

Safe Harbor Contribution Options

401(k) plans require annual nondiscrimination (ADP/ACP) testing which limits the deferrals of highly compensated employees (HCE) based on the average deferrals of the non-highly compensated employees (NHCE). If the test fails, the correction options are 1) refunds of deferrals and income to the HCEs or 2) additional contributions to NHCEs.

Plans also require Top Heavy testing. This tests to see if the Key Employees hold a major percentage (60%) of the plan assets. If so, then additional contributions to NHCEs are also required.

The Small Business Job Protection Act of 1996 added Safe Harbor provisions for 401(k) plans. These provisions deem a plan to pass the ADP/ACP tests and possibly the Top Heavy test.

Safe Harbor contributions are 100% vested immediately. By electing to contribute a Safe Harbor contribution, the HCEs can defer the maximum amount allowed that year regardless of the NHCE deferral average. For 2015 the maximum deferral is \$18,000. Employees age 50 and over can defer an additional \$6,000. Safe Harbor options are:

1. Safe Harbor Basic Match formula is 100% of the employees' deferrals up to 3% of pay, plus 50% match on the next 2% of pay contributed. This only goes to the employees who are deferring. As an alternative, the employer can "enhance" this match by matching 100% of deferrals up to 4% of pay. If there are no additional employer contributions (such as profit sharing) this option will allow the plan to also pass Top Heavy testing.
2. Safe Harbor Non-Elective formula is 3% of pay to all eligible employees, even those not deferring. This option allows the plan to pass the required annual Top Heavy testing even if additional profit sharing is contributed.

The employer must provide a safe harbor notice to all employees on a timely basis in advance of each plan year. The safe harbor may be changed from plan year to plan year with a plan amendment and appropriate notice to employees.