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## What is a Safe Harbor 401(k) Plan?

Under the Safe Harbor provisions, plan sponsors can escape the 401(k) and 401(m) discrimination test. This allows the Highly Compensated employees to defer the maximum amount allowed by law (\$17,000 for calendar year 2012, \$22,500 for individuals age 50 or older) without receiving a refund of their 401(k) deferrals as a result of a 401(k) or 401(m) discrimination test failure. Employer contributions must be fully vested and must follow the distribution restrictions that are applied to salary deferral contributions.

### *How 401(k) Safe Harbor Works*

This plan design feature is available for plan years beginning after December 31, 1998. New plans may be established at any time before October 1st, for a calendar year plan. An existing traditional 401(k) plan may be converted to a Safe Harbor 401(k) Plan on the first day of the plan year. Safe Harbor Plans have two basic requirements, a notice requirement and an employer contribution requirement.

### *Notice Requirement*

The employer must provide to each eligible employee written notice regarding the employer's election to adopt the Safe Harbor provisions. This notice must be made within a reasonable time frame prior to the beginning of the year. IRS guidance states that a reasonable time is not less than 30 days before the beginning of the plan year. The employee notice must inform each eligible employee of his or her rights under the plan and must state the safe harbor contribution formula used.

### *Contribution Requirement*

The design based safe harbor contribution can be made by one of the two allowable contribution methods:

**Non-elective Contribution Approach:** The employer makes a fully vested employer contribution equal to 3% of compensation for all employees who are eligible to participate in the plan or (at least all non-highly compensated employees eligible to participate in the plan). This contribution must be made without regard to whether the employee actually makes salary deferrals.

*Please note that the non-elective contribution approach may be used to meet the top-heavy requirement. It may also be used for the base contribution for employer allocations under cross testing formulas. This method eliminates 401(k) & 401(m) discrimination testing.*

**Matching Approach:** As an alternative to the non-elective contribution, the employer matches either based on the Basic Formula - 100% up to 3% of compensation, plus 50% of the next 2% of compensation deferred, with no match on amounts deferred over 5% of compensation, or; an Enhanced Formula - 100% match on at least 4% of salary deferred, not more than 6% of salary deferred.

*Please note that the matching approach currently eliminates 401(k) & 401(m) discrimination testing. For Plan Years beginning after December 31, 2001, this method also satisfies and eliminates any top heavy testing as well.*

Under either contribution approach the plan cannot require that employees be employed on the last day of the plan year or that they complete a specific number of hours of service during the plan year in order to receive the safe harbor contribution.