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SECURE 2.0

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Your Presenters Today

Ilene H. Ferenczy

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S. Derrin Watson

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INTRODUCTION; BACKGROUND

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Legislation

- Consolidated Appropriations Act, 2023 passed Congress 12/23/2022
- Signed by President 12/29/2022 – Date of Enactment
- Division T – SECURE 2.0 Act of 2022
  - Title 1: Expanding Coverage and Increasing Retirement Savings
  - Title 2: Preservation of Income
  - Title 3: Simplification and Clarification of Retirement Plan Rules (50 sections!)
  - Title 4: Technical Amendments (to 2020 SECURE 1.0)
  - Title 5: Administrative Provisions (Plan amendment deadlines)
  - Title 6: Revenue Provisions (Lots of Roth stuff)
  - Title 7: Tax Court Retirement Provisions (We won't cover)

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2025 Amendment Deadline

- No operational failure if amended by last day of first plan year beginning on or after 1/1/2025
  - IRS can grant later deadline
  - Governmental and union plan deadlines extended two years
  - Amendment must be retroactively effective
- Anti-cutback relief also available
- Must operate in accordance with law and amendment as ultimately adopted

Act Section
501
Qualified
Yes
403(b)
Yes
457(b)
Yes
Eff. Date
N/A

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More On Amendments

- Presumably, deadline for terminating plans is termination date
- Will not be included in 403(b) restatements now being submitted to the IRS
- 2025/2027 deadline also applies to amendments for
  - SECURE 1.0
  - CARES
  - Taxpayer Certainty and Disaster Tax Relief Act of 2020

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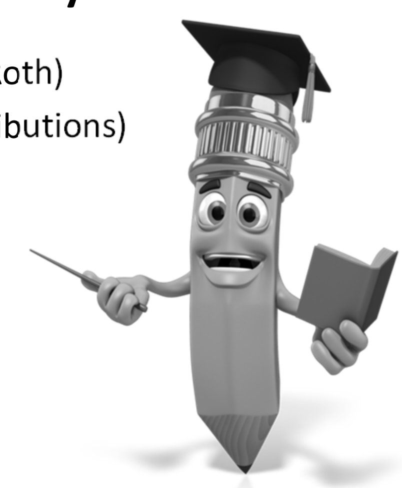
What We Will Cover Today

- Elective deferral specific provisions (including Roth)
- Distributions (including RMDs, premature distributions)
- EPCRS fixes
- Other changes



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ELECTIVE DEFERRAL SPECIFIC PROVISIONS

401(k), 403(b), 457(b), SEP, SIMPLE, Roth

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Mandatory Automatic Enrollment

- New 401(k) and deferral 403(b) plans required to have automatic enrollment EACA
- Default deferral percentage
  - First year 3% to 10%
  - Auto increase of 1%/year thereafter
    - Capped at 10 – 15%
- QDIA unless participant makes different choice
- Must allow permissible withdrawals (up to 90 days after first auto deferral)

Act Section
101
Code Section
414A
Qualified
401(k)
403(b)
Yes
457(b)
No
Eff. Date
Plan Years after 2024

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Exemptions

- SIMPLE 401(k)
- Plans established before 12/29/2022
- Governmental and church plans
- Plans sponsored by employer that normally employs fewer than 11 employees
  - Exemption expires 1 year after close of first tax year after employer goes over limit
- New business: exempt during first 3 years of existence of the business or a predecessor business

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Mandatory Auto-Enrollment in MEPs/PEPs

- Treat each employer as separate entity
- Example:
  - MEP established in 2021
  - Employer joins MEP in 2023
  - That employer is subject to the auto enroll provisions in 2025
- Example:
  - MEP established in 2025
  - Newly formed corporation joins MEP in 2026
  - Corporation exempt until 2029

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Student Loan Repayments Can Be Matched Like Deferrals

- Applies to "Qualified Student Loan Payment"
  - Incurred on behalf of employee
  - For qualified higher education expenses
    - Carrying at least half-time full student load
  - Can't exceed 402(g) limit minus elective deferrals
- Employee must annually certify payment made on loan
  - Employer may rely on certification
- Also applies to SIMPLE IRA

Act Section
110
Code Section
401(m)
Qualified
401(k)
403(b)
Yes
457(b)
Govt
Eff. Date
Plan Years after 2023

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Matching Contribution Specifics

- If plan matches student loan payments:
  - It must do so at same rate as match on elective deferrals
  - The match related to the loan must vest in the same manner as match on deferrals
- Eligibility limited to employees otherwise eligible to receive match for elective deferrals

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Testing Student Loan Matches

- Employees without loans are still considered to be benefiting
- Plan can treat student loan payment as a deferral or after-tax contribution for purposes of SIMPLE, safe harbor, QACA, or Starter 401(k) rules
  - It isn't treated as plan contribution for other purposes
- Can perform separate ADP test for those employees who get student loan match (vs. those who do not)

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Long-Term Part-Time Employee Coverage Changes

- LTPT rules added to ERISA §202 and to Code §403(b)(12)(D)
  - Limited to 403(b) plans subject to ERISA
  - Disregard years beginning before 2023 for eligibility and vesting
- LTPT is EE who has 2 consecutive eligibility computation periods with 500 – 999 HOS and attained age 21
  - Used to be 3 consecutive years
- Years before 2021 are disregarded for 401(k) vesting (applies immediately; 2023 for 403(b) vesting)
- Safe harbor plan not TH just because LTPT don't get SH

Act Section
125
Code Section
401(k)(15)
Qualified
401(k)
403(b)
YES
457(b)
No
Eff. Date
Plan Years after 2024

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LTPT: 2024 vs. 2025

- 2024 plan years must apply SECURE 1.0 Rules
  - 3-year eligibility rule
  - BUT the new vesting and TH rules apply as though in SECURE 1.0
- 2025: begins new LTPT Rules
  - 2-year eligibility

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New "Starter 401(k)"

- Deferral-only 401(k) plan with no ADP and no top heavy
  - Must apply to all eligible employees
    - All who satisfy minimum age and service
    - Can exclude union and nonresident alien
  - Automatic enrollment at 3% - 15% (uniform)
  - Maximum deferral = $6,000 (indexed) + IRA catch-up
- Employer can't have another qualified plan that year
  - Can separate union and nonunion
  - Coverage transition rule applies

Act Section
121
Code Section
401(k)(16)
Qualified
401(k)
403(b)
No
457(b)
No
Eff. Date
Plan Years after 2023

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Safe Harbor 403(b) Plan

- Same provisions as Starter 401(k) but for 403(b) plans
- Auto enrollment must apply to all eligible employees
  - Includes all employees who must be allowed to defer under normal 403(b) universal availability rules
- Negligible benefits to "safe harbor 403(b)"
  - No 403(b) plan is subject to top heavy!

Act Section
121
Code Section
403(b)(16)
Qualified
No
403(b)
Yes
457(b)
No
Eff. Date
Plan Years after 2023

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Mid-Year Conversion from SIMPLE IRA to Safe Harbor 401(k)

- Under current law, you are stuck with SIMPLE IRA for entire year
- New law lets you convert to SH 401(k) mid-year
  - SIMPLE 401(k), SH, QACA, or Starter
- Deferral limit is prorated (by day) between SIMPLE and 402(g)

Act Section
332
Code Section
408(p)
Qualified
401(k)
403(b)
No
457(b)
No
Eff. Date
Plan Years after 2023

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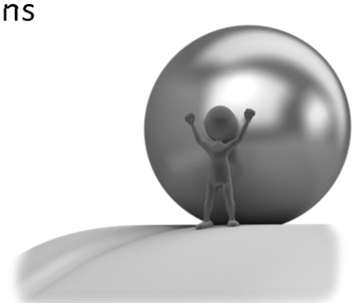
Mid-Year Conversion from SIMPLE IRA to Safe Harbor 401(k)

- Typically, cannot roll from SIMPLE IRA to plan in first two years of participation
- If employer terminates SIMPLE IRA and establishes 401(k) or 403(b), can roll from SIMPLE to plan, if rollover is subject to 401(k)/403(b) restrictions



Act Section
332
Code Section
408(p)
Qualified
401(k)
403(b)
Yes
457(b)
No
Eff. Date
Plan Years after 2023

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Employer Can Rely on Employee Certification for Hardships

- Allows plan to rely on employee's written certification that:
  - Distribution is on account of deemed immediate and heavy financial need under safe harbor regulations
    - Or 457(b) unforeseeable emergency
  - Distribution doesn't exceed amount of need
  - Employee doesn't have other resources
- IRS can issue regulations addressing:
  - When employer has contrary knowledge
  - Cases of employee misrepresentation

Act Section
312
Code Section
401(k)(14)
Qualified
401(k)
403(b)
Yes
457(b)
Yes
Eff. Date
Plan Years after 2022

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Hardship Distributions from 403(b) Plans

- Allows 403(b) hardship distributions to be like 401(k)
- Can distribute from:
  - Deferrals
  - QNECs, QMACs, Safe harbor contributions
  - Custodial accounts
  - Earnings
- No requirement to take loan first

Act Section
602
Code Section
403(b)(17)
Qualified
No
403(b)
Yes
457(b)
No
Eff. Date
Plan Years after 2023

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Emergency Savings Accounts ("ESAs")

- Plans can set up pension-linked ESAs:
  - Limited to Roth accounts
  - Limited to employee contributions
- No new contributions if account balance of account exceeds $2,500 (subject to indexing) or lower plan-specified amount
- If excess contributions made, plan can:
  - Allow participant to treat excess as regular Roth deferral
  - Treat excess as Roth deferral unless participant opts out
  - Not accept the contribution

Act Section
127
Code Section
402A(e)
Qualified
401(k)
403(b)
Yes
457(b)
Govt
Eff. Date
Plan Years after 2023

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Participation in ESAs

- Plan can establish eligibility requirements
- HCEs cannot contribute to ESAs
- If NHCE becomes HCE:
  - No further contributions to ESA
  - Can continue to make withdrawals

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Withdrawals from ESAs

- Withdrawals are treated as tax-free qualified Roth distributions
  - And so, 10% premature distribution penalty doesn't apply
- Participant has complete discretion over withdrawals
  - Employer must allow participant to withdraw at least once/ calendar month
  - No need to attest emergency
  - Distribute ASAP after participant request
- Can't charge a fee for the first 4 withdrawals/year
  - Subsequent withdrawals can have reasonable fee

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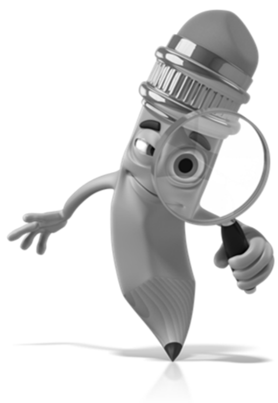
More on ESA



- No minimum balance or contribution
- Can have auto enrollment at no more than 3%
- Detailed annual disclosure (can be combined with other notices)
- Plan document must describe account and require separate recordkeeping bucket

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More on ESA

- Investment:
  - Interest bearing account, or
  - Investment designed to reserve capital consistent with liquidity, offered by regulated institution
- Must treat emergency savings like deferrals for purposes of match
  - Match goes in match bucket, not in ESA
  - No requirement to forfeit or suspend match on withdrawals

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Thoughts on ESAs

- Why in the world would anyone do this?
  - While employees may like it, it requires:
    - Separate accounting (i.e., new source)
    - Special distribution rules
    - Potential of lots of distribution activity for which the plan cannot charge
    - Changes match calculation (but not ADP)
    - Special contribution rules (i.e., $2,500 account limit)
    - Special investment options with different goal than regular plan accounts

Termination of ESA

- Employer can terminate arrangement at any time
  - No anti-cutback right
- After termination of employment or arrangement:
  - Participant can move money to another Roth account in plan
  - Otherwise, plan makes account available to participant

Saver's Match

- Replaces Saver's Credit with Saver's Match
- Partial match based on Qualified Retirement Savings Contributions (net of distributions over 3 years) up to $2,000:
  - Elective deferrals to 401(k), 403(b), Govt 457(b)
  - IRA Contributions, Employee contributions to SARSEP/SIMPLE IRA
- Not available for:
  - Under age 18 and full-time students
  - Dependents
  - Nonresident aliens

Act Section
103
Code Section
6433
Qualified
401(k)
403(b)
YES
457(b)
Govt
Eff. Date
Tax Years after 2026

Ilene

35

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Percentage Matched

- Match is 0% to 50% of deferrals, depending on modified adjusted gross income (MAGI) (add back retirement plan deductions/ exclusions)
- Gradual phase-out over indexed MAGI range

Filing status	50% match	0% match
Joint	$41,000	$71,000
Head of household	$30,750	$53,250
Single/Separate returns	$20,500	$35,500

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Where Does the Match Come From?

- The law says it’s “payable by the Secretary (of the Treasury) as soon as practicable after the eligible individual has filed a tax return making a claim for such matching contribution for the taxable year” to the “applicable retirement savings vehicle” chosen by the participant.

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Where Does the Match Go?

- Participant claims match on tax return
- Participant elects where the matching contribution should go:
  - 401(k)
  - 403(b)
  - 457(b)
  - IRA
- Plan can choose not to accept Saver’s Match contributions
- If amount under $100 participant can take as tax credit

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How Does the Plan Treat the Saver's Match?

- Fully vested
- Subject to distribution restrictions for deferrals
  - No hardship distributions
- Disregarded for statutory limits or nondiscrimination testing, such as:
  - 402(g)
  - 415
  - ADP
  - Top heavy

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Why Would Any Plan Permit This?

- Difficult accounting to match the contribution by the Government with the correct account
- Not treated like deferrals (not eligible for hardship)
- Not treated like other matches
  - Fully vested
  - Subject to 401(k) distribution rules
  - Not included for limitations or testing

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Retroactive Sole Proprietor Deferrals

- SECURE 1.0 allowed retroactive plan adoption
  - Up to extended due date of return
  - Only applied to employer contributions
- New law allows retroactive elective deferral elections
  - Limited to unincorporated sole proprietor with no employees
  - Deferral election made after end of tax year, but by filing deadline, treated as made before end of first plan year for retroactively adopted plan

Act Section
317
Code Section
401(b)
Qualified
401(k)
403(b)
No
457(b)
No
Eff. Date
Plan Years After 2022

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Retroactive Sole Proprietor Deferrals

- Danger, Danger!
  - Not applicable to partners in a partnership (like lawyers, doctors, etc.)
  - Not applicable to anyone with employees
  - Why limit to only proprietors and only if no employees?
    - All self-employed individuals have the same issues regarding determining earned income after year end

Act Section
317
Code Section
401(b)
Qualified
401(k)
403(b)
No
457(b)
No
Eff. Date
Plan Years After 2022

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Larger Catch-ups at 60, 61, 62, 63

- Raises catch-up limit
  - But only for years participant turns 60, 61, 62, or 63
- 150% of 2024 catch-up limit (indexed for inflation after 2025)
  - Based on 2023 limit, in those 4 years catch-up would be
    - $5,250 for SIMPLE IRA/401(k)
    - $11,250 for other plans

Act Section
109
Code Section
414(v)
Qualified
401(k)
403(b)
Yes
457(b)
Gov't
Eff. Date
Tax years after 2024

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Catch-Ups Must Be Roth

- Catch-ups must be Roth
  - Means non-Roth plan cannot take catch-ups
  - Applies to participants whose prior calendar year FICA wages from the employer exceeded $145,000 (indexed)
    - Arguably this excludes self-employed
- Does not apply to SARSEP or SIMPLE IRA

Act Section
603
Code Section
414(v)
Qualified
401(k)
403(b)
Yes
457(b)
Govt
Eff. Date
Tax Years after 2023

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Catch-Ups Must Be Roth

- If CU eligible Participant has 402(g) violation when deferrals from two plans are added together, needs to
  - advise the plan(s) of amount to refund; or
  - determine catch-up limit and request reclassification of that amount to Roth.

  That's pretty complex for a participant…

Act Section
603
Code Section
414(v)
Qualified
401(k)
403(b)
Yes
457(b)
Govt
Eff. Date
Tax Years after 2023

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Roth Employer Contributions

- Vested employer contributions can be Roth
  - Matching contributions
    - Including match on student loan repayments
  - Nonelective contributions
    - Arguably could apply to a straight PS or MPP plan
- Participant election to designate as Roth
  - Presumably follow rules for Roth deferrals

Act Section
604
Code Section
402A
Qualified
DC
403(b)
Yes
457(b)
Govt
Eff. Date
Contrib. after Enactment

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SEP and SIMPLE Roth IRAs

- Allows for Roth SEPs and Roth SIMPLE IRAs
- Addresses both employer and employee contributions
- Employee election required

Act Section
601
Code Section
408
Qualified
No
403(b)
No
457(b)
No
Eff. Date
Tax years after 2022

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Small Deferral Incentives Allowed

- §401(k) forbids employers from conditioning bonuses or other benefits (other than a match) on whether employees defer
- New law allows "de minimis financial incentives (not paid for with plan assets"
- Example: gift card
- Also prohibited transaction exemption

Act Section
113
Code Section
401(k)(4)
Qualified
401(k)
403(b)
Yes
457(b)
No
Eff. Date
Plan Years after 2022

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QACA Technical Correction

- SECURE 1.0 said plan can qualify for ACP safe harbor with a QACA nonelective, even if no safe harbor notice given
- SECURE 2.0 demands notice for QACA ACP safe harbor
  - Like regular safe harbor
  - Presumably can use "maybe" notice

Act Section
401
Code Section
401(k)(13)
Qualified
401(k)
403(b)
Yes
457(b)
No
Eff. Date
Plan Years after 2019

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403(b) MEPS/PEPs Allowed

- Current law ambiguous on 403(b) MEPs
- New law specifically permits 403(b) MEPs/PEPs
  - Except for church plans (no inference)
- Can qualify for SECURE 1.0 relief of one bad apple rule
  - Still waiting for final regulations
  - IRS to draft model language
- Treat as single plan for 8955-SSA, 5500

Act Section
106
Code Section
403(b)(15)
Qualified
No
403(b)
Yes
457(b)
No
Eff. Date
Plan Years after 2022

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403(b) Investments

- 403(b) plans can now invest in group trusts
  - Hook to allow investment in collective investment trusts (CIT)
  - However, securities law changes necessary to allow 403(b) CIT investment not adopted
    - Will require further legislation

Act Section	128
Code Section	403(b)(15)
Qualified	No
403(b)	Yes
457(b)	No
Eff. Date	Enactment

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457(b) Deferral Elections

- 457(b) plans have provided deferral elections must be made or changed before first day of month to which they apply
- SECURE 2.0 eliminates that requirement
  - Allows deferral elections to be immediately effective

Act Section	306
Code Section	457(b)(4)
Qualified	No
403(b)	No
457(b)	Yes
Eff. Date	Tax Years after 2022

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10% Higher Deferrals for Some SIMPLEs

- SIMPLE IRAs and 401(k)s deferrals have been limited:
  - $15,500 deferral limit 2023; $3,500 catch-up
- New law allows 10% higher deferral (e.g., $17,050/$3,850)
  - Automatic if fewer than 26 eligible employees
  - Employers 26 – 100 employees can elect higher rate
    - But must increase employer contributions
      - 3% nonelective (up from 2%)
      - 4% match (up from 3%)
    - At that point, might as well do safe harbor 401(k)

Act Section
117
Code Section
408(p)
Qualified
401(k)
403(b)
No
457(b)
Yes
Eff. Date
Tax Years after 2023

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Additional Nonelective for SIMPLE

- SIMPLE IRAs and 401(k)s have been limited to:
  - Deferrals
  - Mandatory employer contributions
- New law allows discretionary nonelective contribution
  - Up to 10% of comp (up to §401(a)(17) limit)
  - All eligible employees with at least $5,000 in comp
  - Maximum contribution for an employee limited to $5,000 (indexed)

Act Section
116
Code Section
408(p)
Qualified
401(k)
403(b)
No
457(b)
Yes
Eff. Date
Tax Years after 2023

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Roll from 529 Account to Roth IRA

- 529 accounts allow families to save for education expenses
  - Earnings are tax-deferred
  - Withdrawals are tax-free if used for education
    - Other withdrawals taxed on earnings + 10% penalty
- SECURE 2.0 allows rollover from 529 to Roth IRA
  - 15 years after 529 account established
  - Limited to Roth IRA contribution limit
  - $35,000/beneficiary lifetime limit

Act Section
126
Code Section
408A
Qualified
No
403(b)
No
457(b)
No
Eff. Date
Distributions after 2023

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DISTRIBUTIONS

RMDs, penalty taxes, distributable events

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Increase Cash-Out Limit

- Cash-out limit is currently $5,000
- Impacts
  - Auto rollovers
  - Distributions without consent
  - Distributions exempt from QJSA
- Increased to $7,000 (not indexed)
- Last changed in 1997

Act Section
304
Code Section
411(a)(11)
Qualified
Yes
403(b)
Yes
457(b)
No
Eff. Date
Distributions after 2023

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Increased RMD Age

- Required Beginning Date was April 1 of calendar year following year participant turned 70½ (or retired)
- It's going up and up and up!
  - Ambiguity on people born in 1959

Year	Age
2020	72
2023	73
2033	75

Date of birth	Required beginning date
Before July 1, 1949	Based on 70 ½
7/1/1949 – 12/31/1950	Based on 72
1/1/1951 – 12/31/1959	Based on 73
After 12/31/1958	Based on 75

Act Section
107
Code Section
401(a)(9)
Qualified
Yes
403(b)
Yes
457(b)
Yes
Eff. Date
Years after 2022

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Reduce RMD Penalties

- Late RMDs have been subject to 50% penalty tax
- Automatically reduced to 25%
- Can reduce it to 10% if:
  - Take RMD during correction window
  - Submits return during correction window reflecting tax
- Correction window ends
  - Two years after year RMD should have been taken
  - Unless IRS assesses/issues deficiency notice sooner

Act Section
302
Code Section
401(a)(9)
Qualified
Yes
403(b)
Yes
457(b)
Yes
Eff. Date
Tax years after 2022

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Surviving Spouse RMDs

- Surviving spouse has been able to convert IRA into spouse's own IRA without a rollover
  - RMDs based on spouse's age using ULT
- Will now be able to do that in an employer plan
  - Treat as though the spouse was the employee
  - Includes tax-exempt 457(b)

Act Section
302
Code Section
401(a)(9)
Qualified
Yes
403(b)
Yes
457(b)
Yes
Eff. Date
Years after 2023

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No Lifetime RMDs From Roth Plans

- Roth IRAs are exempt from distributing RMDs during owner's lifetime
- Not so for Roth plans currently
- SECURE 2.0 repeals the lifetime RMD requirement for Roth accounts
  - Also repeals incidental death benefit requirement for Roth accounts

Act Section
325
Code Section
402A
Qualified
DC
403(b)
Yes
457(b)
Govt
Eff. Date
Dist. Calendar Years after 2023

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Other RMD Changes

Act	Provision	Effective Date
337	Allow charitable remainder special needs trust for disabled to be eligible designated beneficiary	Distribution calendar years after 2024
201	Expands commercial annuity provisions for DC plan that can satisfy RMD rule (e.g., return of premium death benefit)	Enactment
202	Increases limit on premiums for qualified longevity annuity contracts (QLACs)	Enactment
204	Facilitates partial annuitization of account	Enactment

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Statute of Limitations Penalties for RMDs and Excess Contributions

- Individual reports RMD and excess IRA contribution penalties on Form 5329
- If you don't file the form, you don't start the statute
- Under new law, filing Form 1040 starts the statute
  - 3 years for RMD failures
  - 6 years for excess contributions

Act Section
313
Code Section
6501
Qualified
No
403(b)
No
457(b)
No
Eff. Date
Enactment

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Exemptions from Early Distribution Penalty Tax for Substantially Equal Periodic Payments

- 10% early distribution penalty doesn't apply to series of substantially equal periodic payments over life or life expectancy
  - But if the stream of payments is modified, penalty applies, unless change comes after 5 years from first payment and after age 59½
- Rollover/transfer isn't a change if total distributions from both plans afterward continue substantially equal payments

Act Section
323
Code Section
72(t)
Qualified
Yes
403(b)
Yes
457(b)
No
Eff. Date
Rollovers after 2023

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Exemptions from Early Distribution Penalty Tax for Substantially Equal Periodic Payments

- Example: Distributions from Plan A equal $5,000/year; no penalty if
  - All money rolled to Plan B and Plan B continues to distribute $5,000/year
  - Partial rollover to Plan B and Plan A distributes $2,000/year and Plan B distributes $3,000/year

Act Section
323
Code Section
72(t)
Qualified
Yes
403(b)
Yes
457(b)
No
Eff. Date
Rollovers after 2023

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QBADs

- Recipient of Qualified Birth and Adoption Distribution (QBAD) can repay it to plan or an IRA
- SECURE 1.0 didn't impose a time limit
- SECURE 2.0 limits repayment to 3 years, beginning on day after distribution received
  - For distributions received before enactment, new deadline: Must repay before January 1, 2026

Act Section
311
Code Section
72(t)
Qualified
DC
403(b)
Yes
457(b)
No
Eff. Date
Enactment

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Exemption from Early Distribution Penalty Tax for Emergency Distributions

- 10% early distribution penalty won't apply to emergency personal expense distribution
  - Unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses
    - Can rely on employee's written certification
- Like QBADs (e.g., distributable event, repayments allowed)
- Limits
  - 1/year
  - Lesser of $1,000 or vested benefit - $1,000
  - Unless repaid, no new distributions for 3 calendar years

Act Section
115
Code Section
72(t)
Qualified
Yes except pension
403(b)
Yes
457(b)
Yes
Eff. Date
Enactment

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Exemptions from Early Distribution Penalty Tax for Domestic Abuse Withdrawals

- 10% early distribution penalty won't apply to distributions to domestic abuse victims
  - Limited to lesser of $10,000 (indexed) or 50% vested benefit
  - Made during 1-year period beginning on any date individual is victim of domestic abuse by spouse or domestic partner
- Doesn't apply to DB or QJSA plans
- Can repay (similar to QBADs)
- Distributable event
- Employee can self-certify

Act Section
314
Code Section
72(t)
Qualified
Yes except pension
403(b)
Yes
457(b)
Yes
Eff. Date
Distributions after 2023

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Domestic Abuse Definition

- Physical, psychological, sexual, emotional, economic abuse
- Includes efforts to control, isolate, humiliate, or intimidate victim or to undermine victim's ability to reason independently
  - Includes by means of abuse of victim's child or another family member living in household

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Exemptions from Early Distribution Penalty Tax for Individuals with Terminal Illness

- 10% early distribution penalty won't apply to distributions to terminally ill individual
  - On or after doctor has certified employee has terminal illness
  - Reasonably expected to result in death within 7 years
- Repayment allowed (similar to QBADs)
- Doesn't create new distributable event

Act Section	326
Code Section	72(t)
Qualified	Yes
403(b)	Yes
457(b)	No
Eff. Date	Enactment

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Exemptions from Early Distribution Penalty Tax for Public Safety Officers

- 10% early distribution penalty doesn't apply to distributions after separation from service after attaining 55
- For qualified public safety employees in gov't plans, age 50 instead
  - Expanded to include private sector firefighters
  - Expanded to corrections officers
- Changed to earlier of age 50 or 25 YOS under the plan

Act Section
308, 329, 330
Code Section
72(t)
Qualified
Yes
403(b)
Yes
457(b)
No
Eff. Date
Enactment

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Exemptions from Early Distribution Penalty Tax for IRA Corrective Distributions

- Distributions correcting IRA overpayments not subject to 10% early distribution penalty
  - Effective for "any determination of, or affecting, liability for taxes, interest, or penalties which is made on or after the date of the enactment of this Act, without regard to whether the act (or failure to act) upon which the determination is based occurred before such date of enactment."
  - Don't draw any conclusions about the pre-Act law

Act Section
333
Code Section
72(t)
Qualified
No
403(b)
No
457(b)
No
Eff. Date
Various

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Long-Term Care Insurance

- SECURE 2.0 allows Qualified Long-Term Care Distributions
- Annual calendar year limit is least of:
  - Amount employee paid or is charged for long-term care insurance for employee, spouse, or family member
  - 10% vested accrued benefit
  - $2,500 (indexed)
- Limited to taxable distributions
  - Exempt from early distribution penalty tax
- Must submit insurance statement to plan

Act Section
334
Code Section
401(a)(39)
Qualified
Yes
403(b)
Yes
457(b)
Yes
Eff. Date
Distributions after 12/29/25

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Long-Term Care Insurance – Governmental Plans

- Law allows tax-free distributions from governmental plans to provide tax-free distributions of up to $3,000/year for health or long-term care insurance premiums
- SECURE 2.0 removes current requirement that premiums be paid directly from plan to carrier
  - Allows distribution to participant
  - Participant must declare on return that premiums paid

Act Section
328
Code Section
402(l)
Qualified
Yes
403(b)
Yes
457(b)
Govt
Eff. Date
Distributions after Enactment

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First Responder Disability Payments

- SECURE 2.0 provides certain post-retirement disability payments of first responders are not taxable

Act Section
309
Code Section
139C
Qualified
Yes
403(b)
Yes
457(b)
Govt
Eff. Date
Tax years after 2026

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Permanent Disaster Relief

- Similar to relief packages for 2020 disasters and COVID
- Big difference: Distributions limited to $22,000 (down from $100,000)
- Can take qualified disaster recovery distribution for up to 180 days starting on later of date of disaster or Enactment
  - Distributable event, except from DB plans
  - Spread tax over 3 years
  - No early distribution penalty
  - Can repay (similar to QBADs)

Act Section
331
Code Section
72(t), (p)
Qualified
Yes
403(b)
Yes
457(b)
Govt
Eff. Date
Disasters declared after 2/25/2021

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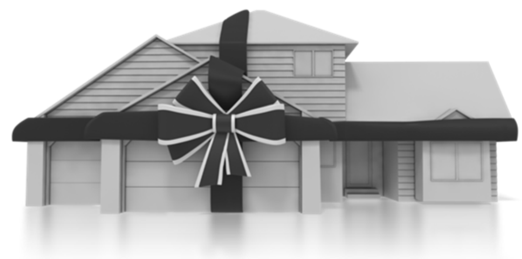
Permanent Disaster Relief

- Can recontribute hardship distributions made for home purchase if home not purchased because of disaster
- Double participant loan limits
- Delay of loan repayment



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Auto-Portability

- New prohibited transaction exemption to facilitate auto-portability transactions
- Used when worker changes jobs
- Worker has small (under $5k/$7k) balance
  - Mandatory cash-out
  - Default rollover to IRA
- System collects data from multiple recordkeepers and platforms and default rolls over funds to plan of new employer

Act Section
120
Code Section
4975
Qualified
Yes
403(b)
Yes
457(b)
Govt
Eff. Date
Transactions after 12/29/23

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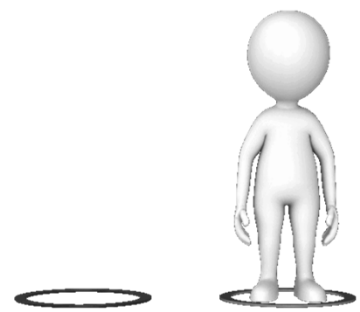
EPCRS CHANGES



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Unlimited Self-Correction

- Any eligible inadvertent failure to comply with the rules may be self-corrected
- No time limit! Unless:
  - IRS catches failure prior to “any actions which demonstrate a specific commitment to implement a self-correction with respect to such failure,” or
  - Self-correction is not completed within a reasonable period after failure is identified

Act Section
305
Code Section
EPCRS
Qualified
Yes
403(b)
Yes
457(b)
No
Eff. Date
????

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Unlimited Self-Correction – Loans, IRAs

- Also includes participant loan failures
  - Self-correction satisfies DOL VFCP
  - DOL can impose reporting or procedural requirements
    - Perhaps like the proposed regulations for self-correction of late deferrals
- Self-correction of inadvertent IRA failures
  - Including waiver of RMD penalty tax
  - Including errors in rolling over inherited IRAs

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Unlimited Self-Correction – Methods, Failures

- IRS can require specific correction methods
  - And provide general principals for other situations
- Eligible inadvertent failure is a failure that occurs despite practices and procedures
  - Doesn't include:
    - Egregious failures
    - Diversion or misuse of assets
    - Abusive tax avoidance transaction

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Unlimited Self-Correction – Guidance

- Correction must be in conformity with correction principles in Code, regulations, EPCRS, and other guidance
- IRS to update EPCRS within 2 years
- No effective date specified!
  - Is it immediately effective?
  - Do we have to wait for the updated EPCRS?

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Does This Obsolete VCP?

- Probably Not
- Still would want VCP if:
  - Unsure of correction
    - Use presubmission conference??
  - Self-correction isn't available
    - No practices/procedures
  - Nervous client

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Correction of Inadvertent Benefit Overpayments

- Gives plan fiduciary the option of not trying to recoup prior overpayments
  - Not ERISA fiduciary breach
- Plan sponsor can amend plan to increase past or decrease future payments to adjust for prior overpayments
- Doesn't relieve employer of funding obligations
- Plan must comply with §415 and compensation limits

Act Section
301
Code Section
414(aa)
Qualified
Yes
403(b)
Yes
457(b)
No
Eff. Date
Enactment

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Inadvertent Overpayments

- If overpayment has been rolled over:
  - The rollover is ok if plan does not seek to recoup
  - If plan does seek to recoup, can roll the money back without tax
- Can continue prior installment payments or benefit reduction
- Many details in new ERISA §206(h) to protect innocent recipient
  - If fiduciary decides to recoup, no interest or collection fees
  - Can't recoup overpayments to participant from spouse or beneficiaries
  - 3-year statute of limitations on recoupment

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Safe Harbor Correction of Elective Deferral Failures

- EPCRS has 0% QNEC “safe harbor” correction of deferral in auto enrollment/auto escalation plan if corrected 9 ½ months after end of plan year
- Sunsets 12/31/2023
- Congress made it permanent; no sunset!
- Other rules to qualify for the safe harbor still apply

Act Section
350
Code Section
414(cc)
Qualified
Yes
403(b)
Yes
457(b)
Yes
Eff. Date
Enactment

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OTHER AMENDMENTS

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Spousal/Child Attribution Fix

- Disregard community property ownership between spouses
  - Allows couples in community property states to use non-involvement exception in controlled group determinations
- Prevents parent-child attribution from creating controlled group between businesses owned separately by the spouses
- Also applies to common control and traditional affiliated service groups
- If this results in breakup of group, coverage transition rule applies

Act Section
315
Code Section
414
Qualified
Yes
403(b)
Yes
457(b)
No
Eff. Date
Plan years after 2023

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Retroactive Increase in Employer Contributions

- Allows employer to amend plan to retroactively increase benefits or nonelective employer contributions
  - Doesn't apply to matching contributions
  - Deadline is extended tax return due date
  - Must be consistent with other requirements (such as nondiscrimination)
- Can treat the amendment as having been adopted on the last day of the prior plan year

Act Section
316
Code Section
401(b)
Qualified
Yes
403(b)
No
457(b)
No
Eff. Date
Plan years after 2023

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Increased Plan Startup Credit – Administrative Expenses

- Code 45E allows a credit for up to 50% of plan startup costs for three years for small employers (no more than 100 employees)
- SECURE 2.0 changes that to 100% of plan startup costs for employers with no more than 50 employees
- Same limits: Greater of $500 or $250/NHCE up to $5,000 max
- Still limited to employer expenses for:
  - The establishment or administration of the plan, or
  - The retirement-related education of employees
- Applies to qualified plans, SEPs, and SIMPLEs

Act Section
102
Code Section
45E
Qualified
Yes
403(b)
No
457(b)
No
Eff. Date
Tax years after 2022

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Increased Plan Startup Credit – Employer Contributions

- Credit for employer contributions to new DC plan, SEP, SIMPLE
- Full credit available only if employer had no more than 50 employees
  - Phase out between 50-100
- Maximum credit for any employee is $1,000
  - No credit for any employee in prior year whose FICA wages exceeded $100,000 (indexed)
- Credit is 100% of contributions, as limited, for years 1 and 2, 75% in year 3, 50% in year 4, and 25% in year 5

Act Section
102
Code Section
45E
Qualified
DC
403(b)
No
457(b)
No
Eff. Date
Tax years after 2022

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Increased Plan Startup Credit – MEPs

- Currently, plan startup credit is limited to first three years of plan
  - If employer joins MEP after it's been around three years, tough
- Under SECURE 2.0, the 3-year clock starts when employer joins MEP
- NOTE: No deduction for any expense or contribution for which employer is allowed a credit

Act Section	111
Code Section	45E
Qualified	Yes
403(b)	No
457(b)	No
Eff. Date	Tax years after 2019

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Military Spouse Credit

- New tax credit (up to $500) to employers sponsoring plans that cover military spouses
  - $200/military spouse participant, plus
  - Employer contribution for military spouse, up to $300
- Credit applies in first year spouse participates and the next two years
- Only applies to small employers (no more than 100 employees)

Act Section	112
Code Section	45AA
Qualified	DC
403(b)	No
457(b)	No
Eff. Date	Tax years after Enactment

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Military Spouse Credit – Details

- Not available if spouse is HCE
- Limited to defined contribution plans with following terms:
  - Military spouses must enter after 2 months of employment
  - Military spouses must be fully vested
  - Must (on entry) have same rate of contributions as other (non-military spouse) employees have after 2 YOS
- Can rely on employee's certification of status
  - Must include name, rank, and service branch of spouse in military

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Top-Heavy and Otherwise Excludable Employee

- If plan covers otherwise excludable employees (less than 1 YOS), can treat them as a separate group for purposes of top-heavy minimum contribution in defined contribution plan
  - Typically means they don't need to get TH minimum
- Congress didn't address problem of plan that otherwise consists solely of safe harbor money but becomes top heavy because OEEs allowed to defer but not get safe harbor

Act Section
310
Code Section
416
Qualified
DC
403(b)
No
457(b)
No
Eff. Date
Plan years after 2023

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Retirement Savings Lost and Found

- DOL ordered to establish online searchable database to allow individual to find contact information for retirement plan administrators
  - Database is intended to keep up with plan mergers, terminations, name changes, etc.
  - Applies to plans subject to ERISA vesting
    - The same plans that are subject to filing Form 8955-SSA
- Ensure privacy for individual's personal and plan information
  - Allow individual to opt out

Act Section
303
Code Section
ERISA 523
Qualified
ERISA
403(b)
ERISA
457(b)
No
Eff. Date
Within 2 years

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Retirement Savings Lost and Found

- New annual form for DOL
  - Contains most of the information on 8955-SSA except participant information
  - Instead, provide name and SSN of employees who were previously reported to IRS on 8955-SSA and who were either:
    - Fully paid out during the year, or
    - Had funds automatically rolled over to IRA during the year
      - List name and address of IRA custodian
    - Received deferred annuity contract
      - List name and address of insurance company and contract number

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Notices to "Unenrolled" Participants

- Eliminates need to provide notices and disclosures (IRS or DOL) to unenrolled participants, other than:
  - Annual reminder notice
  - Documents unenrolled participant requests
- Unenrolled participant
  - Eligible to participate
  - Has received SPD and other notices related to initial eligibility to participate
  - Is not participating in the plan
  - Satisfies other criteria determined by IRS/DOL

Act Section
320
Code Section
Code §414(bb) ERISA §111
Qualified
DC
403(b)
Yes
457(b)
No
Eff. Date
Plan years after 2022

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Annual Reminder Notice

- Furnished by paper or old (opt in) DOL e-Disclosure rules
- Furnished in connected with open enrollment or (if none) a reasonable period prior to beginning of plan year
- Notifies participant of:
  - Eligibility to participate
  - Key benefits and rights under plan (focus on employer contributions and vesting)
- Calculated to be understood by average participant

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One Annual Paper Statement Per Year

- Limits use of new DOL (opt out) eDisclosure regulations
- At least one participant benefit statement/year must be provided on paper, but:
  - Can deliver electronically under old "wired at work" or opt-in consent rules
  - Can deliver electronically under new DOL rules but only if participant affirmatively requests (opts in)
- Other statements can be provided under new DOL rules
- Exception for DB plans: one paper statement every 3 years

Act Section
338
Code Section
ERISA §105
Qualified
ERISA
403(b)
ERISA
457(b)
No
Eff. Date
Plan years after 2025

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One Annual Paper Statement Per Year

- For participants who enter after 2025, electronic benefit statements available only if participant receives one-time paper notice of right to request paper delivery
- DOL to update regulations before 2025

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Defined Benefit Changes

Act	Code	Provision	Effective
119	415(b)	Eliminates DB §415 100% of comp limit for rural electric cooperative plans	Limitation years ending after Enactment
335		IRS must update funding mortality tables	Val. after 2023
342	ERISA 113	Risk mitigation notice required if DB plan offers lump-sum window; DOL to write model; copy of notice and other information to DOL and PBGC	After final regs
343	ERISA 106	Adds information for annual funding notice	Plan years after 2023

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Defined Benefit Changes

Act	Code	Provision	Effective
348	411(b)	Cash balance plan with variable interest crediting rate can use reasonable projected rate not above 6% for backloading protection rules	Plan years after 2022
349	ERISA 4008	Ends variable rate premium; replaces it with flat $52/$1000 unfunded vested benefit	Enactment
606	420(b)	Overfunded plan assets can provide retiree health benefits; Extends sunset from 2025 to 2032	Enactment

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IRA Changes

Act	Code	Provision	Effective
108	219(b)	Indexes IRA catch-ups for inflation	2024
112	4972(c)	Allows SEP for household employees without nondeductible contribution penalty tax (currently limited to SIMPLEs)	Enactment
307	408(d)	Indexes $100,000 limit on qualified charitable distributions Allows one-time $50,000 qualified charitable distribution to charitable remainder trust or charitable gift trust	2023
322	408(e)	If IRA involved in prohibited transaction, doesn't impact other IRAs the owner holds	Enactment

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ESOP Changes

Act	Code	Provision	Effective
114	1042	Expands deferral of gain for stock sale to ESOP to S Corporations, subject to 10% limit	Plan years after 2027
123	401(a)(35)	Expands definition of "publicly traded" securities for purposes of diversification rules	Plan years after 2027

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Other Changes

Act	Code	Provision	Effective
105	ERISA 3(43)	PEPs must designate named fiduciary (not participating employer) to collect employer contributions; old rule had trustee instead	Plan years after 2022
318		DOL to update participant investment disclosures to allow blended-index benchmarks	Within 2 years
339	414(p)	Tribal courts can issue QDROs	Orders recvd after 2022
341		IRS/DOL to revise regs to permit consolidated QDIA/ACA/EACA/QACA/Safe harbor notices	Within 2 years
345		Clarify GoP audit requirements determined plan by plan	Enactment

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A Few Reminders

- ASPPA/NIPA certificates will be emailed within a day or two. ERPA certificates may take up to two weeks.
- Go to ERISApedia.com WEBCAST tab to retrieve previous certificates.
- 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.

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