sponsors who employ a safe harbor 401(k) (“Safe Harbor”) plan design feature. The majority of the guidance is temporary relief which expires on August 31, 2020. However, the IRS Notice also includes a clarification that shall remain effective after August 31, 2020.

## Temporary Suspension of Economic Loss / Safe Harbor Notice Content Requirement

Generally, a Safe Harbor feature is required to be effective for a full 12-month plan year. However, in certain circumstances, it is permissible to suspend or reduce the Safe Harbor feature during the current plan year (“Mid-Year”) if certain additional requirements are met. More specifically, in order for a Safe Harbor feature to permissibly be suspended Mid-Year, the plan sponsor of such plan must either:

- 1) be operating at an economic loss; or
- 2) the Safe Harbor notice issued by the plan sponsor to each eligible employee before the beginning of the plan year (“SH Notice”) must include specific language advising that:
  - a) the plan may be amended Mid-Year to reduce or suspend Safe Harbor employer contributions; and
  - b) the reduction or suspension will not be effective for at least 30 days after all eligible employees receive notice of the intended suspension or reduction of employer Safe Harbor contributions<sup>1</sup>.

However, the IRS Notice temporarily suspends the economic loss and/or SH Notice content requirements described above. Therefore, with regard to any suspension or reduction of Safe Harbor employer contributions that occurs from March 13, 2020 through and including August 31, 2020, a plan sponsor is neither required to have been operating at an economic loss nor to include the specific language referenced above within their annual SH Notice.

## Temporary Suspension of 30 Day Advance Notice Requirement for Safe Harbor Profit Share

As suggested by the discussion above, generally a suspension or reduction of a Safe Harbor contribution feature may not occur any earlier than 30 days after each eligible employee receives supplemental notification of the intended suspension or reduction. With respect to this 30 day advance

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<sup>1</sup> Each Safe Harbor notice prepared by Legacy Retirement Solutions, LLC for its clients includes the necessary language advising all eligible employees that the plan at issue may be amended Mid-Year to reduce or suspend Safe Harbor employer contributions and that such reduction or suspension will not be effective for at least 30 days after such notice is received.



notice requirement, the IRS Notice indicates that such requirement shall not apply with regard to the suspension or reduction of Safe Harbor profit sharing features that occur from March 13, 2020 through and including August 31, 2020. It is important to note that this suspension of the 30 day advance notice requirement only applies to Safe Harbor profit sharing contribution features and does not apply to Safe Harbor matching contribution features. Regardless, the temporary relief within the IRS Notice shall only be available if:

- 1) A supplemental notice advising of the suspension or reduction in Safe Harbor profit sharing contributions is received by each eligible employee by no later than August 31, 2020; and
- 2) The plan amendment that reduces or suspends the Safe Harbor profit sharing contributions is adopted no later than its effective date.

### Suspension or Reduction of Safe Harbor Contribution for HCEs Only

In general, it is not permissible to implement a Mid-Year change to a Safe Harbor plan that reduces or otherwise narrows the group of employees eligible to receive Safe Harbor contributions. Thus, for example, it would not be permissible to amend a Safe Harbor plan Mid-Year in order to exclude all “Sales Associates”. However, the IRS Notice clarifies that it is permissible to implement a Mid-Year amendment to a Safe Harbor plan in order to reduce or suspend a Safe Harbor contribution if such reduction or suspension only applies to “highly compensated employees” (“HCEs”). Typically, an HCE is any employee who owns greater than 5 percent of the plan sponsor or earned greater than \$125,000<sup>2</sup> in the prior year.

In order to implement the HCE clarification discussed in the IRS Notice, the affected HCEs must first receive an updated SH Notice. Such updated SH Notice must advise them of the change to their eligibility to receive the Safe Harbor contribution and must also provide them with an opportunity to change their deferral election before the Mid-Year reduction or suspension is implemented. In general, these timing requirements are deemed to be satisfied if the updated SH Notice is provided at least 30 days before the effective date of the change.

We hope that this article helped you to better understand this topic. However, please be advised that it is not intended to serve as financial, tax or legal advice so it should not be construed as such. If you have questions about this topic, we strongly urge you to further discuss it with a qualified retirement plan professional. For more information about this topic, please contact our marketing department at 484-483-1044 or your administrator at Legacy.

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<sup>2</sup> This is the current 2020 dollar amount which is annually adjusted by the IRS for cost of living increases.





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