

# Retirement Planning Opportunities

## Safe Harbor 401(k) Plans – No Contributions for Rank & File Employees?

### Safe Harbor 401(k) Plans – Is It Your Client's Dream Plan?

Today you can, in some instances, give your clients the qualified retirement plan they've always wanted—a plan with no cost for their employees. Business owners with a safe harbor 401(k) plan may be able to make sizeable contributions for themselves and not have to make any contributions for their other employees in certain situations.

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

Any owner or highly compensated employee in a safe harbor 401(k) plan can defer up to the maximum allowed (\$20,500 in 2008 for employees age 50 or older) regardless of whether the other employees defer anything at all. The nondiscrimination tests (ADP/ACP tests) that apply to other 401(k) plans do not apply to safe harbor 401(k) plans because these plans provide either a safe harbor contribution of 3% of compensation to all eligible employees or a safe harbor matching contribution to those employees who defer part of their salaries. The safe harbor matching contribution is 100% of the participants' first 3% of compensation and 50% of the participants' next 2% of compensation.

### No Top Heavy Minimum Contributions

In the past, all 401(k) plans had to provide top heavy contributions (usually 3% of compensation) for any non-key employees if the plan was top heavy. A plan is considered top heavy if 60% or more of the accrued benefits go to key employees like the business owner.

Safe Harbor 401(k) plans do not have to provide top heavy contributions. Consequently, safe harbor 401(k) plans that provide matching contributions will no longer have to provide any

### Safe Harbor 401(k) with Matching Contributions

	Salary	Deferral	Contrib	Total	%Contrib
Owner	100,000	20,500*	4,000	24,500	100%
A	60,000	0	0	0	
B	55,000	0	0	0	
C	50,000	0	0	0	
D	45,000	0	0	0	
E	40,000	0	0	0	
F	35,000	0	0	0	
G	30,000	0	0	0	
H	25,000	0	0	0	
I	20,000	0	0	0	
Totals		\$20,500	\$4,000	\$24,500	

\*Maximum elective deferral in 2008 is \$15,500 with an additional \$5,000 deferral, known as a catch-up contribution, allowed for employees age 50 or older. The only employee making a deferral is the owner.

contributions at all to those employees who do not make any deferrals.

### Maximum Deferrals and No Cost for Their Employees May Be Possible

Your clients can defer up to the maximum for themselves and make matching contributions for themselves, but make absolutely no contributions for their other employees if these employees do not make deferrals.

Naturally, if the other employees defer anything, they will be entitled to matching contributions. And, if any other contributions aside from elective deferrals and matching contributions are made to the plan, then top heavy contributions may be necessary. (Other contributions, like discretionary profit sharing contributions, are frequently made in a profit sharing/401(k) plan.)

The maximum contributions allowed in these plans for any participant is small. In 2008 this maximum contribution, including the deferrals and the match would be just \$29,700 so this may not be the perfect plan for business owners who want to make high contributions for themselves.

### Ex. Safe Harbor 401(k) Plan with Matching Contributions

In our example we have assumed a business owner is making \$100,000, and has a safe harbor 401(k) plan. Since she is age 51, she can make the maximum deferral of \$20,500 and give herself a \$4,000 matching contribution. Since her employees did not defer anything, there is no matching contribution required for them. She is receiving 100% of the plan contribution and giving her employees nothing.

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