TRINITY
PENSION GROUP, LLC℠

Safe Harbor 401(k) Plan Provisions

A *safe harbor 401(k) plan* is a 401(k) plan under which an employer will no longer be required to perform nondiscrimination testing of elective contributions or matching contributions. To qualify as meeting the safe harbor provision, a 401(k) plan must meet certain employer contribution requirements and must provide for 100 percent immediate vesting of the contributions. Additionally, an employer may not impose a "last day" or hour of service requirement for the mandatory safe harbor contribution. Non-highly Compensated Employee (NHCE) eligible to defer must receive the safe harbor nonelective or matching contribution.

Contribution Requirement. To qualify for the 401(k) ADP safe harbor, the employer, for the entire plan year, *must* provide *either* a minimum matching contribution or a minimum nonelective contribution to NHCEs under the plan.

> **Matching Contribution.** Under the basic matching formula, the employer provides to each NHCE who defers under the plan a matching contribution *equal* to 100% of the employee's elective deferrals not exceeding 3% of compensation *plus* 50% of next 2% of the employee's elective deferrals. This effectively results in a 4% of pay matching rate for an employee who defers 5% or more of pay. Code §401(k)(12)(B).
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> - OR -
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> **Nonelective Contribution.** Under the nonelective contribution alternative, the employer must make a nonelective employer contribution of at least 3% of compensation for each eligible NHCE under the plan, regardless whether the employee actually defers. Code §401(k)(12)(C).

Notice Requirement. To satisfy the ADP and ACP safe harbor, the employer must provide timely written notice to eligible employees before each plan year. The notice must specify certain items and must be understandable by the average plan participant. Notice 98-52, §V.C. The employer must provide the notice within a reasonable period of time (based on the facts and circumstances) before the beginning of the plan year. A plan is deemed to comply if it provides the notice *not* less than 30 days nor more than 90 days prior to the beginning of the each plan year.

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