

Ftwilliam.com Safe Harbor Basics Webinar Q & A (October 28, 2015)

GENERAL WEBINAR QUESTIONS

Q1. Where can I access the webinar materials?

A1. Presentation materials can be accessed at http://ftwilliam.com/Docs/Safe_Harbor_Webinar_10282015.pdf.

Q2: Will it offer ERPA credit?

A2. No, this presentation will only provide ASPPA/NIPA credit. CE certificates will be emailed out to all webinar participants within 2 weeks of the webinar. You will need to use the certificate you receive to self-report your CE.

ESTABLISHMENT AND ELIGIBILITY

Q3. Just to confirm, if a profit sharing plan was amended to add a 401(k) Safe Harbor plan, they would not have to start 1/1?

A3. Correct. If a profit sharing only plan is adding 401(k) provisions mid-year they can start out as a safe harbor plan provided they met the requirements for a brand new plan including the requirement that there are at least three months left in the plan year after the effective date of the 401(k) and safe harbor provisions.

Q4. A safe harbor match plan with no eligibility requirement and 12 months of service for safe harbor match. Plan is top heavy. Is top heavy contribution required?

A4. Yes. If a participant is eligible to defer into to the plan before they are eligible to receive a safe harbor contribution the plan will be subject to top-heavy contribution requirements if they are in top-heavy status.

Q5. If a non-elective plan with different eligibility requirements for deferral and match and no other contributions are made did I just understand I have to do top heavy minimums for the different eligibility?

A5. Yes. If you have different eligibility requirements where participants are eligible to receive safe harbor contributions at a later date than deferrals, top heavy requirements will apply.

CONTRIBUTIONS

Q6. Regarding use of forfeitures to fund safe harbor - What if a participant received too much safe harbor match (calculation error) and the amount is forfeited. May those forfeitures be used to fund safe harbor?

A6. The IRS has stated that, in general, forfeitures may not be used to fund safe harbor contributions that must be 100% vested immediately under the Code and Regulations. They do not differentiate based on the

source of the forfeitures. The forfeitures could be used to fund QACA ADP or traditional and QACA ACP contributions since those sources do not have to be 100% vested at time of contribution. Please see slides 19, 20, and 54.

Q7. Will the software give a warning if the match formula exceeds the limits?

A7. The software will not give a warning if the match exceeds the limits because it is permitted for the match to be larger than the basic and enhanced match rules; compliance testing may just become applicable. There are notes in the document to this affect and when ACP testing will apply.

Q8. When would triple stacked match NOT maintain the top heavy exemption?

A8. When another contribution is made in addition to the triple stack match - for example a forfeiture reallocation.

Q9. For the triple stack match example, would the plan need an amendment each year to change the fixed match if the annual additions amount increases?

A9. If the fixed match is being recalculated every year it would require an amendment. Typically we see a rounded-up approach with adjustments made to the discretionary match.

Q10. For a safe harbor plan with safe harbor match, can I add after-tax contributions with no match on the after-tax without violating the safe harbor requirements?

A10. No. Any additional contributions will subject the plan to top-heavy testing requirements.

DISTRIBUTIONS

Q11. Page 27 indicates Hardship Withdrawals are not permitted? Please clarify.

A11. Safe harbor contributions cannot be included in a hardship distribution. A safe harbor plan can still allow for hardship distributions from other sources.

Q12. If plan allows for loan can a safe harbor 401k plan allow participants to take loans from safe harbor match/safe harbor non-elective? If not, can safe harbor contributions be used in determining the max loan amount?

A12. Safe harbor contributions are available for loans, just not hardship distributions.

NOTICE

Q13. Is there a way to prepare the safe harbor notices in batch for all our safe harbor plans on the FT William system?

A13. Yes. If you go into any plan that has safe harbor, next to the annual notice link there is a batch link where you can create the batch for those notices. Our user guide for the plan documents provides step by step instructions with screen shots on how to complete the batch process for annual notices.

Q14. Where can I find the User Guide which goes through the screen shots for SH batching?

A14. The user guide can be found under the WK button in the upper left hand corner under support → user guides → plan document user guide.

Q15. Going back to the "Maybe" notice, it was my understanding this was only allowed for the SH non-elective only, are you all saying the "Maybe" is allowed for a SH match?

A15. No, the maybe safe harbor must always use the safe harbor non-elective option.

Q16. If the plan is non-elective and used the "maybe" notice does it need to be amended if the sponsor decided NOT to do a safe harbor contribution?

A16. No. If the plan decides not to be safe harbor for the year and did the maybe notice, they do not need to amend.

Q17. If we use a maybe non-elective contribution and hand out the maybe notice each year and no final notice does the plan revert to testing?

A17. Yes. If the plan gave a "maybe" safe harbor notice and no steps are taken to make the plan a safe harbor plan for the year (plan is not amended to say that it will be safe harbor and no follow up notice is given) then the plan is not safe harbor and testing will apply.

Q18. If our default non-elective plan uses a maybe notice and we issue not maybe notice does this create any compliance issues?

A18. The "maybe not" language is typically not in a separate notice; it is a statement that can be included in the normal safe harbor notice given out at the beginning of the year. If a plan uses a maybe notice they can include the maybe not language in that notice without a compliance issue although it is more likely that a plan who gave the maybe notice would simply not take the steps to become a safe harbor plan if they do not wish to make the safe harbor contribution.

AMENDMENTS**Q19. Do ALL factors have to apply in order to suspend safe harbor contributions, or ANY of those factors?**

A19. Meeting the operating at an economic loss requirement for reducing or suspending safe harbor contributions mid-year is a facts and circumstances test. As such there is no bright line rule that all of the factors will apply but the more that apply the better. This is if the safe harbor notice does not include the maybe remove language. See <https://www.irs.gov/Retirement-Plans/Reducing-or-Suspending-Safe-Harbor-401%28k%29-Matching-and-Nonelective-Contributions-Midyear> for more information.

Q20. Can two safe harbor match plans be merged midyear during the grace period aft the sale?

A20. Possibly, but it would really depend on if there needs to be provisional changes to make the plans match. At this time no regulations have been issued regarding safe harbor plans involved in mergers and acquisitions. It is advisable to confer with a technical experts on the specifics to be sure.

Q21. Are the same mid-year reduction/suspension rules applied in a plan termination situation, as far as, subjecting the plan to ADP/ACP testing?

A21. It depends on the situation. If certain rules are followed, the safe harbor status of the plan can be maintained through the plan termination. Please see slide 53.

Q22. Does this mean that I can do a mid-year restatement of a safe harbor plan?

A22. In general there are only five times we know for sure that a safe harbor plan can be amended mid-year for non-safe harbor provisions:

- Adding a hardship withdraw provision for beneficiary hardships
- Adding Roth and in-plan Roth rollover provisions
- Adding eligible employees to correct a coverage failure
- Specific amendments required by code/regulation changes
- Amendment to address Windsor is okay in a S/H 401(k) Plan

Beyond these options there is a lot of grey area. There are three general schools of thought depending on the risk tolerance of the plan:

- Most conservative - do not change anything mid-year that is not on this list.
- Middle ground - do not change anything that may have affected the participant's decision to defer into the plan. This would include anything that is on the safe harbor notice and other things like other contributions the plan sponsor is going to make.
- Least conservative – you can change anything not on the safe harbor notice. This is assuming that the reason for not amending mid-year is solely based on the safe harbor notice so if it does not affect the notice than it can be amended mid-year.

A restatement of a safe harbor plan is not considered a mid-year amendment as long as no other changes are made in the restatement because a restatement is bringing into one document provisions for which amendments have already been adopted. Our changes were either punctuation, technical corrections or already included in previous amendments so these changes and these changes only can be adopted mid-year. Any other changes should follow the assumptions outlined above.

ADDITIONAL RESOURCES

<https://www.irs.gov/Retirement-Plans/Retirement-Plan-Participant-Notices-When-the-Plan-is-Intended-to-be-an-IRC-401k-or-m-Safe-Harbor-Plan>

<https://www.irs.gov/Retirement-Plans/Fixing-Common-Plan-Mistakes-Failure-to-Provide-a-Safe-Harbor-401k-Plan-Notice>