



Safe Harbor Plans

OVERVIEW

A 401(k) plan under which an employer is not required to perform nondiscrimination testing of elective contributions or employer matching contributions is known as one of two types of safe harbor plans:

Safe Harbor Plan Type	Description
Non QACA Safe Harbor	<ul style="list-style-type: none">• Safe harbor plan with no automatic enrollment provision.• Safe harbor plan with an automatic enrollment provision using one of the following automatic contribution arrangement (ACA) types:<ul style="list-style-type: none">– Automatic contribution arrangement (ACA).– Eligible automatic contribution arrangement (EACA).
QACA Safe Harbor	<ul style="list-style-type: none">• Under the QACA provision, a permissible withdrawal provision is allowed, but is not required (which is allowed under an EACA).

Non QACA Safe Harbor Plans

In a non QACA safe harbor retirement plan, the employer is not required to perform ADP and ACP nondiscrimination testing. To qualify for relief from ADP and ACP testing, safe harbor plans must meet the following conditions:

- Meet Safe Harbor Employer Contribution Requirements.
- Provide for 100% immediate vesting of safe harbor employer contributions.
- Apply the same eligibility provisions to salary deferrals and safe harbor contributions.

Non-Permissible Participant Conditions

Conditions such as the following may not be placed on participants for safe harbor allocations:

- Participants must be employed on the last day of the plan year.
- Participants must work a minimum number of hours during the plan year.

Non QACA Safe Harbor Employer Contribution Requirements

Plan sponsors may meet safe harbor plan requirements with one of the following employer contribution options:

Contribution Type	Description
Basic non QACA Safe Harbor Match	<ul style="list-style-type: none">• 100% match on the first 3% of deferred compensation, plus• 50% match on deferrals at 4% and 5%.

Contribution Type	Description
Enhanced Match	<ul style="list-style-type: none"> • An enhanced matching contribution must be at least as much as the basic non QACA match at each tier of the match formula. • The rate of enhanced match may not increase as the percentage of deferrals increases. • The rate of match for any highly compensated employee (HCE) may not exceed the rate of match for any non-HCE (NHCE).
Non-Elective Contribution	<ul style="list-style-type: none"> • 3% or more of compensation • Made to all eligible NHCEs whether or not NHCEs make elective deferrals to the plan. • The plan may be designed to provide the safe harbor contribution to HCEs. • The non-elective contribution may be either guaranteed or flexible: <ul style="list-style-type: none"> – An employer who provides a guaranteed 3% non-elective contribution is required to make the contribution. – A non-elective contribution that is flexible is known as a Year-by-Year Safe Harbor Non-Elective Contribution Election Provision (also called Maybe Safe Harbor).

Safe harbor plans are generally exempt from the top-heavy minimum contribution requirements under IRC section 416 for a plan year in which only safe harbor contributions are made. If additional employer contributions are made for the plan year, top-heavy requirements may apply.

NOTE: Safe harbor contributions may not be reduced or suspended during the plan year except in limited circumstances permitted under applicable IRS regulations. A reduction or suspension may require advance participant notice and a plan amendment. If safe harbor contributions are reduced or suspended, the plan may become subject to ADP and ACP testing for the applicable plan year.

Maybe Safe Harbor Nonelective Contribution Election 401(k) Plans

A Year-By-Year Safe Harbor Nonelective Contribution Election approach, also called Maybe Safe Harbor, permits an employer to satisfy safe harbor obligations by making a non-elective contribution rather than via matching.

Maybe Safe Harbor Plans are subject to the following guidelines:

- The annual notice provided to participants must indicate the employer may make a safe harbor non-elective contribution for the upcoming plan year.
- If the employer elects to make the safe harbor contribution, the plan administrator must notify participants with a supplemental notice no later than 30 days before the end of the plan year of the employer's decision to make the safe harbor non-elective contributions.
- A plan amendment may be required in plan years for which the plan sponsor determines the plan will make a safe harbor contribution.
- If the employer elects not to make the safe harbor contribution, ADP and ACP testing is required for the plan year.

NOTE: Plan administrators should consult with their plan document provider to determine whether an amendment is required and confirm applicable deadlines.

Notice Fulfillment for Non QACA Safe Harbor Plans

With Notice Services

When notice services are active for non QACA Safe Harbor plans, Empower distributes notices as follows:

Initial notices: Coincides with eligibility (generally 30-60 days prior to plan entry date), provided the plan delivers data necessary to calculate or otherwise identify newly eligible participants.

Annual notices: Generally included with other required annual notices.

Without Notice Services

When notice services are not active, the Plan Administrator retains responsibility for:

Initial notices: Must be sent to participants no earlier than 90 days prior to their plan entry date and no later than their plan entry date.

Annual notices: Must be sent at least but no more than 90 days prior to the beginning of each plan year.

NOTE: For plans without notice services, a standard non QACA Safe Harbor notice may be posted to the Plan Service Center (PSC) to assist the Plan Administrator.

QACA Safe Harbor Plans

Qualified Automatic Contribution Arrangement (QACA) Safe Harbor Plans are an alternative to Non QACA Safe and offer an Automatic Enrollment provision (with or without a permissible withdrawal period). QACA Safe Harbor Plans may allow for up to 2 years of vesting requirements, whereas other safe harbor plans require immediate vesting.

QACA Safe Harbor Employer Contribution Requirements

Plan sponsors may meet safe harbor plan requirements with one of the following employer contribution options:

Contribution Type	Description
Basic QACA Safe Harbor Match	<ul style="list-style-type: none">100% match on the first 1% of deferred compensation, plus50% match of the next 5% (maximum 3.5%)
Enhanced Match	<ul style="list-style-type: none">An enhanced matching contribution must be at least as much as the basic QACA match at each tier of the match formula.The rate of enhanced match may not increase as the percentage of deferrals increases.The rate of match for any highly compensated employee (HCE) may not exceed the rate of match for any non-HCE (NHCE).
Non-Elective Contribution	<ul style="list-style-type: none">3% or more of compensation

Default Contribution Rate

Employee contributions in QACA Safe Harbor Plans have a Default Contribution Rate that:

- Starts at at least 3% (but no greater than 10%) of an employee's compensation in the initial period of participation.

- **NOTE:** The initial period is defined as beginning on the first day automatic deferrals begin and ending on the last day of the plan year following the plan year in which automatic deferrals begin.
- Must automatically increase by at least 1% each year, after the initial period (defined as beginning on the first day automatic deferrals begin and ending on the last day of the plan year following the plan year in which the automatic deferrals begin), until it reaches the required minimum level:
 - **Non-mandatory automatic enrollment plans:** Increases continue until the rate is at least 6% of compensation.
 - **Mandatory automatic enrollment plans:** Increases continue until the rate is at least 10% of compensation.
- Does not exceed 15% of compensation for mandatory and non-mandatory automatic enrollment plans.

Notice Fulfillment for QACA Safe Harbor Plans

With Notice Services

When notice services are active for QACA Safe Harbor plans, Empower distributes notices as follows:

Initial notices: Combined with initial QACA notices.

Annual notices: Generally included with other required annual notices.

Without Notice Services

When notice services are not active, the Plan Administrator retains responsibility for:

Initial notices: Must be sent to participants no earlier than 90 days prior to their plan entry date and no later than their plan entry date.

Annual notices: Must be sent at least but no more than 90 days prior to the beginning of each plan year.

SIMPLE IRA Mid-Year Replacement Safe Harbor Plans

Employers who sponsor a SIMPLE IRA (Savings Incentive Match Plan for Employees) can terminate it mid-year and replace it with a non QACA or QACA safe harbor 401(k) plan, as long as certain conditions are met:

Condition	Description
Timing	<ul style="list-style-type: none"> • The SIMPLE IRA must be terminated mid-year. • A safe harbor 401(k) plan must be established immediately after to cover the rest of the year.

Condition	Description
Notices	<ul style="list-style-type: none"> • Employees must receive a 30-day advance notice explaining the termination of the SIMPLE IRA and the adoption of the safe harbor 401(k). • The notice must clearly state that: <ul style="list-style-type: none"> – No salary-reduction contributions will be made to the SIMPLE IRA with respect to compensation paid after the termination date. – Employees will receive matching contributions attributable to salary reduction or nonelective contributions based on their compensation through the termination date. • Must be provided both initially and annually to all eligible and active plan employees (even those not automatically enrolled). • NOTE: Plan Administrators are responsible for <u>all</u> notices required for SIMPLE IRA Mid-Year Replacement Safe Harbor Plans during the replacement year.
Employer Contributions	<ul style="list-style-type: none"> • The new 401(k) plan must use a safe harbor contribution formula (match or nonelective) for the remainder of the year. • Employees who were eligible under the SIMPLE IRA must be eligible for the new safe harbor 401(k).
Employee Contributions	<ul style="list-style-type: none"> • Employees can begin deferring into the safe harbor 401(k) plan as soon as it's effective. • Employee contributions made to the SIMPLE IRA count toward the annual 402(g) elective deferral limit for 401(k) plans.
Rollover Contributions	<ul style="list-style-type: none"> • The 2-year rollover limitation usually applicable to SIMPLE IRAs is waived.

The non-discretionary recordkeeping and administrative services described in this Service Overview are general in nature and reflect the standard service offering. Service descriptions are not specific to any plan provision or administration practice. The recordkeeper may agree to provide an alternate service arrangement, as applicable, if separately requested by the Plan Sponsor. FOR ADVISOR/PLAN SPONSOR OR TPA USE ONLY. Not for use with Plan Participants.