



ADVANTEDGE

LEGISLATIVE AND TECHNICAL UPDATE

2010 401(k) SAFE HARBOR PLAN DESIGN OPTIONS

The Pension Protection Act (PPA) provided new incentives for implementing automatic enrollment in 401(k) plans, including a safe harbor automatic enrollment program known as a “qualified automatic contribution arrangement” or QACA. Along with the usual benefits of safe harbor rules, the QACA options offer exemption from nondiscrimination testing and top heavy testing, and a two-year vesting schedule for employer contributions.

WHY A SAFE HARBOR 401(k) PROGRAM MAY WORK FOR YOU

As a general rule, a 401(k) plan must satisfy certain non-discrimination requirements. The Small Business Job Protection Act of 1996 provided 401(k) plans with alternative, simplified methods of meeting the non-discrimination requirements by providing certain minimum employer contributions. 401(k) plans that adopt one of these alternative methods are known as “safe harbor 401(k)” plans. Adopting a safe harbor 401(k) plan design allows an employer to avoid discrimination testing of employee elective deferrals and/or employer matching contributions (ADP/ACP testing).

SAFE HARBOR DESIGN OPTIONS

Safe Harbor Contribution Requirement for Plans *without* Qualified Automatic Contribution Arrangement

These safe harbor plan designs require 100% immediate vesting.

1. A 3% (non-elective employer contribution – “NEC”) of salary for all eligible employees, or
2. An employer matching contribution which results in a minimum match of 100% of the employee's contributions up to 3% of salary plus 50% of the employee's contributions that exceed 3% of salary but do not exceed 5% of salary.

Safe Harbor Contribution Requirement for Plans *with* Qualified Automatic Contribution Arrangement

These safe harbor plan designs require 100% vesting after 2 years of employment.

3. 3% (non-elective employer contribution – “NEC”) of salary for **all** eligible employees, or
4. An employer matching contribution which results in a minimum match of 100% of the employee's contributions up to 1% of salary plus 50% of the employee's contributions that exceed 1% of salary but do not exceed 6% of salary.

401(k) SAFE HARBOR QUALIFIED AUTOMATIC CONTRIBUTION ARRANGEMENT (QACA)

One of the key measures of the Pension Protection Act of 2006 ("PPA") encourages increased participation in retirement plans through a "Qualified Automatic Contribution Arrangement." QACA allows an employer to enroll its employees and make salary reductions without having employees complete the enrollment process. A 401(k) plan offering the QACA feature would be eligible for safe harbor treatment if certain contribution and vesting requirements are met.

QACA DEFERRAL PERCENTAGE

To qualify for safe harbor treatment, a plan that offers QACA must provide for an automatic deferral percentage equal to a stated percentage of compensation of at least 3% (not to exceed 10%) for the first year of an employee's eligibility, 4% for the second year, 5% for the third year, and 6% for the fourth year and every year thereafter.

The following chart illustrates the key differences between the Safe Harbor design options.

Safe Harbor 401(k) Comparison Chart		
	Safe Harbor Option (without QACA)	Safe Harbor Option (with QACA)
Safe Harbor NEC or Safe Harbor (SH) Matching Example	3% or 100% up to 3% of deferral 50% from 3% to 5% of deferral 5% deferral 4% SH match	3% or 100% up to 1% deferral 50% from 1% to 6% deferral 5% deferral 3% SH match
Maximum Required Safe Harbor Match	4% of Compensation on 5% deferral	3.5% of Compensation on 6% deferral
Vesting	100% Immediate	100% after 2 years
QACA	Not Required	Required initially at 3%, with annual increases (to 4%, 5%, 6%)
Annual Non-Discrimination Testing (ADP/ACP)	Not Required	Not Required
Top Heavy Rules	Top-heavy rules apply. May be exempt if only deferrals and SH contribution is made (annual determination)	Not applicable
Safe Harbor Notice	Required	Required
QACA Employee Notice	Not Required	Required
Qualified Default Investment Alternative ("QDIA") Notice	Not Required	Only needed if plan utilizes QDIA

401(k) PLAN SAFE HARBOR NOTICE REQUIREMENT

All Safe Harbor 401(k) plans require the employer to provide an employee notice within a reasonable time period (generally 30 days) prior to the start of the plan year. This notice must contain the details of the employee's rights and obligations.

SAFE HARBOR MATCH ELIMINATION

A Safe Harbor match can be eliminated with a 30-day written notice to plan participants. If the safe harbor match is eliminated, the plan will be subject to ADP/ACP testing for the entire plan year. A safe harbor 3% basic contribution cannot be eliminated during the plan year.

Each employer's goals, plan design and demographics present a unique scenario which impacts the decision of whether to offer a safe harbor plan. Your Pentegra Plan Consultant is available to discuss your program with you and provide guidance with respect to the new safe harbor options.

For more information, please contact your Plan Consultant at 800-872-3473, or visit us at www.pentegra.com.

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