



August 31, 2020 IRS Deadlines Approaching

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An August 31, 2020, deadline to take advantage of temporary relief provided by the Internal Revenue Service ("IRS") to (i) individuals, and (ii) sponsors of safe harbor 401(k) defined contribution plans, is fast approaching:

Individuals who received required minimum distributions during 2020 have until August 31, 2020, to roll over their payments if they wish to defer paying income taxes on those amounts.

Employers have until August 31, 2020, to adopt amendments to suspend safe harbor employer contributions to their defined contribution 401(k) plans even if their annual notices did not reserve the right to reduce or suspend such contributions or they are not operating at an economic loss.

2020 Required Minimum Distributions ("RMDs")

Individuals who received RMDs from defined contribution plans and individual retirement accounts ("IRAs") during 2020 can return those payments to tax-deferred vehicles even though the normal 60-day period for rollovers may have expired, as long as they do so by August 31, 2020.

RMDs generally must begin to be paid each year beginning with the year in which a participant attains age 72 (age 70-1/2 prior to January 1, 2020). Minimum distributions must also be made to beneficiaries if an individual dies before the RMD date. RMDs are ineligible for rollover, since this would continue the tax deferral.

The CARES Act, enacted on March 27, 2020, waived the requirement to make RMDs in 2020 from defined contribution plans, including 401(k) and profit sharing plans, 403(b) plans, governmental deferred compensation plans and IRAs. This waiver applies to 2019 RMDs with a required beginning date no later than April 1, 2020, that were paid in 2020, and RMDs that would otherwise be required for 2020.

By the time this relief became effective, many individuals had already received RMDs earlier in 2020. Those payments became eligible for rollover when they were no longer considered RMDs, but the payments were outside the standard 60-day rollover period.

On June 23, 2020, the IRS provided relief for RMDs paid from defined contribution plans or IRAs in 2020 that were waived under the CARES Act. Individuals may choose to roll over such payments to a qualified plan or IRA even though the 60-day rollover period may have passed since the payment was received as long as the rollover is made by August 31, 2020.

Suspension of Employer Safe Harbor Contributions

Sponsors of safe harbor defined contribution 401(k) plans may take advantage of temporary relief the IRS provided to make it easier to reduce or suspend safe harbor nonelective employer contributions and safe harbor matching contributions during 2020 as long they act by August 31, 2020. Otherwise, sponsors must comply with somewhat stricter rules that apply to reducing or suspending safe harbor contributions.

Existing guidance on mid-year changes to safe harbor contributions requires that either (i) the employer is operating at an economic loss, or (ii) the current year's annual safe harbor notice stated that the plan could be amended during the plan year to reduce or suspend safe harbor contributions, and the reduction or suspension is effective no earlier than the later of the date the amendment is adopted or 30 days after participants receive a supplemental notice of the reduction or suspension.

A sponsor that adopts an amendment by August 31, 2020, may prospectively reduce or suspend safe harbor contributions for participants in its 401(k) plan regardless whether it is operating at an economic loss or the annual notice stated it could do so. The relief differs as between plans that provide for safe harbor nonelective employer contributions and plans that provide for safe harbor matching contributions.

A 401(k) plan that provides for safe harbor matching contributions may be amended no later than August 31, 2020, to reduce or suspend the safe harbor matching contributions. Participants must be provided a supplemental safe harbor notice at least 30 days before the reduction or suspension becomes effective so that they can change their deferral elections if they choose.

A 401(k) plan that includes safe harbor nonelective employer contributions may be amended to reduce or suspend the safe harbor nonelective employer contributions no later than August 31, 2020. Participants must be provided a supplemental safe harbor notice by August 31, 2020, but the notice does not need to be provided at least 30 days before the change is effective.

If a sponsor reduces or suspends safe harbor contributions during a plan year, the 401(k) plan must satisfy the 401(k) nondiscrimination test for the entire plan. The plan can be amended to be a safe harbor plan again for the following plan year provided an amendment is adopted before the start of the plan year and the required notice is distributed 30 to 90 days before the start of the plan year.


In addition to making it easier to reduce or suspend safe harbor contributions for all participants, the IRS clarified that contributions made on behalf of highly-compensated employees (HCEs) are not considered safe harbor contributions. Thus, a sponsor may amend a plan mid-year to prospectively


reduce or suspend employer contributions for HCEs without affecting the safe harbor. An updated safe harbor notice is generally required with at least a 30-day period for HCEs to change their salary deferral elections before the reduction or suspension of employer contributions becomes effective.

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