

SAFE HARBOR KEY PROVISIONS

UPDATED (12/11)

Primary Benefits: Satisfies ADP/ACP testing which allows highly compensated employees (HCE) the ability to defer up to the maximum deferral limit (\$17,000 for 2012). The plan would also be deemed to pass Top Heavy testing if only Safe Harbor employer contributions are allocated. (HCE's are defined as 5% owners in current or prior plan year and top 20% of employees earning greater than \$110,000 in prior plan year - 2011).

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** NHCE's (& HCE's) eligible for 401(k) deferrals without regard to whether employee makes elective or employee contributions (*similar to Profit Sharing*). The contribution can be used to offset any necessary Top Heavy contribution.
- OR -
- Matching employer contribution of at least \$1.00 on elective deferrals up to 3% of compensation and then a \$.50 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 a provision requiring the employee to be working on the last day of the plan year or completion of a certain number of hours of service.
- In-service withdrawals of safe harbor monies are not allowed before age 59½, even for hardship. Please note that loans are allowed.
- Match exceeding 6% of pay and after tax contributions still need to be tested

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 a short plan year to start Safe Harbor for a brand new 401(k) plan.
- 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 issued 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 provision is formally eliminated from the plan by way of amendment.

General Notice Rules: An annual notice is required 30 to 90 days before the beginning of the Plan year. For a new Plan, notice can be given up to the first day of the first Plan year for employees eligible as of that date.