



# RETIREMENT PLAN DESIGN STRATEGIES FOR BUSINESS OWNERS

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# Introduction

# BDO's Retirement Plan Services

BDO's Retirement Plan Services practice works collaboratively with our clients to tailor plans for their unique business. We assess resources, competitive standing, industry trends, and long-term goals to help each client give its employees the best possible retirement benefit.

## ERISA CONSULTING & ADMINISTRATION



Qualified retirement plans are regulated under the Employee Retirement Income Security Act of 1974 (ERISA).

Our professionals provide comprehensive design, administration and operational support for all qualified retirement plans, including 401(k) Profit Sharing, ESOPs, Health & Welfare, traditional defined benefit pension, and cash balance plans.

We perform annual compliance testing, prepare plan documents and government filings, including Form 5500, as well as assist clients with plan corrections under IRS and DOL programs including self-correction and voluntary compliance filings.

Our team also provides plan compliance reviews and due diligence related to mergers and acquisitions.

## ACTUARIAL SERVICES



A key step in designing effective employee benefit plans is to measure and manage risk. We provide actuarial services to cash balance and other tax-qualified defined benefit plans in addition to retiree health/welfare and non-qualified plans.

We design employer-tailored cash balance plans and support them with implementation and annual administration.

Our team is also a resource for long- and short-term planning, funding, accounting, termination, and mergers and acquisitions related to these plans.



## AREAS OF FOCUS FOR TODAY

*With an ever changing legislative & economic landscape, business owners can benefit from plan design and tax strategy discussions to ensure they are offering the best retirement plan solutions.*

*Identifying the specific needs of the business owners and their employees is an important aspect of plan design - as having the right benefit package not only provides tax savings but can also be a powerful tool for recruiting & retaining the best employees.*

### **OBJECTIVES:**

- Describe the different types of qualified retirement plans and understand how plans are matched with the unique needs of employers
- Recognize specific plan design options and recent regulatory changes that can provide increased tax savings
- Identify overall tax planning opportunities for employers interested in implementing or expanding their qualified retirement plan solutions

# Types of Retirement Plans



# IRA-BASED RETIREMENT PLANS

Plan Type	SEP - SIMPLIFIED EMPLOYEE PENSION	SIMPLE IRA PLAN
<b>Employer Eligibility</b>	Any employer with one or more employees.	Any employer with 100 or fewer employees that does not currently maintain another retirement plan.
<b>Employer's Role</b>	May use IRS Form 5305-SEP to set up the plan. No annual filing requirement for employer.	May use IRS Form 5304-SIMPLE or 5305-SIMPLE to set up the plan. No annual filing requirement for employer.
<b>Contributions</b>	Employer contributions only.	Employee salary reduction contributions and employer contributions.
<b>Maximum Annual Contribution (per participant)</b>	Up to 25% of compensation but no more than \$58,000 for 2021 and \$61,000 for 2022.	Employee: \$13,500 in 2021 and \$14,000 in 2022. Participants age 50 or over can make additional contributions up to \$3,000 in 2021 and in 2022.  Employer: Either match employee contributions 100% of first 3% of compensation OR contribute 2% of each eligible employee's compensation.
<b>Contributor's Options</b>	Employer decides whether to make contributions year-to-year.	Employee can decide how much to contribute. Employer must make a match or contribute 2% of each employee's compensation.
<b>Minimum Employee Coverage Requirements</b>	Must be offered to all employees who are at least 21 years old, employed for 3 out of the last 5 years and had compensation of \$650 for 2021 and for 2022.	Must be offered to all employees who have compensation of at least \$5,000 in any prior 2 years and are reasonably expected to earn at least \$5,000 in the current year.

# SEP IRA PLAN EXAMPLE - 2022 LIMITS USED

EMPLOYEE	2022 PROJECTED ELIGIBLE COMPENSATION	LESSER OF 25% OF PAY OR IRS LIMIT
<b><u>HIGHLY COMPENSATED EMPLOYEES / OWNERS</u></b>		
OWNER 1	290,000.00	61,000.00
OWNER 2	150,000.00	37,500.00
		<b><u>98,500.00</u></b>
<b><u>NON-HIGHLY COMPENSATED EMPLOYEES</u></b>		
EMPLOYEE	65,000.00	16,250.00
<b>TOTALS</b>	<b><u>505,000.00</u></b>	<b><u>114,750.00</u></b>

# SIMPLE IRA PLAN EXAMPLE - 2022 LIMITS USED

EMPLOYEE	2022 PROJECTED ELIGIBLE COMPENSATION	2022 PROJECTED SIMPLE DEFERRALS	100% VESTED IMMEDIATELY TWO EMPLOYER CONTRIBUTION OPTIONS	
			OR	
			2% NONELECTIVE	3% MATCHING
<b><u>HIGHLY COMPENSATED EMPLOYEES / OWNERS</u></b>				
OWNER < AGE 50	290,000.00	14,000.00	5,800.00	8,700.00
OWNER > AGE 50	150,000.00	17,000.00	3,000.00	4,500.00
<b><u>NON-HIGHLY COMPENSATED EMPLOYEES</u></b>				
EMPLOYEE 1 > 50	65,000.00	17,000.00	1,300.00	1,950.00
EMPLOYEE 2 < 50	35,000.00	1,050.00	700.00	1,050.00
<b>TOTALS</b>	<b>540,000.00</b>	<b>49,050.00</b>	<b>10,800.00</b>	<b>16,200.00</b>



# DEFINED CONTRIBUTION RETIREMENT PLANS

Plan Type	Traditional 401(k)	Safe Harbor 401(k)	Automatic Enrollment
<b>Employer's Role</b>	Requires annual nondiscrimination testing to ensure plan does not discriminate in favor of highly compensated employees.	A minimum employer contribution is required. Annual notice requirements. Deemed to pass nondiscrimination testing.	May require annual nondiscrimination testing to ensure plan does not discriminate in favor of highly compensated employees.
<b>Maximum Annual Deferral Contributions</b>	Employee: \$19,500 in 2021 and \$20,500 in 2022. If age 50 or older can make additional contrib. up to \$6,500 in 2021 and 2022.	Employee: \$19,500 in 2021 and \$20,500 in 2022. If age 50 or older can make additional contrib. up to \$6,500 in 2021 and 2022.	Employee: \$19,500 in 2021 and \$20,500 in 2022. If age 50 or older can make additional contrib. up to \$6,500 in 2021 and 2022.
<b>Maximum Annual Total Contributions (per participant)</b>	<i>Employer/Employee Combined:</i> Up to the lesser of 100% of compensation or \$58,000 for 2021, \$61,000 for 2022. Employer can deduct amounts up to 25% of aggregate compensation for all participants.	<i>Employer/Employee Combined:</i> Up to the lesser of 100% of compensation or \$58,000 for 2021, \$61,000 for 2022. Employer can deduct amounts up to 25% of aggregate compensation for all participants.	<i>Employer/Employee Combined:</i> Up to the lesser of 100% of compensation or \$58,000 for 2021, \$61,000 for 2022. Employer can deduct amounts up to 25% of aggregate compensation for all participants
<b>Contributor's Options</b>	Employee can decide how much to contribute based on a salary reduction agreement. The employer can make additional contributions, including matching contributions as set by plan terms.	Employee can decide how much to contribute based on a salary reduction agreement. The employer must make either specified matching contributions or a 3% contribution to all participants.	Employees, unless they opt otherwise, must make salary reduction contributions specified by the employer. The employer can make additional contributions, including matching contributions as set by plan terms.
<b>Minimum Employee Coverage Requirements</b>	Generally, must be offered to all employees at least 21 years old who worked at least 1,000 hours in a previous year.	Generally, must be offered to all employees at least 21 years old who worked at least 1,000 hours in a previous year.	Generally, must be offered to all employees at least 21 years old who worked at least 1,000 hours in a previous year.
<b>Vesting</b>	Employer contributions may be subject to a vesting schedule	Safe harbor employer contributions are immediately 100% vested. Other employer contributions may vest over time according to plan terms.	Employer contributions may be subject to a vesting schedule

# TRADITIONAL 401(k) PLAN - SUBJECT TO TESTING

EMPLOYEE	2022	2022	2022	DEF %	DISCRETIONARY MATCHING	
	PROJECTED GROSS COMPENSATION	PROJECTED ELIGIBLE COMPENSATION	PROJECTED 401(K) DEFERRALS		100% OF DEFERRALS UP TO 2% OF COMP	MT %
<b>HIGHLY COMPENSATED EMPLOYEES / OWNERS</b>						
OWNER < AGE 50	290,000.00	290,000.00	10,000.00	3.45%	5,800.00	2.00%
OWNER > AGE 50	150,000.00	150,000.00	15,000.00	10.00%	3,000.00	2.00%
			<b>AVERAGE DEFERRALS</b>	<b>6.72%</b>	<b>AVERAGE MATCH</b>	<b>2.00%</b>
			<b>HCE LIMIT PER TESTING</b>	<b>5.42%</b>	<b>HCE LIMIT PER TESTING</b>	<b>3.00%</b>
			<b>TEST RESULTS</b>	<b>FAILS</b>	<b>TEST RESULTS</b>	<b>PASS</b>
<b>NON-HIGHLY COMPENSATED EMPLOYEES</b>						
EMPLOYEE < AGE 50	55,000.00	55,000.00	3,300.00	6.00%	1,100.00	2.00%
EMPLOYEE < AGE 50	35,000.00	35,000.00	1,400.00	4.50%	700.00	2.00%
EMPLOYEE > AGE 50	95,000.00	95,000.00	2,850.00	3.00%	1,900.00	2.00%
EMPLOYEE > AGE 50	75,000.00	75,000.00	750.00	1.00%	750.00	1.00%
<b>NHCES - ELIGIBLE 7/01/2022 - PART YEAR WAGES USED</b>						
EMPLOYEE < AGE 50	55,000.00	27,500.00	1,650.00	6.00%	550.00	2.00%
EMPLOYEE > AGE 50	55,000.00	27,500.00	-	0.00%	-	0.00%
			<b>AVERAGE DEFERRALS</b>	<b>3.42%</b>	<b>AVERAGE MATCH</b>	<b>1.50%</b>
			<b>NHCE AVG + 2%</b>	<b>5.42%</b>	<b>NHCE AVG * 2</b>	<b>3.00%</b>
<b>NOT ELIGIBLE IN 2022</b>						
INELIGIBLE	55,000.00					
INELIGIBLE	35,000.00					
<b>TOTALS</b>	<b>900,000.00</b>	<b>755,000.00</b>	<b>34,950.00</b>		<b>13,800.00</b>	

ADP / ACP LIMITS	
NHCE AVERAGE	HCE LIMIT
≤ 2%	NHCE AVG X 2
> 2% ≤ 8%	NHCE AVG + 2
> 8%	NHCE AVG X 1.25

## NOTES:

- CURRENT YEAR VS PRIOR YEAR TESTING
- FIRST PLAN YEAR MAY USE NHCE AVG OF 3% + 2% FOR 5% LIMIT FOR HCES
- CAN WORK WELL WITH LARGER PLANS WITH GOOD PARTICIPATION

# SAFE HARBOR MATCHING - TWO OPTIONS

EMPLOYEE	2022 PROJECTED GROSS COMPENSATION	2022 PROJECTED ELIGIBLE COMPENSATION	OPTION #1 ENHANCED MATCH				OPTION #2 BASIC MATCH			
			100% VESTED IMMEDIATELY				100% VESTED IMMEDIATELY			
			2022 PROJECTED 401(K) DEFERRALS	DEF %	100% UP TO 4%	SH %	2022 PROJECTED 401(K) DEFERRALS	DEF %	100% OF FIRST 3% PLUS 50% OF NEXT 2%	SH %
<b>HIGHLY COMPENSATED EMPLOYEES / OWNERS</b>										
OWNER < AGE 50	290,000.00	290,000.00	20,500.00	7.07%	11,600.00	4.00%	20,500.00	7.07%	11,600.00	4.00%
OWNER > AGE 50	150,000.00	150,000.00	27,000.00	18.00%	6,000.00	4.00%	27,000.00	18.00%	6,000.00	4.00%
<b>NON-HIGHLY COMPENSATED EMPLOYEES</b>										
EMPLOYEE < AGE 50	55,000.00	55,000.00	2,200.00	4.00%	2,200.00	4.00%	2,750.00	5.00%	2,200.00	4.00%
EMPLOYEE < AGE 50	35,000.00	35,000.00	1,400.00	4.00%	1,400.00	4.00%	700.00	2.00%	700.00	2.00%
EMPLOYEE > AGE 50	95,000.00	95,000.00	2,850.00	3.00%	2,850.00	3.00%	3,800.00	4.00%	3,325.00	3.50%
EMPLOYEE > AGE 50	75,000.00	75,000.00	3,000.00	4.00%	3,000.00	4.00%	3,750.00	5.00%	3,000.00	4.00%
<b>NHCES - ELIGIBLE 7/01/2022 - PART YEAR WAGES USED</b>										
EMPLOYEE < AGE 50	55,000.00	27,500.00	1,100.00	4.00%	1,100.00	4.00%	1,375.00	5.00%	1,100.00	4.00%
EMPLOYEE > AGE 50	55,000.00	27,500.00	1,100.00	4.00%	1,100.00	4.00%	1,375.00	5.00%	1,100.00	4.00%
<b>NOT ELIGIBLE IN 2022</b>										
INELIGIBLE	55,000.00									
INELIGIBLE	35,000.00									
<b>TOTALS</b>	<b>900,000.00</b>	<b>755,000.00</b>	<b>59,150.00</b>		<b>29,250.00</b>		<b>61,250.00</b>		<b>29,025.00</b>	

# QACA SAFE HARBOR MATCH - WITH AUTOMATIC ENROLLMENT

EMPLOYEE	2022 PROJECTED GROSS COMPENSATION	2022 PROJECTED ELIGIBLE COMPENSATION	QUALIFIED AUTOMATIC CONTRIBUTION ARRANGEMENT			
			VESTING - EITHER 100% IMMEDIATE OR 2 YEAR CLIFF			
			2022 PROJECTED 401(K) DEFERRALS	DEF %	100% OF FIRST 1% PLUS 50% OF NEXT 5%	SH %
<b>HIGHLY COMPENSATED EMPLOYEES / OWNERS</b>						
OWNER < AGE 50	290,000.00	290,000.00	20,500.00	7.07%	10,150.00	3.50%
OWNER > AGE 50	150,000.00	150,000.00	27,000.00	18.00%	5,250.00	3.50%
<b>NON-HIGHLY COMPENSATED EMPLOYEES</b>						
EMPLOYEE < AGE 50	55,000.00	55,000.00	3,300.00	6.00%	1,925.00	3.50%
EMPLOYEE < AGE 50	35,000.00	35,000.00	1,400.00	4.50%	962.50	2.75%
EMPLOYEE > AGE 50	95,000.00	95,000.00	2,850.00	3.00%	1,900.00	2.00%
EMPLOYEE > AGE 50	75,000.00	75,000.00	750.00	1.00%	750.00	1.00%
<b>NHCES - ELIGIBLE 7/01/2022 - PART YEAR WAGES USED</b>						
EMPLOYEE < AGE 50	55,000.00	27,500.00	1,650.00	6.00%	962.50	3.50%
EMPLOYEE > AGE 50	55,000.00	27,500.00	-	0.00%	-	0.00%
<b>NOT ELIGIBLE IN 2022</b>						
INELIGIBLE	55,000.00					
INELIGIBLE	35,000.00					
<b>TOTALS</b>	<b>900,000.00</b>	<b>755,000.00</b>	<b>57,450.00</b>		<b>21,900.00</b>	

# SECURE ACT - AUTOMATIC ENROLLMENT UPDATE

## *Increased Auto-escalation Contribution Cap*

- ❖ Plan sponsors using a QACA Safe Harbor design must default the employee's contribution to at least 3% of the employee's pay with an annual increase of 1% to at least 6%.
  - *If the auto deferral starts at 6%, auto escalation is not required*
- ❖ The automatic escalation of the employee's contribution previously was capped at a maximum of 10%, but the SECURE Act **increased that limit to 15%**.
- ❖ Plan sponsors can choose to stop the auto-escalation at an amount lower than 15%, however, as this increase is not a required change.
- ❖ This higher limit could be especially helpful in enhancing the retirement readiness of employees who tend to put their retirement savings on autopilot.

# SAFE HARBOR NONELECTIVE WITH PROFIT SHARING

EMPLOYEE	2022 PROJECTED GROSS COMPENSATION	2022 PROJECTED ELIGIBLE COMPENSATION	2022 PROJECTED 401(K) DEFERRALS	DEF %	REQUIRED CONTRIBUTION SAFE HARBOR NONELECTIVE 100% VESTED IMMEDIATELY		DISCRETIONARY PROFIT SHARING 6 YEAR VESTING SCHEDULE		TOTAL EMPLOYER CONTR	TOTAL CONTR
					100% OF FIRST 3% OF COMP	SH %	PROFIT SHARING	PS %		
<b><u>HIGHLY COMPENSATED EMPLOYEES / OWNERS</u></b>										
OWNER < AGE 50	290,000.00	290,000.00	20,500.00	7.07%	8,700.00	3.00%	31,800.00	10.97%	40,500.00	61,000.00
OWNER > AGE 50	150,000.00	150,000.00	27,000.00	18.00%	4,500.00	3.00%	36,000.00	24.00%	40,500.00	67,500.00
<b><u>NON-HIGHLY COMPENSATED EMPLOYEES</u></b>										
EMPLOYEE < AGE 50	55,000.00	55,000.00	3,300.00	6.00%	1,650.00	3.00%	1,100.00	2.00%	2,750.00	6,050.00
EMPLOYEE < AGE 50	35,000.00	35,000.00	1,400.00	4.50%	1,050.00	3.00%	700.00	2.00%	1,750.00	3,150.00
EMPLOYEE > AGE 50	95,000.00	95,000.00	2,850.00	3.00%	2,850.00	3.00%	1,900.00	2.00%	4,750.00	7,600.00
EMPLOYEE > AGE 50	75,000.00	75,000.00	750.00	1.00%	2,250.00	3.00%	1,500.00	2.00%	3,750.00	4,500.00
<b><u>NHCES - ELIGIBLE 7/01/2022 - PART YEAR WAGES USED</u></b>										
EMPLOYEE < AGE 50	55,000.00	27,500.00	1,650.00	6.00%	825.00	3.00%	550.00	2.00%	1,375.00	3,025.00
EMPLOYEE > AGE 50	55,000.00	27,500.00	-	0.00%	825.00	3.00%	550.00	2.00%	1,375.00	1,375.00
<b><u>NOT ELIGIBLE IN 2022</u></b>										
INELIGIBLE	55,000.00									
INELIGIBLE	35,000.00									
<b>TOTALS</b>	<b>900,000.00</b>	<b>755,000.00</b>	<b>57,450.00</b>		<b>22,650.00</b>		<b>74,100.00</b>		<b>96,750.00</b>	<b>154,200.00</b>



# CASH BALANCE PLANS - HIGH LEVELS OF CONTRIBUTIONS & TAX SAVINGS

## ***What is a Cash Balance Plan?***

- ❖ IRS-qualified defined benefit retirement plan
  - ❖ Can be setup in combination with a 401(k) plan
- ❖ Must track a benefit amount (on paper) which is then funded in a trust.
- ❖ Each year, participants earn a cash balance benefit, called a “pay credit” that is added to their total accrued benefit.
- ❖ The total cash balance is also increased annually with “interest credits” as defined in the plan document
- ❖ To participants, these balances and credits appear very similar to a 401(k) balance.
- ❖ When participants earn a pay credit, a deductible contribution is made to the trust to fund it.

## ***How much is the interest credit?***

- ❖ The annual interest credit is often tied to a market index, such as 30-year Treasury Securities Interest Rate (published by the IRS), or a flat rate between 0% and 6%.
- ❖ It may also be tied to the actual investment performance of the fund, with the restriction that the credit can’t be outside the 0%-6% window in any year.

## ***How are plan assets and investments handled?***

- ❖ Plan assets are pooled and directed by the plan sponsor.
- ❖ An investment manager or trustee handles the investments.
- ❖ In order to optimize tax advantages and minimize volatility, assets typically are invested with a goal of earning the plan’s guaranteed “interest credit” rate (typically 3% to 5%).
- ❖ If the plan’s investment earnings exceed the guaranteed rate, the excess will be used to reduce future employer contributions.
- ❖ On the other hand, if the plan’s investment earnings are less than the guaranteed “interest credit” rate, then additional employer contributions could be required in the future to make up the shortfall.

# CASH BALANCE PLANS - HIGH LEVELS OF CONTRIBUTIONS & TAX SAVINGS

## How much can be contributed for a participant in a Cash Balance Plan?

Employer contributions are determined by age and can be defined either as a percentage of pay or a flat dollar amount. Sample limits for 2022:

Annual Qualified Plan Limits				
Age	401(k) & Profit Sharing	Cash Balance	Total	Est. 1-year tax impact*
65	\$67,500	\$295,000	\$362,500	\$134,000
62	67,500	315,000	382,500	142,000
60	67,500	285,000	352,500	130,000
55	67,500	222,000	289,500	107,000
50	67,500	173,000	240,500	89,000
45	61,000	135,000	196,000	73,000
40	61,000	105,000	166,000	61,000
35	61,000	82,000	143,000	52,000

*\* Assumes 37% federal tax rate and that the entire amounts shown are deferred. Impact on state and local taxes are not estimated. Amounts deferred in qualified retirement plans are taxed when withdrawn, at tax rates in effect the year of withdrawal.*

## Important factors to consider:

- It is recommended that the plan be maintained for no less than 3 years to be compliant with IRS permanency requirements
- Plan may be amended periodically to change the contribution credits prospectively or frozen due to business income changes
- Each participant may have a different contribution credit, provided plan passes nondiscrimination testing

# Legislative Updates & Considerations

# PLAN AMENDMENTS & RESTATEMENTS

POST PPA Cycle 3 Restated Plan Documents were due by 7/31/2022 - *pre-approved plans*

IRS extends due date for several required plan amendments to 12/31/2025

- Originally due by last day of plan year beginning on or after 1/01/2022
- SECURE Act - all law changes for both retirement plans and IRAs
- CARES Act
  - Does NOT extend the deadline for expanded distribution & loan options due to COVID
  - DOES extend due date for amending for 2020 RMD suspensions in qualified plans

## Important to note:

- *Regardless of when the plan is amended, it must be operated as if the amendment applied as of the original effective date of the applicable change in the law.*
- *Regardless of any IRS relief for plan amendment deadlines, retirement plans must be updated for all relevant changes in the law before they are terminated.*

# RETIREMENT PLAN STARTUP COSTS - TAX CREDITS

Employers may be able to claim a tax credit of up to \$5,000, for three years, for the costs of starting a SEP, SIMPLE IRA or 401(k) Plan.

<https://www.irs.gov/retirement-plans/retirement-plans-startup-costs-tax-credit>

## Which Employers are eligible?

- 100 or fewer employees who received at least \$5,000 in compensation from you for the preceding year;
- at least one plan participant who was a non-highly compensated employee (NHCE); AND
- In the three tax years before the first year you're eligible for the credit, your employees weren't substantially the same employees who received contributions or accrued benefits in another plan sponsored by you, a member of a controlled group that includes you, or a predecessor of either.

## Amount of the credit

The credit is 50% of your eligible startup costs, up to the greater of:

- \$500; OR
- The lesser of:
  - \$250 multiplied by the number of NHCEs who are eligible to participate in the plan, or
  - \$5,000

## Auto-enrollment tax credit

An eligible employer that adds an auto-enrollment feature to their plan can claim a tax credit of \$500 per year for a 3-year taxable period beginning with the first taxable year the employer includes the auto-enrollment feature.

# SECURE ACT - EXTENSION OF TIME TO ADOPT NEW PLAN

Employers can now adopt a retirement plan up until their tax return due date, plus extensions.

For tax years beginning back in 2020, employers can retroactively adopt a new qualified retirement plan as late as the employer's extended federal income tax filing deadline.

**Important items to consider:**

- timing for salary deferrals with new plans as deferrals can only be made prospectively
- the new plan can be retroactively effective as of the beginning of the tax year for which the tax return is being filed
- may allow for full year employer profit sharing, subject to plan eligibility and allocation conditions

Tax Status	Filing Deadline	Extended Deadline
S-Corporation (or LLC taxed as S-Corp)	March 15	September 15
Partnership (or LLC taxed as a part)	March 15	September 15
C-Corporation (or LLC taxed as C-Corp)	April 15	October 15
Sole Proprietorship (or LLC taxed as sole prop)	April 15	October 15



# OTHER IMPORTANT TIMING CONSIDERATIONS

## *When can I adopt a new 401(k) plan if I currently have a SIMPLE IRA in place?*

All SIMPLE IRAs operate on a calendar year basis. Replacing one with a 401(k) plan takes some planning due to the following IRS rules:

- A SIMPLE IRA must be the sole retirement plan in effect for the calendar year.
- SIMPLE IRAs cannot be terminated mid-year.
- For a SIMPLE IRA to be terminated at year-end, participants must be notified at least 60 days in advance (November 2).

Due to these rules, the soonest you can implement a new 401(k) plan is the January 1 following the year your SIMPLE IRA plan is terminated.

## *What is the deadline for adopting a new safe harbor 401(k) plan?*

- the first year of a new safe harbor 401(k) plan must be at least 3 months long - to give all plan participants the opportunity to make salary deferrals.
- The deadline for employers to adopt a new calendar-based plan is October 1. **Time is of the essence for 2022!!!**

## *What is the deadline for amending a traditional 401(k) into a safe harbor 401(k) plan?*

- A plan amendment must be executed to convert a traditional 401(k) into a safe harbor 401(k) plan. The deadline for adopting this amendment will depend upon the type of safe harbor contribution to be made.
  - Safe harbor match - amendment deadline is the last day of year preceding the plan year in which the plan will be safe harbor.
  - However, match-based safe harbor plans must distribute a safe harbor notice to participants sooner - 30-90 days before the start of the plan year.
- Safe harbor nonelective - The SECURE Act made the amendment deadline much more flexible for these plans. It depends on the contribution formula elected:
  - *Less than 4%* - up to 30 days before the close of the plan year in which the plan will be safe harbor.
  - *4% or greater* - The last day of the plan year following the plan year in which the plan will be safe harbor.
  - The SECURE Act eliminated the notice requirement for nonelective-based safe harbor plans.

# Questions?

Please contact me if I can be of any assistance:

Nicole Parnell, CPC, QPA, QKC, QKA

Managing Director - Retirement Plan Services Leader

BDO USA, LLP

[nparnell@bdo.com](mailto:nparnell@bdo.com)

757-640-7291