Safe Harbor Contributions

These are contributions meeting special characteristics of Code Sections 401(k)(12) and 401(k)(13) (and related regulations). Safe harbor contributions come in 2 main types: non-elective and matching.

Non-elective safe harbor contributions are provided to all eligible participants whether or not they make any contributions from their own paychecks. These are not matching contributions. In general, the non-elective safe harbor has the following characteristics:

- Equals 3% of eligible compensation which is entirely paid by the company
- Fully vested at all times (there is one minor exception to this)
- An eligible employee who terminated employment before the end of the year still receives the contribution
- This is the preferred type of safe harbor in cases where a company uses cross-testing for profit sharing contributions (described in another section).

The basic safe harbor matching contribution is based on how much the employee contributes to the plan. It has the following characteristics:

- Match is $1 for $1 up for deferrals up to 3% of compensation, plus an additional $0.50 for each additional $1 deferred between 3%-5% of compensation. A participant deferring 5% or more of compensation will receive a match equal to 4% of compensation.
- Able to enhance the safe harbor match. For example: $1 for $1 up to 4% of compensation. There are some limitations on this.
- Fully vested at all times (there is one minor exception to this)
- An eligible employee who terminated employment before the end of the year still receives the contribution

Special rules for Qualified Automatic Contribution Arrangement safe harbors

- Employees must be automatically enrolled upon becoming eligible, unless they affirmatively opt out of the plan, or elect their own rate of 401(k) contribution
- There are various automatic enrollment structures that satisfy the rules. The simplest and most common example in small plans is 6% of compensation. This means that employees are automatically signed up to contribute 6% of their compensation. An employee can opt out of the plan or can elect a different amount of compensation to defer.
- If this special type of automatic contribution arrangement is adopted there are changes to the safe harbor.

- Able to apply a 2 year “cliff” vesting schedule instead of full vesting.
- Non-elective safe harbor stays the same at 3% of compensation
- Safe harbor match is lowered and stretched out: $1 for $1 up to 1% of compensation, plus $0.50 for each additional $1 deferred between 1%-6% of compensation. A participant deferring 6% or more of compensation receives a 3.5% of compensation matching contribution.
- Since participants could be automatically enrolled, there must be a default investment. This is usually a qualified default investment alternative (QDIA)

Notices for Safe Harbor Plans (and related matters)

- The company must distribute notices in advance if each year spelling out certain basic information about the safe harbor.
- This notice must be distributed no less than 30 days prior to the start of a plan year for an existing safe harbor plan, or for a 401(k) plan that is changing to a safe harbor plan in the following year. For a calendar year plan this is generally by December 2nd of the preceding year.
- A company that does not have a 401(k) plan can start a safe harbor 401(k) plan up to October 1st of a particular year.
- For a newly adopted safe harbor plan, the notice can be given a reasonable time before the arrangement becomes effective.
- For a newly eligible participant, the notice can be given a reasonable time before becoming eligible. For plans with short eligibility requirements, it can be given around the time the employee becomes eligible.
- There are some restrictions about what amendments can be made to a safe harbor plan during the year. Generally, there are no restrictions for amendments made in advance of a year, as long as these are reflected in the notice.

The rules regarding qualified plans are quite complex. The explanations above are provided as general information and for educational purposes. They should not be relied upon as legal advice, advice on establishing a retirement plan, advice on interpreting a retirement plan, or for any purpose other than general information and education.