

## SAFE HARBOR KEY PROVISIONS

### **Primary Benefits:**

- ❖ Satisfies ADP/ACP testing, allowing highly compensated employees (HCEs) the ability to defer up to the maximum deferral limits (<https://tpagroup.com/annual-benefit-and-limits>). *HCEs are defined as 5% owners, including family members by attribution, in current or prior plan year and generally employees earning greater than the Highly Compensated Limit.*
- ❖ Satisfies Top Heavy testing if the only employer contribution allocated is Safe Harbor.

### **Employer Contribution Requirement:**

- ❖ Non-elective Contribution of at least 3% to all NHCEs (and, if desired, HCEs) eligible for 401(k) deferrals without regard to whether employee makes deferral contributions (*similar to a Profit Sharing contribution*). The contribution can be used to offset any necessary Top Heavy contribution and is used as a baseline in testing any additional Profit Sharing contributions to targeted employees.  
*- OR -*
- ❖ Matching Contribution of at least \$1.00/\$1.00 on elective deferrals up to 3% of compensation and then a \$.50/\$1.00 match on elective deferrals from 3% to 5% of compensation. The contribution can be used to offset any necessary Top Heavy contribution.

*Note: Safe Harbor provisions can also be combined with **automatic enrollment provisions** requiring a matching contribution of at least 100% of the first 1% of deferral and then 50% of the next 5% or alternatively a 3% contribution of pay regardless of deferral rate. Additionally, the Employer contribution could be 100% vested after 2 years of service. There are other conditions and considerations. [Click here](#) for additional information of the requirements for **Qualified Automatic Contribution Arrangement ("QACAs")**.*

### **Restrictions:**

- Safe Harbor Contributions **must be 100% vested**
- Once eligible, cannot incorporate provisions requiring the employee to be working on the last day of the plan year or requiring completion of a certain number of hours of service during the plan year.
- In-service withdrawals of Safe Harbor monies are not allowed before age 59½, unless the participant requests a financial hardship withdrawal or a loan, if permitted under the plan.
- Safe Harbor Match exceeding 6% of pay including non-Roth after tax contributions still need to be tested. Any discretionary Match Contributions funded in addition to Safe Harbor contributions are subject to special limitations.
- Testing and additional contributions may needed if different eligibility requirements are utilized for Elective Deferrals and Safe Harbor Contributions.

### **Implementation Guidelines:**

- Need at least 3 months left in a plan year to add Safe Harbor 401(k) to an existing Profit Sharing plan.
- Need at least 3 months left in year to start Safe Harbor for a brand new 401(k) plan for current plan year.
  - There is an exception to the 3 month rule for a completely new business. Such businesses can start a Safe Harbor 401(k) with as little as a month in the plan year.
- The SECURE ACT allows you to add the 3% Safe Harbor Non-elective to an existing 401(k) plan up to 30 days prior to the end of the plan year. After the plan year end, you can still add the Safe Harbor Non-elective provision up until the next plan year end as long as you increase the contribution from 3% to 4%.
- The plan can be amended to add the Safe Harbor Match feature as of the first day of the next plan year.
- A Safe Harbor feature is intended to be a required commitment by the Employer for as long as the provision is in effect. The IRS has very strict guidelines that must be followed in the event an Employer is financially unable to fulfill this obligation. The Employer is legally bound for funding a Safe Harbor contribution through the date that the plan is formally amended to remove the provision and employees are given advance notice.

**General Notice Rules:** An annual notice is required 30 to 90 days before the beginning of each plan year. For a new plan, the notice requirement can be satisfied with less than 30 days advance notice, as long as participants are given a reasonable time frame to make a decision regarding their own contributions to the plan. The annual notice for the Safe Harbor Non-elective Contribution is no longer required under the SECURE ACT as long as the plan does not have a non-Safe Harbor Match provision. However, our notice contains language that Safe Harbor Contributions can be discontinued during the plan year without proof that your business is operating at an economic loss. Therefore, we recommend distributing the notice each year as a protective measure in the event your company were to experience an unanticipated hardship.