

SAFE HARBOR KEY PROVISIONS

Primary Benefits: Satisfies ADP/ACP testing which allows highly compensated employees (HCEs) the ability to defer up to the maximum deferral limits (<https://tpagroup.com/annual-benefit-and-limits>). Satisfies Top Heavy testing if the only employer contribution allocated is Safe Harbor. *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](#).*

Effective Date: Plan years beginning after 12/31/98

Vesting: Must be 100% vested

Contribution Requirement:

- ❖ Non-elective employer contribution of at least 3% to **all** NHCEs (&, 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 employer 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.

Restrictions:

- 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.
- 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 and any after tax contributions still need to be tested. Any discretionary Match funded in addition to safe harbor contributions are subject to special limitations.
- Testing may apply if dual eligibility requirements are utilized.

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 remaining in the year to start Safe Harbor for a brand new 401(k) plan in the current year.
- There is an exception to the 3 month rule for a completely new business. Such businesses can start a safe harbor plan with as little as a month in the plan year.
- Can not add Safe Harbor to an existing 401(k) plan during the plan year. The plan can be amended to add the Safe Harbor 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.