



Wolters Kluwer

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Safe Harbor Basics

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Agenda

- ADP safe harbor requirements
- ACP safe harbor requirements
- Top Heavy safe harbor plans
- Reducing or suspending safe harbor contributions for the current plan year
- Common questions on Safe Harbor plans
- Designing a safe harbor plan on the ftwilliam.com documents

Questions during webinar

If you have any questions during the webinar, please

- send them in using the Q&A option on your toolbar. We will gather questions and post them with answers on our website in the near future.
- Please also feel free to email support@ftwilliam.com or call 800-596-0714



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SAFE HARBOR 401(K) PLANS

Why would we want to design our 401(k) as a safe harbor plan?

Deemed to Pass Certain Non-Discrimination Tests

- Actual Deferral Percentage (ADP) test
- Actual Contribution Percentage (ACP) test
 - If certain additional requirements are met
- Top-Heavy Testing
 - If certain additional requirements are met



Types of Safe Harbor Plans

- The Internal Revenue Code (IRC) provides two alternatives to satisfying safe harbor
 - Section 401(k)(12) Option: “Traditional” Safe Harbor
 - Section 401(k)(13) Option: Qualified Automatic Contribution Arrangement (“QACA”) Safe Harbor
 - Includes an automatic enrollment feature



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ADP SAFE HARBOR



ADP Safe Harbor

- Basic requirements to satisfy the ADP safe harbor (deemed to pass ADP testing):
 - Adopted by the first day of the plan year
 - In effect for the entire 12-month plan year
 - Minimum employer contributions
 - Vesting requirements
 - Annual notice
 - Withdrawal restrictions



ADP Safe Harbor Document Requirement

Plan document must specify safe harbor provisions before the first day of the plan year

- New plan exception - new plan can be set up as a safe harbor plan as long as there are at least 3 months in the first plan year
- Existing profit sharing plan adding a new 401(k) feature is treated as a new plan for the new plan exception



ADP Safe Harbor Document Requirement

Wait and See (Maybe) Approach

- Wait and see (Maybe) notice provided at beginning of the plan year
- Follow-up notice provided at least 30 days before the last day of the plan year
- Plan must be amended at least 30 days before the last day of the plan year to specify safe harbor provisions



ADP Matching Contribution Formula Traditional Safe Harbor

- Basic Safe Harbor Matching Formula:
 - 100% match on first 3% of compensation deferred; plus
 - 50% match on the next 2% of compensation deferred



ADP Matching Contribution Formula Traditional Safe Harbor

■ Enhanced Safe Harbor Matching Formula

- If an employer would prefer to use a formula other than the basic safe harbor formula, he or she may do so as long as:
 - 1) At each deferral rate the participant would be getting a match at least as good as the basic matching formula
 - 2) The formula does not provide for a higher level of match for any HCE than is provided for any NHCE who contributes at the same deferral rate as the HCE; and
 - 3) The rate of match does not increase as the rate of deferral increases

ADP Matching Contribution Formula Traditional Safe Harbor

Example 1 - Enhanced SH Match

- Proposed formula is 100% on the first 2% and 75% on the next 4% of deferrals
- Proposed formula is not a valid enhanced SH match as rate of matching at a 3% deferral rate is lower than the basic rate

Deferral Rate	Basic Rate	Proposed Rate
1	1%	1%
2	2%	2%
3	3%	2.75%
4	3.5%	3.5%
5	4%	4.25%
6	4%	5%

ADP Matching Contribution Formula Traditional Safe Harbor

Example 2 - Enhanced SH Match

- Proposed formula is 100% on the first 4% of deferrals
- Proposed formula is a valid enhanced SH match as the rate of matching at each deferral rate is at least as high as at the basic rate

Deferral Rate	Basic Rate	Proposed Rate
1	1%	1%
2	2%	2%
3	3%	3%
4	3.5%	4%
5	4%	4%
6	4%	4%



ADP Matching Contribution Formula QACA Safe Harbor

- Basic safe harbor matching formula:
 - 100% match on first 1% of compensation deferred; plus
 - 50% match on the next 5% of compensation deferred
- Enhanced matching formula also permitted
 - Same requirements as with traditional enhanced match

ADP Matching Contribution Formula QACA Safe Harbor

Example 1 - Enhanced SH Match

- Proposed formula is 100% on the first 2% and 25% on the next 4% of deferrals
- Proposed formula is not a valid enhanced SH match as rate of matching at a 5% and 6% deferral rates is lower than the basic rate

Deferral Rate	Basic Rate	Proposed Rate
1	1%	1%
2	1.5%	2%
3	2%	2.25%
4	2.5%	2.5%
5	3%	2.75%
6	3.5%	3%

ADP Matching Contribution Formula QACA Safe Harbor

Example 2 - Enhanced SH Match

- Proposed formula is 100% on the first 3.5%
- Proposed formula is a valid enhanced SH match

Deferral Rate	Basic Rate	Proposed Rate
1	1%	1%
2	1.5%	2%
3	2%	3%
4	2.5%	3.5%
5	3%	3.5%
6	3.5%	3.5%



ADP Safe Harbor Nonelective Contribution Formula

- Same requirement for traditional and QACA safe harbor plans
- The employer must provide a nonelective contribution that equals at least 3% of the participant's compensation



ADP Contribution Vesting Requirement Traditional Safe Harbor

- Must be 100% vested immediately
 - Note that the IRS has stated that forfeitures may generally not be used to fund safe harbor contributions subject to immediate 100% vesting
- The ftwilliam.com document automatically provides for 100% immediate vesting for ADP safe harbor contributions



ADP Contribution Vesting Requirement QACA Safe Harbor

- ADP Contributions under the QACA safe harbor may be subject to a vesting schedule
 - Participants must be 100% vested in no more than two years

Additional QACA Requirements

- Automatic enrollment arrangement - initial deferral percentage can be 3 to 10%
 - Participant can elect not to defer, or defer a different percentage
- If participant does not make investment election, default needs to be communicated to participants
- Notice requirements

Additional QACA Requirements

- If initial deferral percentage is less than 6% of compensation, the following applies:
 - Minimum of 3% from enrollment to the last day of the following plan year
 - Minimum of 4% for the next plan year
 - Minimum of 5% for the next plan year
 - Minimum of 6% for any subsequent plan year

Annual Notice Contents - All Safe Harbor Plans

- The annual safe harbor notice must provide the following:
 - The safe harbor formula used in the plan for matching or nonelective contributions
 - Any other contributions that may be made under the plan including the potential for discretionary contributions
 - The plan to which the safe harbor contributions will be made
 - The amount and type of compensation that may be deferred
 - Vesting provisions of the plan
 - Withdrawal provisions of the plan
 - The method by which a participant may make deferral elections
 - Guidance on how to obtain further information about the plan



Annual Notice Requirements for QACA Plans

- In addition to the preceding, the annual notice for a QACA plan must also provide an explanation of:
 - The rights not to make employee contributions, or make them at a different rate to the rate set
 - How the contributions will be invested if the employee does not select investment options him or herself



Annual Notice Timing Requirement

- The annual safe harbor notice must be provided to employees within a 'reasonable time' prior to the first day of the plan year.
- The IRS has provided that this is generally considered to be between 30 and 90 days prior to the first day of the plan year.

Annual Notice Timing Requirement

- Employers may provide newly eligible employees with a safe harbor notice up to the employee's date of eligibility
- Such notice may not be provided earlier than 90 days prior to the employee's date of eligibility
- Notice for new plans may be provided up to the first day of the first plan year of a new safe harbor 401(k) plan
- Notice for existing 401(k) plans that convert into a safe harbor 401(k) plan must be given 30 to 90 days prior to the first day of the plan year that such conversion is effective



Withdrawal Restrictions on Safe Harbor Plans

- Withdrawal of ADP safe harbor employer contributions is restricted under IRC § 401(k)2, i.e. can only be made due to:
 - Severance of employment or retirement
 - Attainment of age 59 ½
 - Disability
 - Certain payments to qualified reservists
 - Certain plan terminations
- Hardship withdrawals are not permitted

Other ADP Safe Harbor Requirements

- Plan may apply normal eligibility conditions
 - Maximum is one year/1000 hours/age 21 with semi-annual entry dates
 - Two-year eligibility not allowed
 - Eligibility may be different for deferrals and safe harbor contributions - disaggregated testing will apply and plan will have to test for top heavy status
- No allocation conditions allowed for non-HCEs, i.e. last day rule or hours requirement
 - Once eligibility is met, participant must receive safe harbor contributions
 - Allocation conditions can apply to HCEs



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ACP SAFE HARBOR



ACP Safe Harbor

- If the matching contributions under a safe harbor 401(k) plan meet certain requirements, they are deemed to satisfy the ACP test
 - This is known as the ACP safe harbor
- The plan must satisfy the ADP safe harbor but ACP safe harbor is optional

ACP Safe Harbor Requirements

- Mandatory (fixed) matching contributions may not be made on deferrals in excess of 6% of compensation
- Discretionary matching contributions may not exceed 4% of compensation
- Matching contributions may not increase as the rate of deferrals increases
- Matching contributions for HCEs at any rate of deferral may not be greater than matching contributions made to NHCEs who contribute at that same rate.
- No allocation conditions may be placed on matching contributions for non-HCEs (e.g., last day rule, hours requirement)

ACP Matching Contribution Formula Mandatory (Fixed) Example

- Proposed formula 1 is 100% on the first 12% of deferrals
- Proposed formula 2 is 200% on the first 6% of deferrals

	Formula 1	Formula 2
Max Match	12%	12%
% of Deferrals Matched	12%	6%

ACP Matching Contribution Formula Discretionary Example

- Proposed formula 1 is 50% on the first 8% of deferrals
- Proposed formula 2 is 200% on the first 4% of deferrals

	Formula 1	Formula 2
Amount need to defer to get max match	8%	4%
% of Compensation Received	4%	8%



ACP Safe Harbor

- Fixed and discretionary matching contributions may be subject to a vesting schedule without jeopardizing the ACP safe harbor

Triple Stack Match

- Three types of match
 - Safe Harbor Match - maximum 4% of compensation
 - Discretionary Match - maximum 4% of compensation
 - Fixed Match - ?????% of deferrals up to 6% of comp
- The Safe Harbor and Fixed formulas are specified in document
- This formula can maximize HCEs and only benefits other participants who defer
- Maintains the ADP/ACP safe harbor status and can provide a top heavy free pass in most circumstances

Triple Stack Match

- 2015 numbers to allow someone on maximum compensation (\$265,000) to reach the 415 limit

Contribution Type	Formula	Amount
Deferrals	Participant age 50+	\$24,000
Safe Harbor Basic Match	100% of deferrals (up to 3% comp) + 50% of deferrals (up to next 2% comp)	\$10,600
Discretionary Match	100% of deferrals (up to 4% comp)	\$10,600
Fixed Match	86.8% of deferral (up to 6% comp)	\$13,800
Total		\$59,000



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TOP HEAVY SAFE HARBOR PLANS

Top Heavy Rules

- A safe harbor plan that would otherwise be top heavy is considered not to be provided that:
 - No other contributions are made to the plan
 - Includes forfeiture reallocation
 - If there are matching contributions, they satisfy the ACP safe harbor
 - Eligibility is the same for deferrals and safe harbor contributions
 - Can't be disaggregated for top heavy testing

Top Heavy Rules

- Determination as to whether the top heavy exemption applies is made year by year
 - E.g. make a discretionary profit sharing contribution some years
- Safe harbor contributions may be used toward top heavy minimum contributions
 - Match or NEC
 - 3% NEC will generally meet requirement depending on eligibility requirements, entry dates, and definition of compensation



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**REDUCING OR SUSPENDING SAFE HARBOR
CONTRIBUTIONS FOR THE CURRENT PLAN
YEAR**



Reducing/Suspending Safe Harbor Contributions

- Plan must experience a substantial business hardship. Factors taken into account in determining whether a business hardship exists include whether or not:
 - The employer is operating at an economic loss;
 - There is substantial unemployment/underemployment in the trade or business and in the industry concerned;
 - Sales and profits of the industry concerned are depressed or declining; and
 - It is reasonable to expect that the plan will be continued only if the amendment is adopted.
- Exception to substantial business hardship if the initial safe harbor notice stated that the safe harbor contribution may be reduced or removed



Effect of Reducing/Suspending Contributions

- If an employer chooses to reduce/suspend safe harbor contributions for a plan year, then the plan will be subject to ADP/ACP testing for the entire plan year
- Employer must fund safe harbor matching contributions up until effective date of amendment
- Employer must fund safe harbor nonelective contributions taking compensation into account, up until effective date of amendment
- If the plan is top heavy, the plan may no longer rely on the safe harbor top heavy exemption
 - Plan should consider top heavy status before making decision to amend out of safe harbor status



Reducing or Suspending Safe Harbor Contributions

- A supplemental notice must be given to all eligible employees explaining the effect of the amendment which reduces/suspends the safe harbor contributions, the amendment's effective date, and, if removing matching contributions, information on how a participant may change his or her deferral election
 - Notice must be provided at least 30 days prior to the effective date of the reduction/suspension
- Participants must be given a reasonable opportunity to change their deferral elections before the reduction/suspension goes into effect



Reducing or Suspending Safe Harbor Contributions

- The plan must be amended to reflect the reduction/suspension of the safe harbor contributions, and that the plan will be subject to ADP/ACP testing for that entire plan year
 - Model amendments are available on the ftwilliam.com website under 'Other Documents' on the 'Print Plan Documents Screen'



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COMMON QUESTIONS ON SAFE HARBOR PLANS




When Must Safe Harbor Contributions be Made?

- Safe harbor contributions must be made no later than 12 months after the end of the plan year
- If the employer would like the contributions to be deductible for the year to which they apply, then the contribution must be made by the due date of the employer's federal income tax filing for that year
- If safe harbor matching contributions are being made on a payroll period basis, then they must be made no later than the last day of the next plan year quarter




What is the definition of compensation for safe harbor purposes?

- For safe harbor purposes, the definition of compensation must satisfy Code section 414(s)
- Entry date compensation may be used



I would like to amend my 401(k) plan to be a safe harbor 401(k) plan starting next year; when must the amendment be adopted?

- In order to be exempt from ADP/ACP testing for a plan year, the plan must be amended for safe harbor purposes prior to the first day of that plan year



I'd like to make a mid-year amendment to my safe harbor 401(k) plan to add (or remove) a new feature. Is this allowable?


- There are five times where we have written approval from the IRS to amend a safe harbor plan mid-year
 - Adding a hardship withdraw provision for beneficiary hardships
 - Adding Roth and in-plan Roth rollover provisions
 - Adding eligible employees to correct a coverage failure
 - Specific amendments required by code/regulation changes
 - Amendment to address Windsor is okay in a S/H 401(k) Plan

Mid-year amendment

- There are five times where we have unofficial guidance from IRS officials
 - Change of plan year, so long as the following plan year the plan followed the safe harbor rules
 - Expand coverage to include employees previously not included (so long as existing participants are not affected)
 - Change of investment vendor
 - A retroactive corrective amendment to address a coverage failure
 - Change of trustee

Mid-year amendment

- Beyond these options there is a lot of grey area. There are three general schools of thought depending on the risk tolerance of the plan:
 - Most conservative - do not change anything mid-year that is not on this list.
 - Middle ground - do not change anything that may have affected the participant's decision to defer into the plan. This would include anything that is on the safe harbor notice and other things like other contributions the plan sponsor is going to make.
 - Least conservative - you can change anything not on the safe harbor notice. This is assuming that the reason for not amending mid-year is solely based on the safe harbor notice so if it does not affect the notice than it can be amended mid-year.



I'd like to restate my safe harbor 401(k) plan mid-year for PPA. Is this allowable?

- All pre-approved defined contribution plans must be restated to PPA version of the document no later than April 31, 2016
- It is always safest to restate a safe harbor plan effective the beginning of a plan year
- If no changes are being made aside from moving the plan to an updated version of the document the restatement can be done mid-year.

How do short plan years of terminating plans affect safe harbor plans?

- For short plan years created by the termination of a safe harbor plan, the plan sponsor may operate the plan during its final year in one of the following ways:
 - Cease safe harbor contributions as of the date of termination and apply ADP/ACP tests to the plan for its final year using the current year testing method; or
 - The plan may continue to be a safe harbor plan for the final plan year if the safe harbor requirements are met through the date of termination, and:
 - The plan's termination is in connection with certain business transactions described in Code section 410(b)(6)(C) (e.g., change in employer's related group), OR
 - The employer incurs a substantial business hardship, as described by Code section 412(c)(2).



Can forfeitures be used to fund safe harbor contributions?

- The IRS takes the position that forfeitures should not be used to fund contributions that are required to be 100% vested
- PPA documents do not allow forfeitures to fund ADP safe harbor contributions but do allow their use to fund:
 - ACP enhanced contributions
 - QACA contributions



Can safe harbor contributions be made to another plan?

- Yes; for example if the employer sponsors a profit sharing plan as well as a 401(k) plan, the safe harbor nonelective may be made to the profit sharing plan rather than the 401(k)
 - Plans must have same plan year
 - 401(k) plan must name the other plan in their document



Can a 403(b) plan be safe harbor?

- ADP testing is not required for 403(b) plans
- ACP safe harbor is available - the plan must satisfy the following requirements:
 - Contributions must satisfy the ADP and ACP safe harbors
 - Annual notice must be furnished



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**DESIGNING A SAFE HARBOR PLAN
ON THE FTWILLIAM.COM
DOCUMENTS**

Safe Harbor - Eligibility

- Eligibility is the same regardless if match or non-elective and traditional safe harbor or QACA safe harbor
- Excluded Classes
 - Follows elections for elective deferrals
 - If union are not excluded for elective deferral purposes they can be excluded separately for safe harbor contribution
 - Can also exclude HCEs or HCEs who are also key employees - cannot exclude just key employees
- Allocation Condition - Highly Compensated Employees only
 - Maximum requirement is employment on the last day and/or completion of 1,000 hours of service

Safe Harbor – Eligibility (continued)

- Age, Service, and Entry Date
 - Follow same elections made for elective deferrals
 - If not elected disaggregated coverage testing will need to be completed
 - Complete custom age, service, and entry date
 - Must still meet the 21 and 1 year maximum eligibility requirement
 - Greatest age and service requirement using semi-annual entry dates
 - Requirement is age 21 and 1 year of service (defined as completing 1,000 hours by the end of a 12 month period)
 - Entry dates are the first day of the first and seventh month of the plan year on or immediately following the day eligibility is met
 - Greatest age and service requirement using annual entry dates
 - Requirement is age 21 and 1 year of service (defined as completing 1,000 hours by the end of a 12 month period)
 - Entry dates is the first day of the first month of the plan year closest to the day eligibility is met (may be retro-active)

Safe Harbor – Eligibility (continued)

2. ADP/ACP Safe Harbor Eligibility

- a. Exclusions. For purposes of safe harbor contributions, the term "Eligible Employee" shall not include
 - i. No exclusions
 - ii. Participants who are Highly Compensated Employees
 - iii. Participants who are Key Employees and Highly Compensated Employees
 - iv. Other exclusions: _____
- b. Participants covered by a collective bargaining agreement will share in safe harbor allocations provided retirement benefits were the subject of good faith bargaining.
- c. Eligibility conditions for Safe Harbor Contributions
 - i. None. Any Eligible Employee eligible to make Elective Deferrals is eligible to receive a safe harbor contribution.
 - ii. The following age, service and entry date requirements: _____
 - iii. Participants who have met the greatest minimum age and service conditions permitted under Code section 410(a)(1)(A) with semi-annual entry dates (first day of the first month and seventh month of the Plan Year)
 - iv. Participants who have met the greatest minimum age and service conditions permitted under Code section 410(a)(1)(A) before the first day of the seventh month of the Plan Year
- d. Allocation requirements for Highly Compensated Employees
 - i. Require service for Highly Compensated Employees to receive a safe harbor contribution. Hours of Service required in the applicable Plan Year for Highly Compensated Employees to receive a safe harbor contribution: _____
 - ii. Require employment on the last day of Plan Year for Highly Compensated Employees to receive a safe harbor contribution
- e. Employer contributions will be offset by safe harbor contributions

Safe Harbor - Contributions

- New for PPA - Plans can have both a safe harbor contribution and additional fixed or discretionary match that does not meet either the ADP or ACP safe harbor contribution requirements
 - Plan would be required to complete ACP and top heavy testing if match is made that does not meet the ACP safe harbor contribution requirements
- Plan can have both an ADP and an ACP safe harbor matching contribution
- Plans can have 2 ACP safe harbor matching contributions and remain ACP safe harbor as long as the ACP safe harbor contribution requirements are met (triple stack match)

Safe Harbor - Contributions (continued)

- Completing check list for ADP safe harbor contribution
 - Match must be set to one of the tiered rate options (no discretionary or years of service)
 - Example shows basic matching contribution

▼ D. Matching Contribution Formula	
6. Matching Contribution formula	<input type="text" value="Two rates"/>
6a. First rate of Matching Contributions (without % sign - percent of elective deferrals match)	<input type="text" value="100"/>
6a.i. Maximum amount of Employee contributions matched (without % sign - maximum percent of compensation matched at rate above)	<input type="text" value="3"/>
6b. Second rate of Matching Contributions (without % sign - percent of elective deferrals matched at second step)	<input type="text" value="50"/>
6b.i. Maximum amount of Employee contributions matched (without % sign - maximum percent of compensation matched at rate above)	<input type="text" value="5"/>

Safe Harbor – Contributions (continued)

Completing check list for ACP safe harbor contribution

- Additional match can be fixed and/or discretionary
 - Additional match would be completed the same way if either of the additional matches is non-safe harbor
- ACP Safe Harbor match limitations
 - The rate of matching Contributions cannot increase
 - Cannot be made on contributions in excess of 6% of Compensation
 - Discretionary ACP match cannot exceed 4% of Compensation.

▼ D. Additional Matching Contributions	
7. Further discretionary Matching Contributions may be made in addition to those described as first - third steps	<input checked="" type="radio"/> Yes / <input type="radio"/> No
8a. Further fixed Matching Contributions will be made in addition to those described as first - third steps	<input checked="" type="radio"/> Yes / <input type="radio"/> No
8b. Describe any further tiered Matching Contributions	25% match on Matched Contributions up to 4% of Compensation









Safe Harbor - Vesting

- Traditional ADP safe harbor contributions are always 100% vested
- QACA ADP safe harbor contributions are subject to the vesting schedule selected in the plan document (maximum of 2 year cliff)

▼ E. QACA Vesting	
11a. Specify the vesting schedule for QACA contributions	<input type="text" value="Other"/>
11b. Other QACA Schedule - less than 1 year (without % sign)	<input type="text" value="50"/>
11c. Other QACA Schedule - 1 year but less than 2 years (without % sign)	<input type="text" value="75"/>

Safe Harbor - Vesting (continued)

- Discretionary ACP (traditional or QACA) safe harbor contributions are always subject to the vesting schedule selected for matching contributions
- Fixed ACP (traditional or QACA) safe harbor contributions are subject to the vesting schedule selected for matching contributions only if elected in the check list (Section E)

▼ E. Matching Vesting	
8a. Matching Contribution Account Vesting Schedule	 3 Year Cliff
	
	
	
	
	
	
9. If the Plan provides for a safe harbor match, additional fixed or discretionary matching contributions beyond the safe harbor contribution will be subject to the vesting schedule above:	 Discretionary only
	Discretionary only
	Additional fixed and discretionary
▼ F. Profit Sharing	



Questions

- If times does not allow for all questions, a follow-up will be posted to the ftwilliam.com website with answers to submitted questions.