



# What's the Easiest Way to Pass a 401(k) **NONDISCRIMINATION TEST?**



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*POWER CHOICE FREEDOM*

Skip it with

# SAFE HARBOR

contributions.

It's true. A company may be able to forego 401(k) nondiscrimination testing by making a prescribed level of safe harbor contributions and giving timely notice to employees. Read on to find out how a safe harbor 401(k) plan can benefit a plan sponsor and learn more about the rules that make safe harbor plans so attractive.

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## WHAT ARE THE BENEFITS?

### SAFE HARBOR PLANS CAN:

- Eliminate the need for 401(k) nondiscrimination tests, also known as the actual deferral percentage (ADP) and actual contribution percentage (ACP) tests, which allows the highly compensated employees (HCEs) to maximize their deferrals and to receive matching contributions without worry of refund or forfeiture
- Eliminate ADP and ACP test fees and significantly reduce time-consuming data gathering, and test preparation
- Safe harbor contributions may also satisfy the top-heavy required contributions and the new comparability plans\* (NCP) gateway contributions\*\*, for some plans

## HOW DOES IT WORK?

There are two types of safe harbor contributions:

- Safe harbor matching contributions available with or without a qualified automatic contribution arrangement (QACA)
- Safe harbor non-elective contributions available with or without a qualified automatic contribution arrangement (QACA)

Generally, all safe harbor contributions must be 100% immediately vested. In addition, a timely notice that describes the safe harbor provisions and some of the other benefits and features provided under the plan must be provided to employees.

A QACA is a type of automatic enrollment provision. Under the QACA rules, a plan can provide for 100% vesting of safe harbor contributions after 2 years of service, rather than 100% immediate vesting, as required in traditional safe harbor plans.

\*NCP is a plan that uses a profit-sharing allocation formula that allows a greater allocation rate for a target group(s) of participants.

\*\*The NCP gateway is the minimum contribution percentage for any non-highly compensated employee. The gateway/minimum contribution percentage must be at least either (1) one-third of the highest percentage for any highly compensated employee or (2) 5%.

## General GUIDELINES

### Match

- Basic safe harbor match: 100% match on deferrals up to 3% of compensation plus 50% match on deferrals above 3% but not more than 5% of compensation, for all eligible non-highly compensated employees
- Enhanced safe harbor match: 100% match on deferrals up to a specified percentage (at least 4% and not greater than 6%) of compensation for all eligible non-highly compensated employees
- QACA safe harbor match: 100% match on deferrals up to 1% of compensation plus 50% match on deferrals above 1% but not more than 6% of compensation for all eligible non-highly compensated employees

### Non-elective

- Basic safe harbor non-elective contributions: Contributions equal to at least 3% of compensation for all eligible non-highly compensated employees
- QACA safe harbor non-elective: Contributions equal to at least 3% of compensation for all eligible non-highly compensated employees, including employees automatically enrolled in the plan\*

\*A QACA has several requirements, including automatic increases of salary deferral amounts of 1% each year for each employee automatically enrolled, until an elective deferral rate of at least 6% is reached, but not to exceed a maximum rate of 10%.

### Removing Safe Harbor Provisions During the Plan Year

- Amending from safe harbor matching or safe harbor non-elective contribution during the year by reducing or eliminating future safe harbor contributions is permitted if:
  - Plan is amended before the effective date of the reduction or elimination; *and*
  - Supplemental notice is given to eligible employees explaining consequences of amendment; *and*
  - If a safe harbor matching contribution is being reduced or eliminated, the effective date of the change is no earlier than 30 days after supplemental notice is given or the date amendment is adopted, whichever is later; *and*
  - If a safe harbor non-elective contribution is being reduced or eliminated, certain business hardship requirements have been met; *and*
  - Before the elimination or reduction eligible employees are given a reasonable period of time to change their deferral elections; *and*
  - The plan amendment states that the ADP/ACP tests will be performed and satisfied for the entire plan year using the current year testing method; *and*
  - All other safe harbor requirements are satisfied through the amendment's effective date

## Other Rules

- The employer may also elect to provide the safe harbor match or the safe harbor non-elective contributions to highly compensated employees
- Catch-up contributions must be matched up to the safe harbor limit
- The withdrawal provisions that apply to traditional 401(k) plan deferrals also apply to safe harbor contributions, except that safe harbor contributions are not available for hardship withdrawals
- Existing profit sharing plans can be amended to add a safe harbor 401(k) feature if:
  - Plan is not a successor plan
  - 401(k) feature is effective no later than 3 months before plan year end
  - All other safe harbor requirements are satisfied from the date the 401(k) feature is added to the end of the plan year, including funding matching contributions from the effective date of the amendment
- For existing 401(k) plans, the safe harbor feature may only be added on the first day of the plan year
- Top-heavy minimum contributions are not required for the year if the only employer contribution is the safe harbor contribution and no forfeitures are allocated that year
- ACP test is still required for after-tax employee contributions or when match exceeds certain levels
- Same eligibility waiting period for safe harbor contributions as for elective deferrals
- Cannot impose last day or hours conditions for eligibility to share in safe harbor contributions
- A discretionary match, not counting the safe harbor match, cannot exceed 4% of compensation

*This is not a comprehensive statement of all safe harbor requirements and restrictions. Plan sponsors should consult their legal advisor or contact Transamerica Retirement Services for more information.*

Which companies are

# THE BEST CANDIDATES?

You must compare the cost and time savings of eliminating the need for ADP/ACP tests with the expense of 100% vested safe harbor contributions.

Not all companies are good candidates for a safe harbor plan. Safe harbors are ideal for the following types of 401(k) plans:

- Top-heavy plans and new comparability plans (NCP)
- Plans already providing matching contributions close to safe harbor levels
- Plans featuring short or no service requirements for full vesting
- Plans unable to maximize HCEs deferrals due to ADP testing limitations
- Plans using qualified non-elective contributions (QNECs) to pass ADP/ACP tests



TO FIND OUT MORE,  
CONTACT YOUR  
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