Safe Harbor Plan Basics

Plan Sponsor FAQs
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What is a safe harbor 401(k) plan?

A safe harbor 401(k) plan is a type of retirement plan that is exempt from certain testing requirements. Specifically, a safe harbor plan is generally exempt from ADP/ACP testing ***enabling the plan's highly compensated employees to maximize 401(k) deferrals/Roth contributions without limitation.*** Safe harbor plans may also be exempt from top-heavy requirements if certain conditions are met.

What are the contribution requirements?

The plan must make either a safe harbor matching or safe harbor non-elective contribution. These contributions must be:

- 100% vested,
- Subject to the same distribution restrictions as 401(k) contributions, and
- Cannot be subject to allocation conditions (i.e. employment on the last day of the plan year or 1,000 hours).

What is a safe harbor matching contribution?

There are two basic formulas that may be used:

- 100% on the first 3% of deferrals, plus 50% on the next 2% (maximum of 4% match), or
- 100% on the first 4% of deferrals.

What is a safe harbor non-elective contribution?

A safe harbor non-elective contribution is similar to a profit sharing contribution and must be made on behalf of all eligible employees, with limited exceptions. The contribution must be, at a minimum, 3% of eligible plan compensation regardless of whether the employee elects to defer.

Are there other requirements?

Yes; before the beginning of each plan year the employer must provide all eligible employees with a notice meeting specific requirements. The notice must also be provided to employees before they become eligible to participant in the plan on an ongoing basis throughout the year.

Can a plan make matching contributions in addition to safe harbor matching contributions?

Yes; however, depending upon the matching formula, ACP testing may be required.

If the plan allows for after-tax (non-Roth) contributions, is the plan still exempt from ACP testing?

No; voluntary after-tax contributions are subject to the ACP test which must be performed each year.

In order for additional matching contributions to be exempt from ACP testing, what conditions must be satisfied?

- Discretionary matching contributions may not exceed 4% of compensation,
- Deferrals in excess of 6% may not be matched,
- The rate of match may not increase as deferrals increase, and
- The plan may not impose allocation conditions on additional matching contributions.

In order for the plan to be exempt from the top-heavy rules, what conditions must be satisfied?

- No contributions may be allocated to participants for the plan year other than 401(k), Roth and safe harbor contributions,
- Forfeitures may not be allocated to participant accounts for the plan year, and
- The plan may not have dual eligibility requirements (i.e. immediate eligibility for 401(k) and a one-year wait for safe harbor contributions).

Can a safe harbor plan include an automatic enrollment feature?

Yes; as a matter a fact, a safe harbor plan can be designed in such a way that if it includes an automatic enrollment feature with an automatic escalation feature, the plan can take advantage of a lesser safe harbor matching contribution formula and a 2-year cliff vesting schedule.

Can a safe harbor plan provide profit sharing contributions?

Absolutely! The plan can provide for discretionary (or fixed) profit sharing contributions in addition to safe harbor contributions and can include any allowable allocation formula, such as an integrated or cross-tested formula. This just means the plan will not be exempt from the top-heavy rules in years in which the employer elects to make a profit sharing contribution.

When can a plan adopt safe harbor provisions?

An existing 401(k) plan can only adopt a safe harbor contribution feature effective as of the beginning of a plan year.

How can I learn more?

If you would like to learn more about safe harbor plans, please contact us. We would be happy to conduct a plan design study so you can determine if this is the right fit for your company's plan!

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