

Post PPA Matching Contributions - Q&A

Below are answers to the questions we've received most frequently since the release of the Cycle 3 (Post PPA) documents. Both safe harbor matching contributions and Employer Matching Contributions are addressed below. To minimize confusion, the Q&A follows the order of the software checklists. Where applicable, numbering below refers to the document checklist – not Adoption Agreement – items of the Non-Standardized 401(k) Plan document. Please note, numbering may be different on other checklist types.

Click on a question below to see the answer:

Q-1: Does the determination period at C.18 dictate when the safe harbor matching contributions must be made to participant accounts?

Q-2: My client wants to fund their safe harbor matching contribution each payroll, but the plan's determination period is "End of Plan Year" – will my client owe a true-up?

Q-3: Why are there new checklist questions for discretionary Employer Matching Contributions?

Q-4: Most of my clients won't want to distribute a participant communication – what counts as a 'Uniform Percentage'?

Q-5: My client wants to use the fully discretionary formula - when do I have to start distributing participant communications?

Q-6: My client wants to use the fully discretionary formula - how should the Participant communication be structured?

Q-7: My PPA plans used "At Company Discretion" for the determination period – why is that no longer available for the determination period (Post PPA D.13)?

Q-8 My PPA plan had a discretionary formula and no set determination period. After converting to Cycle 3 (Post PPA) I want to use the fully discretionary formula, but I have to elect a determination period at D.13 – am I locked into that election?

Q-9: How do true-ups work for discretionary Employer Matching Contributions on Cycle 3 (Post PPA)?

Q-1: Does the determination period at C.18 dictate when the safe harbor matching contributions must be made to participant accounts?

A-1: The determination period sets when the safe harbor matching contributions will be "determined" or calculated. In other words, the amount of deferrals and compensation used in calculating the match for that time period. With one notable exception*, the election at C.18 will not dictate the timing for the allocation or funding of safe harbor matching contributions.

*Please note: if the elected determination period is anything other than "End of Plan Year", the safe harbor matching contributions must be contributed to the plan by *the last day of the following plan quarter*.

Q-2: My client wants to fund their safe harbor matching contribution each payroll, but the plan's determination period is "End of Plan Year" – will my client owe a true-up?

A-2: Maybe. Where the safe harbor matching contribution is allocated more frequently than the determination period elected at C.18, a true-up contribution *must* be given to any participant who received less on the allocation basis (e.g., each pay period) than they were owed based on the plan's determination period (e.g., End of Plan Year). We have added an example in the help text to C.18 (click on the question mark).

Conversely, the plan sponsor is limited in its ability to make a true-up contribution based on a longer determination period (e.g., End of Plan Year) where the plan allocates and funds the safe harbor matching contribution in accordance with the determination period set in the plan document (e.g., each pay period). According to Notice 2016-16, a mid-year change in the determination period for safe harbor matching contributions appears to be prohibited unless the change is made at least 3 months prior to the end of the plan year and an updated safe harbor notice and election opportunity are provided.

Q-3: Why are there new checklist questions for discretionary Employer Matching Contributions?

A-3: The new checklist questions are the result of the IRS insisting that a discretionary matching formula be considered a *definitely determinable* matching formula. Because of this, the Cycle 3 (Post PPA) documents feature two new required fields for discretionary Employer Matching Contributions:

- D.8a - Plans with a discretionary matching formula now must make a secondary election geared toward identifying the allocation method for Employer Matching Contributions. The available elections are "Uniform Percentage", "Flat Dollar", and "At Employer Discretion". Plans using "At Employer Discretion" have the same flexibility as was permitted under PPA, but *the IRS now requires plan sponsors to meet certain conditions, including the distribution of a communication to all plan participants outlining the applicable matching formula and provisions*. These conditions, including the participant communication, are not required for plans using "Uniform Percentage" or "Flat Dollar".
- D.13 - All plans, including those with a discretionary formula, must identify the plan's determination period.

Please note that PPA plans using a discretionary formula will be mapped to "Uniform Percentage" at D.8a once converted to Post PPA.

Q-4: Most of my clients won't want to distribute a participant communication – what counts as a 'Uniform Percentage'?

A-4: A common discretionary matching formula is a percentage of deferrals (e.g., 50% or 100%) up to a percentage of compensation (e.g., 4% or 6%). Our interpretation of the new IRS position as it relates to our Cycle 3 (Post PPA) documents is that a plan sponsor has the discretion to change both the percentage of deferrals *and* percentage of compensation under the “Uniform Percentage” option at D.8a. The plan sponsor avoids the participant communication requirement if only these two factors vary.

Although this is our interpretation, the IRS has not issued - and is unlikely to issue - any further guidance on this discretionary matching formula change, including whether percentage of compensation may vary under the “Uniform Percentage” option. If you wish to identify the percentage of compensation limit explicitly within the plan document, we recommend the following approach to completing the checklist:

- Select “Discretionary” at D.8;
- Select “Uniform Percentage” at D.8a;
- Select either “Yes – maximum % that applies to all Participants” or “Yes – maximum % that applies to HCEs only”, as applicable, at D.12a; and
- Enter the maximum Employer Matching Contribution limit at D.12b. For example, you would enter "6" where the plan's maximum Employer Matching Contribution is limited to 6% of compensation.

We believe this approach allows plan sponsors to allocate a matching contribution up to the stated limit while maintaining a Uniform Percentage to avoid the participant communication requirement. For example, if "6" were entered at D.12b, the plan could use a matching formula of "100% to 5%" without the need for an amendment. However, if the plan wanted to allocate a match of "100% up to 7%" instead, an amendment would be required to reflect this.

Plan sponsors who interpret the matching limit differently may prefer to amend the plan in any year where a discretionary Employer Matching Contribution is made, but the compensation limit used is different from the limit stated in the document (i.e., an amendment is prepared if the plan wanted to allocate a match up to any amount other than 6%).

Finally, a multi-tiered discretionary match does not appear to be fit under “Uniform Percentage”. Therefore, “At Employer Discretion” with participant communication should be selected for this type of matching formula.

Q-5: My client wants to use the fully discretionary formula - when do I have to start distributing participant communications?

A-5: The participant communication requirement does not become effective until the effective date of the plan's restatement onto a Cycle 3 (Post PPA) document. The communication must be distributed within 60 days after the last discretionary matching contribution is contributed.

For example, if the Cycle 3 (Post PPA) restatement is signed in 2021 with an effective date of 1/1/2022, the participant communication requirement becomes effective for the 2022 plan year. If a plan deposits the last discretionary matching contribution for the 2022 plan year on March 15, 2023, a participant notice could be timely distributed as late as May 14, 2023.

Q-6: My client wants to use the fully discretionary formula - how should the Participant communication be structured?

A-6: We do not have any specific guidance from the IRS with respect to the participant communication. However, we are working on a sample communication for your use. Once the sample is available on the software, we will alert all customers via email.

Q-7: My PPA plans used "At Company Discretion" for the determination period – why is that no longer available for the determination period (Post PPA D.13)?

A-7: The removal of this checklist option was required by the IRS and was part of their new insistence that all plans – even those using a discretionary matching formula – have a definitely determinable formula. For plans that want to maintain flexibility with respect to the determination period, see Q-8 below for more details.

Please note that PPA plans using "At Company Discretion" will be mapped to "End of Plan Year" once converted to Post PPA.

Q-8 My PPA plan had a discretionary formula and no set determination period. After converting to Cycle 3 (Post PPA) I want to use the fully discretionary formula, but I have to elect a determination period at D.13 – am I locked into that election?

A-8: Plans using a fully discretionary formula (i.e., D.8 is "Discretionary", D.8a is "At Employer Discretion", and the plan sponsor is satisfying all additional conditions, including distributing participant communications) now must elect a determination period at D.13, but that election is flexible. Such plans could, for example, elect "End of Plan Year" in D.13, decide to fund the match on a per payroll basis instead, include that information in the participant communication, and not be required to fund a true-up contribution.

Q-9: How do true-ups work for discretionary Employer Matching Contributions on Cycle 3 (Post PPA)?

A-9: If the plan is allocating Employer Matching Contributions more frequently than the plan's stated determination period (e.g., the plan's determination period is "End of Plan Year" but the matching contribution is calculated and allocated each payroll), a true-up contribution will be owed to any participant who received less on an allocation basis (e.g., each pay period) than they would have received if the Employer Matching Contribution had been determined based on the deferrals and compensation for the plan's stated determination period (e.g., End of Plan Year). We have added an example in the help text to D.13a (click on the question mark).

Alternatively, where the plan allocates and funds Employer Matching Contributions in accordance with the determination period set in the plan document, and the determination period is more frequent than annual (e.g., Each pay period, Monthly, Quarterly, etc.) the plan sponsor always has the option of using "End of Plan Year" to determine the Employer Matching contribution and funding applicable true-ups.

When made, true-ups must always be contributed on a nondiscriminatory basis.