ROBIN S. WEINGAST
AND ASSOCIATES, INC.

EFFECTS OF COVID-19 RELATED MARKET TURMOIL ON YOUR 401(k) PROFIT SHARING PLAN

The recent market turmoil caused by the COVID-19 Pandemic is creating many aspects of concern among all of us, so we would like to take this opportunity to address some concerns that you may have with regards to your 401(k) Profit Sharing Plan, with issues ranging from your ability to fund the 2019 contribution (if not funded yet) and/or future contributions and the effect on participants' accumulated balances.

If your plan covers only you as owner(s) and does not have any participating employees, you have the flexibility to contribute what you can afford for the 2019 (assuming that you have not yet filed your tax return) and 2020 plan years, as contributions are not required to be made, given the plan provision that contributions are discretionary up to dictated limits ($56k for those under age 50 and $62k for those age 50 or older in 2019 and $57k for those under age 50 and $63,500 for those age 50 or older in 2020).

If your plan does cover participating employees, the following are some issues to consider:

- If your plan is "top heavy" with more than 60% of accumulated balances attributable to key employees, a minimum contribution of 3% of compensation is generally required on behalf of NON-key employees, with contributions of ANY type of contribution on behalf of key employees (even only salary deferrals). If the intent is to not be obligated for a contribution for 2020, key employees will have to **NOT** elect salary deferrals for 2020. If the highest key employee deferral is less than 3% of considered compensation, the minimum contribution required for employees is the highest rate of deferral rate by a key employee .

- If your 401(k) testing generally fails with the average level of salary deferrals elected by Highly Compensated Employees (HCEs) exceeding the level dictated by the average level of salary deferrals elected by Non-Highly Compensated Employee (NHCEs), your plan may allocate a Safe Harbor contribution on behalf of participants to avoid distributing excess contributions to HCE's. If your 401(k) Plan allocated or will allocate Safe Harbor contributions for 2019 to allow the level of salary deferrals by HCEs, it is likely too late to NOT allocate it for the 2019 plan year, but any additional Profit Sharing contribution allocated on behalf of NHCES is not required, if employer contribution allocation on behalf of HCEs are reduced. Lower Profit Sharing contributions are also possible for plans without Safe Harbor with reductions to HCE allocations. If you are looking to avoid the Safe Harbor contribution for 2020, lower salary deferrals elected by HCEs and key employees could eliminate the need for such contributions. It is also possible to implement a provision via a plan amendment that limits deferrals by HCES to allow the 401(k) testing to pass, but such a provision is rare and is generally not popular among non-key HCES. If your plan allocates a Safe Harbor contribution to allow the level of Salary Deferrals on behalf of Highly Compensated Employees without requiring distribution of excess contributions to them and you believe that you may need to suspend the Safe Harbor contribution, please contact your Administrator for further discussion of your options.

Each 401(k) Profit Sharing Plan has its own unique circumstances and opportunities for lower contributions vary, depending on many different factors.

If you have any concerns about your ability to fund contributions for 2020 (or even 2019 - if not funded yet), we invite you to contact your plan Administrator or Robin directly to request that we conduct an analysis to determine options available to you.

Your participants most likely have valid concerns over how the recent market loss affects their account balances. Any such concerns can be discussed with Robin or the broker on the plan account.

GARDEN CITY CENTER | 100 QUENTIN ROOSEVELT BLVD. | SUITE 507 | GARDEN CITY, NY 11530
p: 516.794.1450 f: 516.794.8146 | RSW@RSWTPA.COM | WWW.RSWTPA.COM