



Pass the Catch-Up

S. Derrin Watson, JD, APM

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Your Presenter Today



S. Derrin Watson, J.D., APM



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past part. (as DE-, FILE²)

define /di'fain/ v.tr. 1 give the exact meaning of (a word etc.). 2 describe or explain the scope of (define one's position). 3 make clear, esp. in outline (well-defined image). 4 mark out the boundary or limits of. 5 (of properties) make up the total character of.


definable adj. **definer** n. [ME f. OF *definer* ult. f. *definire* (as DE-, *finire* finish, f. *finis* end)]

definite /'definit/ adj. 1 having exact and discernible limits. 2 clear and distinct: not vague. 'See the no

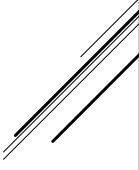
DEFINITIONS

- Catch-up
- Applicable employer plan
- Catch-up eligible participant
- Elective deferral
- Applicable limits

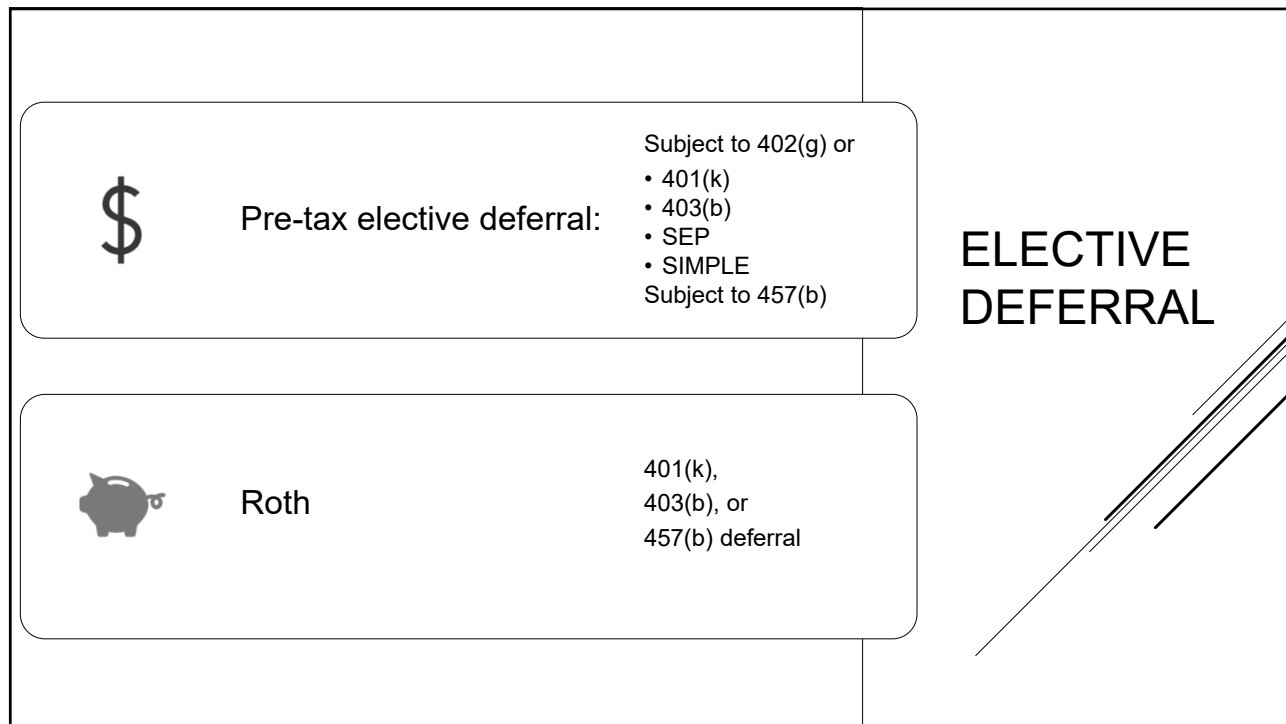
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	<h2>WHAT IS A CATCH-UP?</h2>	<ul style="list-style-type: none"> ▶ “With respect to an applicable employer plan, catch-up contributions are <ul style="list-style-type: none"> ▶ elective deferrals ▶ made by a catch-up eligible participant ▶ that exceed any . . . applicable [limit] . . . ▶ and that are treated under the applicable employer plan as catch-up contributions, ▶ but only to the extent they do not exceed the catch-up contribution limit.”
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	<h2>APPLICABLE EMPLOYER PLAN</h2>	<ul style="list-style-type: none"> ▶ Only applicable employer plans can offer catch-ups ▶ Applicable employer plan <ul style="list-style-type: none"> ▶ 401(k) plan ▶ SIMPLE IRA ▶ SARSEP ▶ 403(b) plan ▶ 457(b) governmental plan <ul style="list-style-type: none"> ▶ Not tax-exempt 457 ▶ Not 457(f)
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Catch-up Eligible Participant



- ▶ Is eligible to make elective deferrals during the calendar year without regard to catch-up rules
 - ▶ 401(k) plan X says HCEs can defer 0% of comp
 - ▶ Allows catch-ups
 - ▶ No HCE is catch-up eligible
- ▶ Will turn (or has turned) 50 before end of calendar year
 - ▶ Participants born before 1972 satisfy this requirement for 2021

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- ▶ Sam was born November 1, 1971
- ▶ He is an HCE in a 401(k) plan with a June 30 plan year
- ▶ For the plan year ending 6/30/21, Sam had a \$6,500 catch-up
- ▶ Sam dies 8/1/21
- ▶ Sam is catch-up eligible for all of 2021 since that is the year his 50th birthday would have occurred

EXAMPLE: AGE 50



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Applicable Limits

- ▶ **Statutory limit**
 - ▶ 401(a)(30); 402(g); 457(b)
 - ▶ \$19,500 for 2021
 - ▶ \$13,500 for SIMPLE
 - ▶ 415 annual additions
 - ▶ \$58,000 for 2021
- ▶ **Employer-provided limit**
- ▶ **ADP limit**
 - ▶ Only applies to HCEs




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<ul style="list-style-type: none"> ▶ A \$3,000 catch-up would result in 2021 from the each of the following: <ul style="list-style-type: none"> ▶ Mary defers \$22,500 to 401(k), SEP, 403(b), or 457(b) ▶ Chris defers \$16,500 to SIMPLE 401(k) plan or SIMPLE IRA ▶ John defers \$11,000 to 401(k) and employer allocates \$50,000 profit sharing contribution to John 	<p style="text-align: center;">EXAMPLE: STATUTORY LIMITS</p>
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Employer-provided limit



- ▶ Terms of plan specifically limit deferral elections
 - ▶ Common in pre-EGTRRA documents
 - ▶ Much more rare today except for HCEs
- ▶ Plan may limit HCEs but not NHCEs
 - ▶ Often used to avoid test failures
- ▶ Example:
 - ▶ Plan says HCEs cannot defer more than 6% of compensation
 - ▶ Sue, age 51, has \$200,000 comp
 - ▶ Sue can defer $\$12,000 + \$6,500 = \$18,500$

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How does an employer provide a limit?



- ▶ Contained in the terms of the plan, or
- ▶ Otherwise permissible under 401(k) plan
- ▶ Example: Plan allows administrator to set an HCE limit at start of year
 - ▶ That is contained in terms of plan and is an employer-provided limit
- ▶ No go: Plan has no limits, but company sends memo to HCEs asking them not to defer more than 6%
 - ▶ That is not an employer-provided limit

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ADP Limit



- ▶ The highest dollar amount of elective deferrals the plan can retain for an HCE consistent with the ADP test
- ▶ For a SARSEP, the ADP limit is the highest rate of elective deferrals that an HCE can make under the rules of section 408(k)(6)

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ADP Limit Example



- ▶ Plan fails 2021 ADP test and plan corrects by returning HCE deferrals exceeding \$10,000
- ▶ Mary, 55, an HCE, deferred \$12,000
- ▶ Keep the \$2,000 in the plan
 - ▶ It's a catch-up

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No options here



- ▶ The law does not give an option
 - ▶ Who receives distributions of excess contributions
 - ▶ Whose deferrals are recharacterized as catch-ups
 - ▶ Distribute instead of recharacterize

Participant	Age	Deferral	Excess	Distribute	Recharacterize
Wanda	45	\$19,000	\$4,000	\$4,000	\$0
William	50	\$16,000	\$1,000	\$0	\$1,000

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What Is a Catch-Up?

- ▶ Applicable plan
 - ▶ Plan accepts deferrals
 - ▶ Plan accepts catch-ups
- ▶ Deferral from catch-up eligible participant
 - ▶ 50 by December 31
- ▶ Exceed any applicable limit
 - ▶ 402(g)
 - ▶ 415
 - ▶ ADP
 - ▶ Plan
- ▶ Up to catch-up limit
 - ▶ \$6,500 in 2020 and 2021
 - ▶ Indexed for inflation in \$500 jumps
 - ▶ Total deferrals can't exceed 100% of comp
 - ▶ Crucial issue for self-employed



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Aggregate catch-ups

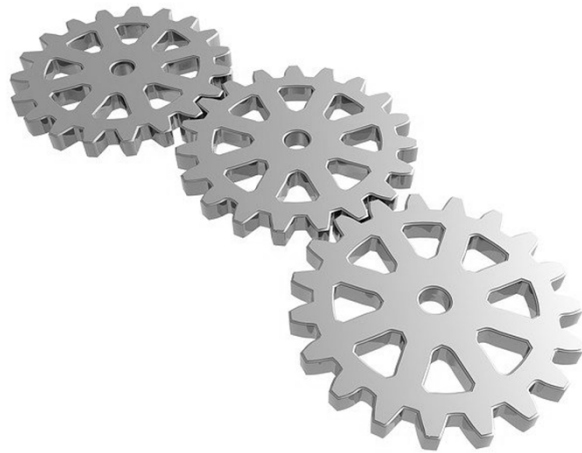
- ▶ Add all catch-ups in all plans maintained by a single employer — or a controlled group, ASG, etc. — to determine if the catch-up limit is exceeded
 - ▶ Disregard plans of unrelated employers
- ▶ One exception — 457 plans are separate



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Limited choices

- ▶ Plan choice:
 - ▶ Allow catch-ups
 - ▶ Not allow catch-ups
- ▶ Participant choice
 - ▶ Whether to defer
 - ▶ How much to defer
- ▶ Everything else is automatic



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Automation in action

- | | |
|--|---|
| <ul style="list-style-type: none"> ▶ Salary Reduction Agreement <ul style="list-style-type: none"> ▶ Regular: \$5,000 ▶ Catch-up: \$2,000 ▶ It's simply \$7,000 of deferrals ▶ If it doesn't exceed an applicable limit, it isn't a catch-up | <ul style="list-style-type: none"> ▶ Doug (55) deferred \$10,000 ▶ ADP limit = \$8,000 ▶ Must keep \$2,000 in plan <ul style="list-style-type: none"> ▶ Can't give it back to Doug ▶ Can't give Doug the option |
|--|---|

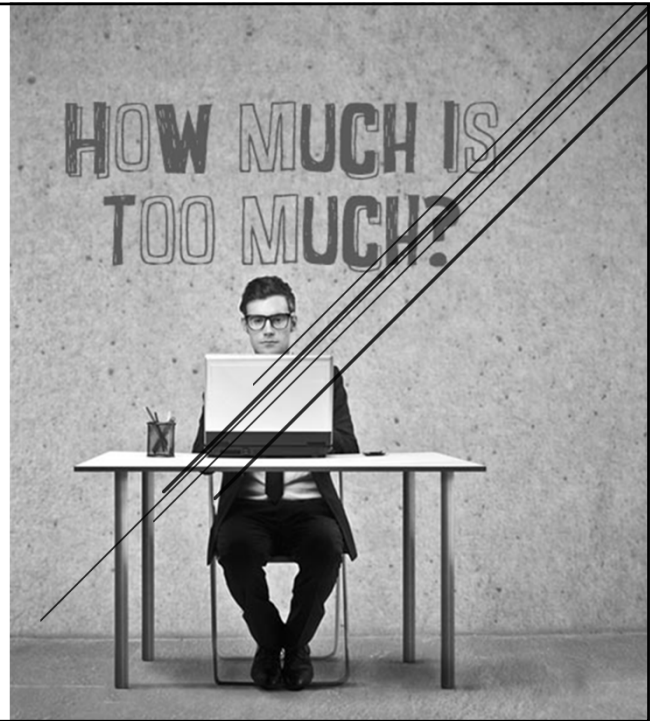


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A TALE OF TWO LIMITS

402(g)

401(a)(30)



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402(g) limits participants



- ▶ Thou shalt not defer more than \$19,500
 - ▶ If you do, you cannot exclude the excess from income
 - ▶ And you don't get basis if it's Roth
 - ▶ Combines all plans from all employers
 - ▶ Related or not
 - ▶ Exception 457(b)
- ▶ Catch-up can allow participant to defer \$26,000

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401(a)(30) limits plans



- ▶ Thou shalt not allow a participant to defer more than \$19,500
 - ▶ Operational failure if the plan violates 401(a)(30)
- ▶ Aggregate all plans of all RELATED employers
 - ▶ Disregard plans of unrelated employers
 - ▶ 457(b) plans separate
- ▶ Catch-up can allow a plan to permit deferrals of \$26,000 without an operational failure

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Examples: 45-year-old



- ▶ Adam, defers \$26,000 to XYZ 401(k)
 - ▶ Adam can only exclude \$19,500; taxable on \$6,500
 - ▶ XYZ 401(k) has operational failure
- ▶ Betty defers \$13,000 to XYZ 401(k) and to XYZ 403(b)
 - ▶ Betty can only exclude \$19,500; taxable on \$6,500
 - ▶ Plans have operational failure
- ▶ Carl, 45 defers \$13,000 to XYZ 401(k) and to ABC 401(k)
 - ▶ Carl can only exclude \$19,500; taxable on \$6,500
 - ▶ Neither plan has operational failure under Code §401(a)(30)
 - ▶ Plan can allow \$6,500 distribution to Carl if he requests it
 - ▶ Deadline is April 15

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Examples: 50-year-old



- ▶ Adam, defers \$26,000 to XYZ 401(k)
 - ▶ Adam and XYZ recognize \$6,500 catch-up
- ▶ Betty defers \$13,000 to XYZ 401(k) and to XYZ 403(b)
 - ▶ Adam and XYZ recognize \$6,500 catch-up
 - ▶ Plan can decide which plan credits the catch-up
- ▶ Carl, 45 defers \$13,000 to XYZ 401(k) and to ABC 401(k)
 - ▶ Adam recognizes \$6,500 catch-up
 - ▶ Neither plan recognizes catch-up because neither plan has 401(a)(30) failure

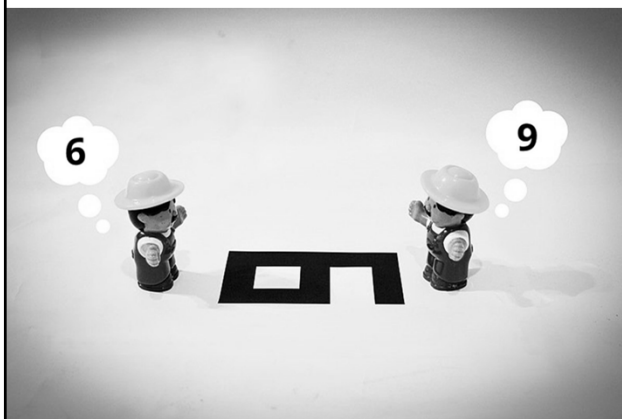
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Applicable limit depends on point of view

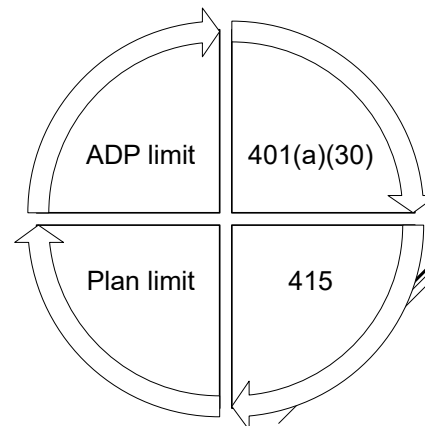


Participant

402(g) Limit



Employer



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Example (2021 calendar plan year)



- ▶ Dianne, 50 defers \$13,000 to XYZ 401(k) and ABC 401(k)
 - ▶ \$6,500 catch-up based on 402(g)
 - ▶ Neither plan recognizes a catch-up
- ▶ XYZ and ABC each make \$50,000 PS contribution for Dianne
 - ▶ Total annual additions in each plan \$63,000
 - ▶ Each plan recognizes a \$5,000 catch-up from 415
 - ▶ 2021 limit is \$58,000

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457(b) plans



- ▶ Governmental 457(b) plans can permit age 50 catch-ups
- ▶ Tax-exempt 457(b) plans cannot
- ▶ Double your catch-ups, double your fun
 - ▶ Prof. Rocky participates in Wossamatta U 403(b) and 457(b)
 - ▶ Governmental university
 - ▶ Rocky can defer \$26,000 to each in 2021



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WHEN IS IT A CATCH-UP?

Timing is everything



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Timing Contribution Limits



- ▶ Determine if a contribution exceeds 401(a)(30) or similar limit when contribution made.
- ▶ Example: In 2021 Edna (55) defers \$2,000/ month to her company's 401(k) plan
 - ▶ January through September deferrals (total=\$18,000) are "regular" deferrals
 - ▶ October deferral is \$1,500 regular and \$500 catch-up
 - ▶ November and December deferrals are catch-ups

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TIMING 415 LIMITS

- ▶ A plan determines if deferrals exceed the 415 limit at the end of the limitation year
 - ▶ Generally, that's the same as the plan year

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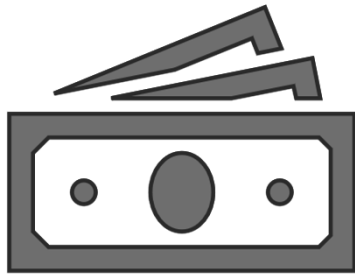
All other limits (e.g. employer-provided limits and ADP limit) are computed at the end of the plan year.



Calculate and adjust for all other catch-ups during plan year before running ADP test.

TIMING OTHER LIMITS

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- ▶ Annual limit for catch-up purposes — compare total deferrals with total limit
- ▶ If plan uses payroll by payroll limit, add together payroll limits to determine annual limit



COMPUTING EMPLOYER- PROVIDED LIMIT

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Employer limit alternatives

- ▶ Can add each month's limit
- ▶ Can use weighted average for year
- ▶ Can calculate compensation based on ADP compensation even if different compensation definition used for limit



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Example: Computing employer limit



- ▶ 2021 calendar year plan allows HCEs to defer 10% gross pay + \$542/month catch-up if applicable
- ▶ Plan changes May 1, 2021 to drop the limit to 7%
- ▶ Adam:
 - ▶ Comp. \$5,000/month through June 30
 - ▶ Comp. \$6,000/month July – December
 - ▶ Always defers \$600/month (\$7,200 total)

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Payday computations



Month	Comp	%	Limit
Jan	5,000	10	500
Feb	5,000	10	500
Mar	5,000	10	500
Apr	5,000	10	500
May	5,000	7	350
June	5,000	7	350
July	6,000	7	420
Aug	6,000	7	420
Sep	6,000	7	420
Oct	6,000	7	420
Nov	6,000	7	420
Dec	6,000	7	420
Total	66,000	8	5220

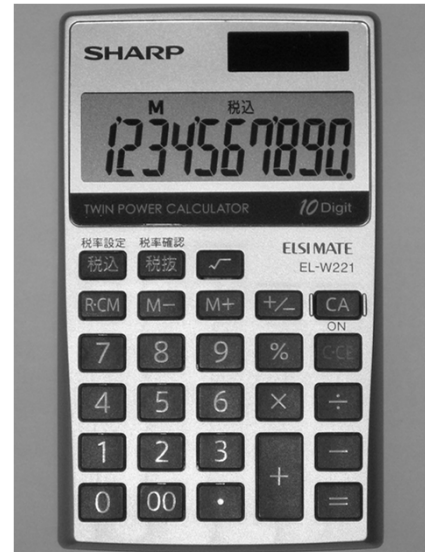
- ▶ Catch-up adding monthly limits = \$7,200 - \$5,220 = \$1,980
- ▶ Weighted average limit = 8%
X \$66,000 = \$5,280
- ▶ Weighted average catch-up = \$1,920

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Example: Comp definition

- ▶ Cold Molasses, Inc. limits HCEs to deferring 10% of gross compensation (plus catch-ups)
- ▶ Plan computes ADP on comp net of deferrals
- ▶ In 2021, Elmer defers \$11,000
 - ▶ Gross comp: \$100,000
 - ▶ ADP comp: \$89,000

	Gross Comp	ADP Comp
Limit	\$10,000	\$8,900
Catch-up	\$1,000	\$2,100
ADR	11.24%	10%

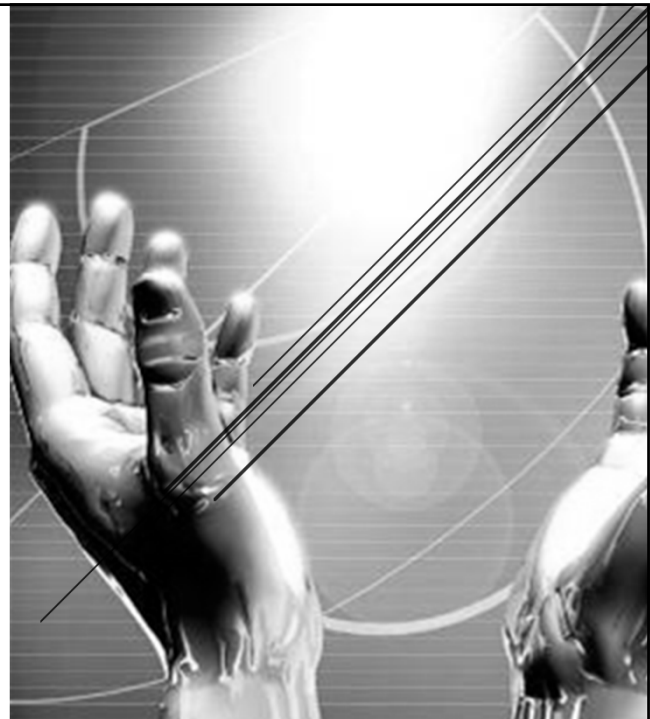


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NONDISCRIMINATION

Universal Availability

- Participants
- Plans
- Limits



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- ▶ All catch-up eligible participants in all applicable plans sponsored by the employer must have an effective opportunity to make the same dollar amount of catch-up contributions

- ▶ Or else plan fails 401(a)(4) nondiscrimination

UNIVERSAL AVAILABILITY



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All plans of employer

- ▶ If one plan of an employer offers catch-ups, then all applicable plans of controlled group must offer catch-ups simultaneously
- ▶ Doesn't apply during 410(b)(6)(C) transition period if new member joins group



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457 exception



- ▶ 457 plans are separate from other plans for catch-ups
- ▶ Example: Red Ink School District sponsors a 403(b) and a 457(b) plan. The District can accept catch-ups in the 403(b) and not the 457(b), or vice versa



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Universal Availability Within the Plan



- ▶ Plan fails universal availability if there is any applicable limit that a catch-up eligible participant cannot exceed
- ▶ Example: Plan limits total deferral to 10% of gross pay each pay period
 - ▶ Plan fails universal availability because there is no way to exceed 10% limit

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Permitted provisions

- ▶ Limit deferrals to % of pay plus portion of catch-up limit
- ▶ Limit total deferrals to net paycheck
- ▶ Limit total deferrals to 75% (or more) of gross pay
- ▶ Have an employer limit on HCEs and not NHCEs
 - ▶ But can't have different limits on catch-up eligible and others



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Union employees

- ▶ Plan can exclude collectively bargained employees from catch-ups without violating universal availability.



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NO HELP HERE

- ▶ Can't use "otherwise excludable employee" rule to avoid providing catch-ups for newly hired
- ▶ Can't use QSLOB rule to exclude separate business units



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EFFECTS OF CATCH-UP RULES



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Catch-ups don't count for Code limits



- ▶ Catch-up (for whatever reason) does not count for 401(a)(30) or 415
- ▶ Example: Oswald, age 60, defers \$26,000 in 2021 (\$6,500 catch-up)
 - ▶ Only \$19,500 of deferrals count for 415
 - ▶ Plan can allocate \$38,500 employer contribution

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ADP and Catch-up



- ▶ If an elective deferral is characterized as a catch-up because it exceeded a statutory limit (§401(a)(30) or §415) or an employer-provided limit, then
 - ▶ Do not include the deferral in calculating the participant's ADR
 - ▶ True for HCEs and NHCEs
 - ▶ Do not consider the deferral in "leveling" excess contributions to correct failed ADP

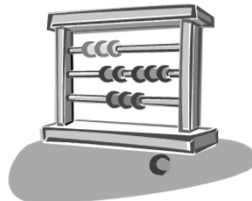
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ADP Example



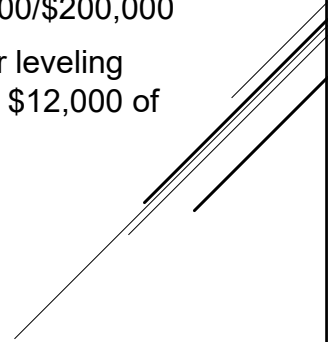
► Facts:

- HCE earns \$200,000
- Employer-provided limit is 6% of pay, \$12,000
- HCE defers \$15,000



► Result:

- Catch-up: \$3,000
- $ADR = 6\% = \$12,000 / \$200,000$
- If plan fails ADP, for leveling purposes HCE has \$12,000 of deferrals



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- If excess deferrals would be distributed to a catch-up eligible participant who has unused catch-up limit available, then the plan must retain the deferrals, up to the limit
- In effect, the deferrals are “recharacterized” as catch-ups

ADP RECHARACTERIZATION

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ADP Example



- ▶ Marion
 - ▶ Born 11/1/66
 - ▶ HCE
 - ▶ Comp: \$250,000
 - ▶ 2020 Defer: \$22,000
 - ▶ \$2,500 catch-up
 - ▶ ADR 7.8%
 - ▶ \$19,500/\$250,000
- ▶ Plan fails 2020 ADP
 - ▶ Return HCE deferrals > \$12,000
- ▶ Marion \$7,500 over limit
 - ▶ Recharacterize \$4,000 as catch-up
 - ▶ Return \$3,500 plus earnings
 - ▶ 401(a)(30): \$16,500

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Top-heavy



- ▶ Don't count catch-ups in top-heavy test in the year the contribution is made
 - ▶ Catch-up contributions for prior years are taken into account for purposes of top-heavy tests
 - ▶ Little practical effect
- ▶ No separate recordkeeping bucket required

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Average benefit percentage test



- ▶ Don't count catch-up in year contribution is made when determining the average benefit percentage
- ▶ Catch-up contributions for prior years are taken into account for purposes of section 410(b)

Category	Amount
Deferral	\$26,000
ER Contribution	\$38,500
Total	\$64,500
Less Catch-up	\$6,500
Adjusted Total	\$58,000
Compensation	\$200,000
Avg Benefit %	29%

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MATCHING CATCH-UPS

Surprisingly tricky



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Can a plan choose whether to match catch-ups?



► Traditional plan:

- Plan can choose
- Look at document
- Not discriminatory either way
- If document is silent, then it matches catch-ups
- All match in ACP test

► Safe harbor plan:

- Must match catch-ups same as other deferrals
 - ADP SH match
 - ACP SH match



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How to avoid matching catch-ups



► Right:

- “Plan will match elective deferrals up to 401(a)(30) limit and employer-provided limit.”

► Wrong:

- This plan does not match catch-ups

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MULTI-YEAR FISCAL YEAR EXAMPLE

Calendar years certainly make catch-ups easier



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The facts



- ▶ Jo (55) starts work at Complex 1/1/19

- ▶ Complex 401(k) plan:

- ▶ 10/31 plan year end
- ▶ Immediate entry
- ▶ No employer provided limit

- ▶ Jo's comp. = \$240,000/year

- ▶ Deferrals:

- ▶ \$1,000/month in 2019 (\$12,000/year)
- ▶ \$2,000/month 2020 and 2021 (\$24,000/year)

Limits	2019	2020	2021
402(g)	\$19,000	\$19,500	\$19,500
Catch-up	\$6,000	\$6,500	\$6,500
ADP	\$15,000	\$18,000	\$16,000
Jo defers	\$12,000	\$24,000	\$24,000

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2019: No catch-ups

- ▶ PYE 10/31/19 Deferrals: \$10,000
- ▶ 2019 CY Deferrals: \$12,000
- ▶ Jo isn't HCE in 2019
- ▶ 2019 402(g) limit is \$19,000



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Plan Year Ending 10/31/20



Period	Deferred	Catch-ups	Amount
11/1/19 – 12/31/19	\$2,000	401(a)(30)	\$500
1/1/20 – 10/31/20	\$20,000		
Total Deferrals	\$22,000	Total	\$500

- ▶ Deferrals in ADP test: \$21,500
- ▶ $ADR = \$21,500 / \$240,000 = 8.96\%$

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Plan Year Ending 10/31/20



Period	Deferred	Catch-ups	Amount
11/1/19 – 12/31/19	\$2,000	401(a)(30)	\$500
1/1/20 – 10/31/20	\$20,000	ADP	\$3,500
Total Deferrals	\$22,000	Total	\$4,000

- ▶ Deferrals in ADP test: \$21,500
- ▶ $ADR = \$21,500 / \$240,000 = 8.96\%$
- ▶ ADP Limit is \$18,000
- ▶ Excess deferrals = $\$21,500 - \$18,000 = \$3,500$
 - ▶ Recharacterized as catch-ups

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Comparison 401(a)(30) vs 402(g) 10/31/2020



Plan	Deferred	Jo	Amount
Deferrals	\$20,000	Deferrals	\$20,000
Catch-up	\$4,000	Catch-up	\$500
401(a)(30)	\$16,000	402(g)	\$19,500
Unused 401(a)(30)	\$3,500	Unused 402(g)	\$0
Unused Catch-up	\$2,500	Unused Catch-up	\$6,000
Deferral available	\$6,000	Deferral available	\$6,000

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Finish 2020



Through 10/31	Deferred	Nov. Dec. 2020	Amount
Deferrals	\$20,000	Deferrals	\$4,000
Catch-up	\$4,000	401(a)(30) defer	\$3,500
401(a)(30)	\$16,000	401(a)(30) catch-up	\$500
Unused 401(a)(30)	\$3,500	Unused 401(a)(30)	\$0
Unused Catch-up	\$2,500	Unused Catch-up	\$2,000
Deferral available	\$6,000	Deferral available	\$2,000

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Plan Year Ending 10/31/21



Period	Deferred	2021 Catch-ups	Amount
11/1/20 – 12/31/20	\$4,000	401(a)(30)	\$500
1/1/21 – 10/31/21	\$20,000		
Total Deferrals	\$24,000	Total	\$500

Deferrals in ADP	Amount
Total Deferral	\$24,000
12/2020 401(a)(30) catch-up	\$500
2021 401(a)(30) catch-up	\$500
Deferrals in ADP	\$23,000

- ▶ Jo's ADR: $\$23,000 / \$240,000 = 9.58\%$
- ▶ ADP Limit = \$16,000
- ▶ Recharacterize \$6,000 as catch-up
- ▶ Distribute \$1,000 of excess contributions

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Comparison 401(a)(30) vs 402(g) 10/31/2021



Plan	Deferred	Jo	Amount
Deferrals	\$20,000	Deferrals	\$20,000
Catch-up	\$6,500	Catch-up	\$500
401(a)(30)	\$13,500	402(g)	\$19,500
Unused 401(a)(30)	\$6,000	Unused 402(g)	\$0
Unused Catch-up	\$0	Unused Catch-up	\$6,000
Deferral available	\$6,000	Deferral available	\$6,000

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Finish 2021



Plan	Deferred	Nov. Dec. 2021	Amount
Deferrals	\$20,000	Deferrals	\$4,000
Catch-up	\$6,500	401(a)(30) defer	\$4,000
401(a)(30)	\$13,500	401(a)(30) catch-up	\$0
Unused 401(a)(30)	\$6,000	Unused 401(a)(30)	\$2,000
Unused Catch-up	\$0	Unused Catch-up	\$0
Deferral available	\$6,000	Deferral available	\$2,000

- All \$4,000 of Jo's November and December deferrals will count in the 2022 ADP test

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Thank you!



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- ▶ Derrin's books are available at ERISApedia.com
 - ▶ Who's the Employer (8th ed)
 - ▶ 403(b) Plan eSource
 - ▶ 457 Plan eSource
 - ▶ Plan Correction eSource (with Ilene Ferenczy and Alison Cohen)

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CE Credit



- ▶ Credit is offered for ERPA/ASPPA-ARA/NIPA
- ▶ Those that attended the requisite time in the live video portion of the webcast today will receive a certificate by email in a few days (ERPA will take longer).
- ▶ Please check spam folder.
- ▶ Any questions? Email: support@erisapedia.com.
- ▶ After the webcast you will be presented with a short Google Forms survey. Please let us know how we are doing.

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For Further Study



Joanne Pecina will demonstrate how to find more information on today's topic from the ERISApedia.com resources.

