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## Safe Harbor 401(k) Plan

### *Discontinuance of Matching Contribution*

#### **Matching Contribution Reduced or Discontinued**

Although the safe harbor matching contribution must be determined under a fixed formula specified in the Plan document and announced to employees at least 30 days prior to the beginning of each Plan Year, an employer may amend the Plan to reduce or discontinue the match during a plan year and opt to run ADP/ACP testing for that year instead.

**Note that any change in the matching formula, whether a reduction for any part of the year, or a complete discontinuance for the year, will result in the Plan being subject to the ADP/ACP test for the entire year.**

ADP/ACP testing is required to determine whether the average contribution rate of the highly compensated group (HCEs) is discriminatory when compared to the average contribution rate of the non-highly compensated group (NHCEs). This test is based on the amount of elective 401(k) contributions made by each eligible employee. Eligible employees are broken down into two groups: the highly compensated group (HCEs) and the non-highly compensated group (NHCEs). The average contribution rate of each group is calculated and then compared to one another. Generally, the difference between the two groups cannot exceed two percent, i.e. the average contribution rate of the HCEs cannot exceed more than 2% of the NHC average. There are additional restrictions if the NHCE average is either below 2% or above 8%.

HCEs are generally defined as business owners and/or any employee whose prior year compensation exceeds \$115,000 (as indexed). A plan that fails the ADP/ACP test is required to refund excess contributions after testing is completed at the close of the year. As an alternative, a plan may impose a limit on the HCE contribution rate to avoid test failure.

#### **Conditions for Reducing or Discontinuing the Match**

To obtain relief from the Safe Harbor obligation, the following conditions must be satisfied:

1. A **supplemental notice** must be provided to employees. The notice must explain the consequences of the amendment reducing or discontinuing the match, the procedures by which an employee may change his/her 401(k) election, and the effective date of the amendment.
2. The amendment reducing or discontinuing the match may be effective no earlier than **30 days after the employees are provided the supplemental notice**, or 30 days after the amendment is adopted, if later. The Safe Harbor match contribution must be accrued and deposited up to the date of discontinuance, including the 30-day notice period.
3. Eligible employees have a **reasonable opportunity** during the 30-day notice period prior to the reduction or suspension of the match to change their 401(k) elections.
4. **The plan is amended** to provide that the ADP/ACP test will be satisfied for the entire plan year using the current year testing method.