July 2020

IRS Issues COVID-19 Relief and Guidance on Mid-Year Suspensions or Reductions of 2020 Safe Harbor Contributions

On June 29, 2020 the Internal Revenue Service ("IRS") issued Notice 2020-52 (the "Notice"), clarifying the requirements applicable to mid-year amendments to a safe harbor plan that reduce only those contributions made on behalf of highly compensated employees ("HCEs"), and providing temporary COVID-19 relief from certain requirements normally applicable to mid-year suspension or reduction of safe harbor contributions.

The guidance and relief provided in this Notice applies to safe harbor 401(k) and 401(m) plans and to 403(b) plans subject to the Employee Retirement Income Security Act ("ERISA") that apply the § 401(m) safe harbor rules to satisfy nondiscrimination requirements for matching contributions.

Guidance on Reducing or Suspending Safe Harbor Contributions for HCEs

Generally, a reduction or suspension of safe harbor contributions may only be made in accordance with applicable regulatory requirements. However, contributions made on behalf of HCEs are not included in the definition of safe harbor contributions. Therefore, as explained in the Notice, a mid-year reduction or suspension of contributions made on behalf of HCEs would generally not be subject to the special requirements for reducing safe harbor contributions. The Notice does make clear, however, that such a suspension or reduction requires that impacted HCEs be provided with an updated safe harbor notice and election opportunity.

This guidance specifically notes that it does not address the impact of the recent Setting Every Community Up for Retirement Enhancement ("SECURE") Act change that eliminated the safe harbor notice requirements for safe harbor non-elective plans effective with the 2020 plan year.

Temporary COVID-19 Relief for Reductions or Suspensions of 2020 Safe Harbor Contributions

The IRS 401(k) regulations provide that safe harbor plans may generally only suspend their safe harbor contribution if they either (1) are operating at an economic loss for the plan year or (2) have included language in their safe harbor notice indicating that the plan may be amended during the plan year to reduce or suspend the safe harbor contribution, and that such reduction or suspension will not apply until at least 30 days after eligible employees are provide notice of the reduction or suspension.

Because of the unprecedented nature of the COVID-19 pandemic, the Notice provides that employers may reduce or suspend safe harbor matching or safe harbor non-elective contributions by adopting a plan amendment between March 13, 2020 (the date that the President issued an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act) and August 31, 2020 without having to meet either the economic loss or contingency language requirements described above.

Further, safe harbor non-elective plans that adopt such an amendment need not provide a supplemental notice 30 days before the effective date of the reduction or suspension, as long as notice is provided to eligible employees by August 31, 2020 and the adoption date of the amendment is no later than the effective date of the reduction or suspension of safe harbor non-elective contributions.

The Notice provides no relief for the timing of the required supplemental notice for safe harbor match plans. If an employer with a safe harbor match plan is seeking to reduce or suspend those safe harbor matching contributions, the required supplemental notice to eligible employees must generally be provided 30 days prior to the effective date of the change. Since matching contribution levels communicated to employees directly affect employee decisions on elective deferrals, providing the supplemental safe harbor notice of the reduction or suspension of safe harbor match 30 days prior to the effective date of the change enables participants to have a reasonable opportunity to modify their deferral elections.

Voya continues to monitor these and all regulatory developments impacting retirement plans.