

1. What is an ADP/ACP safe harbor 401(k) plan?

A safe harbor 401(k) plan allows adopting employers to automatically “pass” certain compliance tests if the plan meets specific contribution and notification rules. The term “safe harbor” generally applies to qualified retirement plans which operate within well-defined boundaries established by the Internal Revenue Service (IRS).

2. What are some of the advantages of a safe harbor plan?

Generally, a safe harbor plan is deemed to “pass” the following IRS compliance testing requirements:

- Actual deferral percentage (ADP) test,
- Actual contribution percentage (ACP) test, and
- Top-heavy test

3. Who may benefit from adopting a safe harbor plan?

The employer who will benefit the most from a safe harbor 401(k) plan is one who previously had to limit the amount of contributions or who makes an annual contribution to the plan to satisfy testing requirements. Most owner-only plans are generally exempt from non-discrimination testing. Examples include and employer:

- Whose deferrals from highly compensated employees (HCEs) are limited due to low participation rates or low contribution rates by non-highly compensated employees (NHCEs),
- Whose plan is consistently top-heavy and who must make additional contributions to satisfy the top-heavy requirements, or
- That consistently makes generous (more than 3%) profit sharing or matching contributions.

4. What employer contributions will satisfy the safe harbor requirements?

When selecting the type of safe harbor option for a 401(k) plan, employers must choose one of the following contribution formulas, which must be reflected in their plan document. An amendment to the plan document is required and an amendment fee may apply.

Basic Match

A dollar-for-dollar (100%) match on an eligible employee’s deferral that does not exceed 3% of compensation for the year; in addition, the employee receives a 50% match on the next 2% of the employee’s deferrals. For example, an employee who defers 5% will receive a 4% match.

Enhanced Match

A matching contribution that is at least as generous as the Basic Match at any level of employee deferral. For example, the most common Enhanced Matching formula gives eligible employees a 100% match on deferrals that do not exceed 4% of the employee’s compensation. This simple formula is more generous than the Basic Match. The maximum enhanced match is 100% of deferral up to 6% of compensation.

Non-elective Contribution

A contribution given to all eligible employees – even those who do not defer – that equals 3% of the employee’s compensation for the year.

The safe harbor plan design requires all match or non-elective contributions be 100% vested.

Safe Harbor Automatic Enrollment with Match Contributions

Minimum participant deferral of 3% of compensation with an automatic increase of 1% per year (up to 6% deferral) and an employer contribution of either:

- 3% of compensation, or
- 100% of the first 1% of compensation and an additional 50% match for deferrals between 1% and 6% of compensation.

A two-year vesting schedule may be applied to safe harbor automatic enrollment contributions.

5. What safe harbor administrative requirements must an employer satisfy?

In addition to the typical operational compliance rules (following plan provisions, filing IRS Form 5500 annually, etc.), the employer who selects an ADP/ACP safe harbor plan must also:

- Amend the 401(k) plan document (or adopt a 401(k) plan for the first time) to add the safe harbor provisions. A new plan must be in existence for at least 3 months of the plan year,
- Notify participants about the safe harbor provisions no less than 30 but no more than 90 days before the start of each new plan year,
- Operate as a safe harbor plan for the entire plan year.

If an employer fails to provide the proper notice to their employees, additional steps are required:

- During any plan year that an employer fails to give proper notice, the plan is not considered a safe harbor plan and is subject to ADP, ACP, and top-heavy testing.
- If a plan states a safe harbor contribution will be made, the employer must make the contribution even though the plan will not benefit from any compliance testing exemptions.

Goldleaf Partners will provide plan administrators with the Annual Notice for distribution to all employees. Employers are responsible for the timely distribution of the Annual Notice.

6. What other information is important to know about safe harbor plans?

Many employers limit their contribution amounts to the percentage required under their chosen safe harbor formula. However, employers may select provisions in their plan document to provide more contribution flexibility.

For instance, an employer may want to make profit sharing or matching contributions in addition to the basic match. This is permissible, provided the additional contributions do not exceed certain limitations. These limitations are in place to prevent HCEs from getting a disproportionate amount of employer contributions. If an employer exceeds this limitation (and others), the safe harbor relief no longer applies and the employer is again subject to the various non-discrimination tests, thus losing the benefit of making the contributions. Therefore, contribution flexibility is permitted, but within limits.

Due to the vast number of contribution possibilities, please defer to the advice of ERISA experts when making contributions beyond those allowed under safe harbor regulations.

7. Where can I get additional help on the ADP/ACP safe harbor issues?

Contact your Goldleaf Partners Client Relationship Manager at 866.882.8442.