FOUR SAFE HARBOR OPTIONS FOR 401(k) PLANS

Normally a 401(k) plan is subject to certain nondiscrimination tests, comparing deferrals and the matching contributions for Highly Compensated Employees (HCEs) vs. Nonhighly Compensated Employees (NHCEs). Companies willing to make certain minimum Safe Harbor (SH) contributions and meet other requirements can be exempt from these tests. A Nonelective Contribution (NEC) is a company contribution that is not a function of the participant's elective deferral. Prior to the Pension Protection Act (PPA) of 2006, there were two options; but PPA added two more. This chart spells out all four options and most of the related rules.

		A	B	C	D
1	Type	**Pre-PPA SH Match**	**Pre-PPA SH NEC**	**PPA SH Match**	**PPA SH NEC**
2	Required Company contribution	Dollar-for-dollar match on the first 3% contributed by the participant, plus half of the next 2%.	3% contribution for every eligible participant, regardless of his own contributions.	Dollar-for-dollar match on the first 1% contributed by the participant, plus half of the next 5%.	3% contribution for every eligible participant, regardless of his own contributions.
3	Resulting max employer contribution to a participant	4.00%	3.00%	3.50%	3.00%
4	Vesting schedule	Full and immediate vesting	Full and immediate vesting	100% vesting after 2 years of service.	100% vesting after 2 years of service.
5	Does Automatic Enrollment apply?	No automatic enrollment provisions are required under these SH options.		Yes, participants who make no election must automatically be put in the plan with deferrals that are at least 3% the first year, 4% the second, 5% the third, and 6% the fourth and later years.	
6	Exempt from top-heavy rules?	Yes, as long as the only employer contribution is the SH contribution (or enhanced SH contribution) and any forfeitures are applied toward this contribution.			
7	Can the company contribution be discontinued mid-plan year?	Yes, but only if the employer is operating at an economic loss for the year and participants receive a 30-day advance notice. The nondiscrimination tests will apply for the whole year; and the plan loses its top heavy exemption. Safe harbor contribution must be made through effective date of amendment.	Only if the original SH notice was a "flexible SH notice", giving the employer until the end of the year to make its final commitment; **or** if the employer is operating at an economic loss for the year and participants receive a 30-day advance notice. The nondiscrimination tests will apply for the whole year; and the plan loses its top heavy exemption. Safe harbor contribution must be made through effective date of amendment.	Yes, but only if the employer is operating at an economic loss for the year and participants receive a 30-day advance notice. The nondiscrimination tests will apply for the whole year; and the plan loses its top heavy exemption. Safe harbor contribution must be made through effective date of amendment.	Only if the original SH notice was a "flexible SH notice", giving the employer until the end of the year to make its final commitment; or if the employer is operating at an economic loss for the year and participants receive a 30-day advance notice. The nondiscrimination tests will apply for the whole year; and the plan loses its top heavy exemption. Safe harbor contribution must be made through effective date of amendment.

8 Other notes

9 For all four options, the SH commitment need only be made one year at a time.

10 In both matching options, deferrals above 6% may not be matched.

11 In all four cases, written notice must be given to eligible employees prior to the beginning of the plan year. Special rules apply if 401(k) provisions are being added to the plan mid-year, or if the plan is a new plan starting up mid-year.

12 In all four cases, the plan cannot require a minimum number of hours worked or end-of-year employment for sharing in this contribution.

13 There is still no SH contribution that eliminates testing for Non-Roth, *after*- tax participant contributions.

14 In all four options, a plan termination will also terminate the SH contribution for compensation earned after a 30-day notice period; but no successor defined contribution plan is allowed for 12 months after the terminated plan's distributions.

15 If plan is terminated mid-year on account of substantial business hardship, merger, or acquisition, the plan can terminate without providing advance notice and can retain it's safe harbor status.

Retirement Management Services, LLC **905 Lily Creek Road**
(502) 429-0767 **www.consultRMS.com** **Louisville, KY 40243**