

Plan Documents FAQs Webinar Agenda

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This webinar will focus on defined contribution plan issues.

- 1 - Overview of Document Types
- 2 - Checklist FAQs
- 3 - Disaggregation - New approved language/options

1. Overview of Document Types

- a. Retirement package
 - i. Standardized Prototypes (401(k)/PS or Money Purchase)
 - ii. Non-Standardized Prototypes (401(k)/PS, Money Purchase or Target Benefit)
 - iii. Volume Submitters
 1. 401(k) - two formats (Adoption Agreement or 'IDP' format) - checklists are identical (except for 401(k) option in prototype style plan and 'whereas' language in IDP format)
 2. Profit-sharing, IDP format
 3. Money Purchase, IDP format
 4. Defined Benefit - two formats (Adoption Agreement or 'IDP' format) - checklists are identical
 - iv. Not eligible for pre-approval
 1. 403(b) limited or full scope (we plan to participate in the pre-approval program)
 2. Cash Balance - two formats (Adoption Agreement or 'IDP' format) - checklists are identical
 3. ESOP (401(k) or non-401(k))
- b. Non-qualified
 - i. 457(b)
 - ii. 409A
- c. Welfare
 - i. Cafeteria
 - ii. HRA
 - iii. POP
 - iv. Wrap
 - v. 132 (transportation plan)

Defined contribution Volume submitter (VS) vs non-standardized prototype:

- VS includes irrevocable participation waiver option
- VS has more flexible New Comparability formula
- VS has a non-safe harbor hardship option
- VS minor modifications OK
- VS may be used in multiple employer contexts

2. Checklist FAQs

- a. Company Information - Address and other basic info is used in first section of the Adoption Agreement; contact information is used in forms
- b. Section A - General Information
 - i. **Restatement date** generally first day of current plan year - unless planning for a change to take effect the next year
 - ii. **Short plan year** issues - may want to explain in custom SPD language and/or consent resolution
 1. Optional issues:
 - a. May want to include special eligibility rules for the short plan year
 - b. Limitation year selection
 2. Non-optional issues:
 - a. Eligibility and vesting computation periods are still a 12-month period
 - b. Annual compensation limit is prorated as are most limits
 - c. Indexed dollar amount used to determine HCEs is not prorated
 - iii. **Plan Features** - note that selections here will blank out corresponding checklist items in other sections (Matching eligibility will be blanked out if Matching is "No").
 - iv. **Compensation**
 1. W-2 generally recommended; exceptions: life insurance or sales force with company cars may want to use withholding (need to ensure plan sponsors give you the correct figures)
 2. Deemed 125 compensation - difficult to calculate; generally recommend to choose "No" (defined under "Compensation" in the document)

If Company does not request information regarding Participant's other health coverage (does not have a program to offer cash in exchange for not taking health insurance), then the employer could include the value of the health insurance as compensation under the plan for those that do not take the health insurance offered by the employer.

3. Fringe - If "Yes", Compensation shall exclude all of the following (even if includable in gross income): reimbursements or other expense allowances, fringe benefits (cash and noncash), moving expenses, deferred compensation, and welfare benefits.
4. Testing compensation - used for 415 purposes only (plan does not define ADP/ACP testing compensation; use any permissible 414(s) definition)

5. Bonuses - no election in AA, Section 4.01(c) of BPD: "The Plan Administrator may, on a nondiscriminatory basis, permit a Participant to make a separate election as to any bonuses or other special pay."
 - v. **Disability** definition. Do not recommend selecting 'Under uniform rules established by the Plan Administrator' unless there actually are rules established for determining disability.
 - vi. **Choice of Law** - custodial trustee may want to establish in a different state than the actual plan
 - vii. **Misc** - user-defined fields for your own use
- c. Section B - Eligibility
- i. Nonresident aliens - this exclusion typically excludes no one:

Employee who is a non-resident alien (e.g. French citizen living in France) who received *no earned income* ... which constitutes income from services performed within the United States...

 - ii. **Union** employees for purposes of top heavy should be excluded in **B.4a/b**
 - iii. **Waiver** of plan participation - irrevocable before eligibility and must be 'knowing', should not be taken lightly (only available in volume submitter)
 - iv. **Service with non-affiliated employers** - plan limits to 5 years; may want to limit the service to a specific period of time
 - v. **Rule of parity** - generally recommend against selecting
 - vi. **One year hold-out** - only applies to contributions other than elective deferrals
 - vii. **Age** - can enter age less than 18, need to modify the word version of the document after generation. Documents were approved with a blank for age so it is not a custom modification.
 - viii. **Service** - 1,000 hour fail safe is in the AA in the notes, IDP appears at end of Sections 3.01, 3.02 and 3.03 if service is calculated in months ("Notwithstanding the foregoing, the service requirement under this Subsection shall be deemed met no later than the end of an Eligibility Computation Period during which the Eligible Employee completes 1,000 Hours of Service; provided, that the individual is an Eligible Employee on the applicable entry date.")
 - ix. **Safe Harbor Matching** uses eligibility set up in section B for matching (safe harbor non-elective does not use profit sharing eligibility). Use B.22 or B.4 to set up special eligibility rules for safe harbor match ("For purposes of Safe Harbor Matching contributions, Highly Compensated Employees are excluded.")
 - x. **Entry dates** - May want to tie to payroll, use "other dates" and insert text like "first payroll following..."
- d. Section C - Contributions
- i. **QACA/EACA** elections will not appear in the document - part of PPA amendment
 - ii. **Maybe safe harbor** - nonelective contribution with follow-up notice. System will provide a sample follow-up notice that will amend the plan for the current year only and provide the notice.
 - iii. **If ADP and ACP safe harbor** - if plan is both no last day/hours requirements for matching contributions (C.20-21)

- iv. **Minimum elective deferral** contributions - Safe harbor plans generally cannot require a minimum elective deferral contribution but can require elections to be made in whole percentages (edit check on percentages higher than 1%).
- v. **Maximum elective deferral** - can enter other percentages, need to modify the word version of the document after generation. Documents were approved with a blank so it is not a custom modification.
- vi. **Automatic enrollment** - pre-QACA negative elections
- vii. **Service for Match/profit sharing allocation** - Note that C.20a/30a is last day *or* 500 hours (standardized plan rule). If you want both or only one select "No" and move to C.21/C.31
- viii. **Matching formula** -
 1. Years of service is available on prototypes but note that it is subject to benefits rights and feature testing
 2. Two rates:

[T]he Company will contribute as a Matching Contribution an amount equal to a. **[C26.a]**% of the Participant's Matched Employee Contributions that are not in excess of

b. **[C26.b]**% of the Participant's Compensation;

PLUS

c. **[C26.c]**% of the amount of the Participant's Matched Employee Contributions that exceed the amount described in C.26b of the Participant's Compensation but that do not exceed d. **[C26.d]**% of the Participant's Compensation.

Traditional safe harbor formula:

[T]he Company will contribute as a Matching Contribution an amount equal to a. **100%** of the Participant's Matched Employee Contributions that are not in excess of b. **3%** of the Participant's Compensation; PLUS

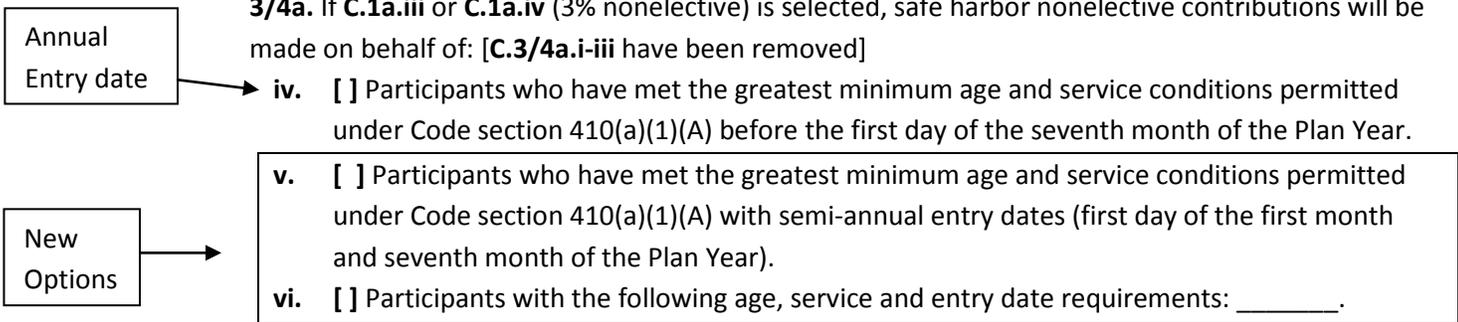
... **50%** of the amount of the Participant's Matched Employee Contributions that exceed 3% of the Participant's Compensation but that do not exceed **5%** of the Participant's Compensation.
- ix. **Matching Allocation Dates** - if plan has safe harbor plus additional discretionary/fixed, likely want to select "at Company discretion".
- x. **Maximum Match** - blanked out if discretionary match or specific formula is used
- xi. **Profit Sharing Formula** -
 1. Points - must be tested (similar to compensation testing), not a safe harbor formula - testing is outlined in the document.
 2. New comparability - we suggest using *volume submitter* formula of one group per participant, eliminates need to amend the plan with census changes. The Prototype Non-standardized 401k plan new comparability option of One Group per Participant requires the employer to determine the number of groups each year based upon the number of NHCEs before or on the due date of the Company's tax return for the year of allocation. The gateway must also be stipulated in the prototype document.

- xii. **Profit Sharing Disability** - continue to provide profit sharing to disabled employees as if still active.
- xiii. **QNECs** - If needed to pass testing, may not be helpful to have 1,000 hours/last day requirements.
- xiv. **Simple 401(k)** - See section 4.10 of the BPD for more information. Currently requires modification of the SPD document.
- xv. **Deemed IRA** - "No" for most plans. Note that you must have a separate trust for this arrangement.
- e. Section D - Vesting
 - i. **Special vesting** - if holding assets from prior plan or want to keep prior vesting schedule
 - ii. **PPA Profit Sharing** - this is the vesting used in SPD
- f. Section E - Distributions
 - i. **Early Retirement age** - way to provide in-service distributions with age and service requirement
 - ii. **Time payment other than death** - consider holding to year end of using contributions not subject to year-end employment.
 - iii. **J&S** -
 1. Note item **E.20** (The Plan has received a transfer of assets from a plan subject to the survivor annuity rules of Code sections 411(a)(11) and 417). This will only subject the transferred assets to J&S per the document. Note that distribution forms may need to be modified for distributions without transferred assets not otherwise subject to J&S.
 2. Checklist items that will subject the entire plan to J&S: **E.6a** (Permit distributions in the form of an annuity) and **E.5a.i** (Unless otherwise elected by the Participant, distributions shall be made in the form of - "QJSA").
- g. Section F - In-service and Loans
 - i. Recommend only allowing from fully vested accounts
 - ii. **Hardship** - only Volume Submitter documents have non-safe harbor option
 - iii. **Specified Age** - can use age lower than 55 (blank line was approved, not a modification of the document to change); generally recommend instead making use of other withdrawals (F.30-31) instead if possible.
 - iv. **Loans** - we provide a loans procedures. Note that you can modify the loans procedures in generally any manner you wish (provided it does not conflict with the document). Item **F.47** (A Participant must obtain the consent of his or her spouse, if any, to use the Account balance as security for a loan) will be blanked out if the document provides for J&S since it is no longer an option but is required.
- h. Section G - Plan Operations
 - i. **Trusts** - Certain outside trusts are available for use with our documents and pre-approved by the IRS. If you are using an outside trust, please be sure to check with us that you can still rely on advisory letter.
 - ii. **Trustees** - Recommend including both trustee name and title on the signature line if a corporate trustee
- i. Section H - Top Heavy

- i. **Combining DC and DB plans** - DC documents require last day for TH; DB documents require 1,000 hours. When combining with cash balance may want to customize the CB plan (since it is individually designed). If you have a DB and DC plan, need an actuary to assist in completing **H.7** of the DC checklist (interest rate and mortality tables).
- j. Section I - Custom Effective Date/Custom Language
 - i. **Custom effective date** = no modification of pre-approved plan
 - ii. **Custom language** - can use to track issues changes - must ensure it is not made part of the document
 - 1. Prototype documents with modifications become individually designed and must use Form 5300 (consider changing to a volume submitter)
 - 2. Volume submitter documents with minor modifications can use Form 5307 (generally the preferred route)
- k. Section J - Administrative Elections - items only used in SPD/Forms
 - i. Each item should identify the form in which it is used (SPD, annual notice, etc.).
 - ii. **J.10** (For purposes of generating a Joinder Agreement, enter the names of all employers who have adopted the plan other than the lead plan sponsor separated by a semicolon) - note that prototype documents should only use in control group/affiliated service group situations. Volume submitters can be multiple employer plans.

3. **Disaggregation** - New approved language/options

- a. BPD and AA language have been changed and updated (10/6/2010 - see Technical update of same date for more info)
 - i. Use new BPD language - it is not clear if plan sponsors must specifically adopt the new BPD language. Because this change adds new options to the BPD (not just clarification), we recommend that sponsors wishing to use the new disaggregation options adopt a brief board resolution clarifying they are adopting the current BPD language (sample in technical update) before the last day of the plan year.
- b. The new language is outlined below (**C.3/4a.v - vi**): Section C, eligibility for a safe harbor nonelective contribution:



NOTE: If **C.3/4a.iv** is selected, the plan will have an annual entry as of the first of the year and safe harbor contributions will be made based on compensation for the entire Plan Year.

NOTE: If **C.3/4a.iv - vi** is selected, the Plan must be tested in accordance with Section 5.03(g).

NOTE: Age, service and entry date requirements specified in **C.3/4a.vi** may not be greater than that required under Code section 410(a)(1)(A).

The new Basic Plan Document Section 5.03(g)/(h) provides:

(g) Code Section 410(a) Excludable Employees. The Company may treat, pursuant to applicable Treasury Regulations, Participants who have not met the minimum age and service requirements of Code section 410(a)(1)(A) as comprising a separate plan for purposes of Section 5.02 pursuant to Subsection (1) or (2), provided the disaggregated Plan consisting of such excludable Nonhighly Compensated Employees separately satisfies the requirements of Code section 410(b) and the Plan does not utilize Section 5.03(h).

(1) **Annual Entry Date.** The Plan Administrator may treat Participants who have not met the minimum age and service requirements of Code section 410(a)(1)(A) before the first day of the seventh month of the Plan Year as comprising a separate plan. If the Plan provides safe harbor contributions, Participants not considered in the separate plan must be eligible for safe harbor contributions for the entire Plan Year.

(2) **Semi-Annual or More Frequent Entry Date.** The Plan Administrator may treat Participants who have not met the minimum age and service requirements of Code section 410(a)(1)(A) using one of the entry dates specified in the Plan (not less frequently than semi-annual) before the last day of the Plan Year as comprising a separate plan. *Contributions of Participants who have an entry date during the applicable Plan Year shall not be counted in the separate plan.*

(h) **Excludable Nonhighly Compensated Employees.** The Company may also, pursuant to applicable Treasury Regulations, exclude all Nonhighly Compensated Employees who have not met the minimum age and service requirements of Code section 410(a)(1)(A) (pursuant to Subsection (g)(1) or (2)) from consideration in determining whether the requirements of Section 5.02 are met, provided the disaggregated Plan consisting of such excludable Nonhighly Compensated Employees separately satisfies the requirements of Code section 410(b) and the Plan does not utilize Section 5.03(g).

- c. If using safe harbor disaggregation option and semi-annual or more frequent entry dates, ensure you are excluding compensation before participation.