IRS Provides Relief for Safe Harbor Plans June 29, 2020

Today the IRS issued Notice 2020-52 (the "Notice"), which provides some relief for sponsors of safe harbor 401(k) plans who want to reduce or suspend their safe harbor contributions mid-year. While the industry was asking for relief, the Notice does not provide as much relief as we had hoped would be provided. Following are the key points:

- Any safe harbor plan that currently provides benefits to highly compensated employees (HCEs) can be amended mid-year to reduce or suspend contributions just for the HCEs. Although this relief is limited, the cost of HCE contributions may account for a large portion of the required contribution for the year. An amendment that reduces or suspends contributions to HCEs affects the language in the safe harbor notice. An updated notice must be provided to participants, and HCEs must be given the opportunity to make a new deferral election.

- The IRS will also allow amendments that reduce or suspend safe harbor contributions for all participants if they are adopted ***between March 13, 2020 and August 31, 2020***. Without this relief, such contributions can be eliminated only under limited circumstances. In addition, a *safe harbor nonelective* contribution can be reduced or suspended during this same period without an advance 30-day notice. The reduction or suspension must not apply earlier than the adoption of the amendment. The 30-day notice is required to reduce or suspend a *safe harbor matching contribution, as normal*.

Please note, some 401(k) plans are "top heavy" and must provide minimum contributions to "non-key employees" (generally employees who are not owners of the company). This Notice does not grant any relief for such top heavy minimum required contributions.

This is the third notice released by the IRS in the last two weeks that provides guidance or clarification on the CARES Act or with respect to retirement plans and participants impacted by COVID-19.