



# Family Attribution Big Changes Coming in 2024 Analysis and Alternatives



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## YOUR CO-HOSTS



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- All attendees' lines are muted.
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- Do not use the chat icon.
- Click on "Live Transcript/Closed Captioning to see a transcript of what is being said.



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## AFTER THE WEBINAR

- Please join us for a brief educational session on how to find more information on today's topic on ERISApedia.com.
- At the conclusion of the webinar, you will be presented with a short google forms survey. Please let us know how we are doing. Completion of the survey is not a requirement for CE credit but we very much appreciate your feedback!
- Slides and recordings will be available on ERISApedia.com webcast tab.



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## YOUR PRESENTERS TODAY



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Derrin\*



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Attribution among family members takes place for a variety of reasons

SECURE 2.0 changed two of them

### WHAT WE'LL COVER

Attribution	Changed by SECURE 2.0
Controlled groups; common control	Yes
Traditional affiliated service groups	Yes
Management function groups	No
Key employee	No
HCE	No
5% owner for RMD	No



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## EFFECTIVE DATES

- New rules are effective for plan years beginning after December 31, 2023
- Means that the old rules are in place for 2022 and 2023

Suggests that if you haven't been following the old rules up until now, you should reconsider your position



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## IMPACT OF COMMUNITY PROPERTY

- Community property law provides that spouses each own property acquired during marriage while living in the state
- Example:
  - Derrin lives in California
  - His wife owns half of his law practice, even though she isn't a lawyer
- This is actual ownership, even before divorce
  - If they file separate tax returns, she pays tax on her half of the income

### Community Property States

- Arizona
- California
- Idaho
- Louisiana
- Nevada
- New Mexico
- Texas
- Washington
- Wisconsin



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## COMMUNITY PROPERTY – RETIREMENT PLANS

Profoundly impacts controlled groups

- Husband appears to own 100% of his business
- Wife appears to own 100% of her business
- If the businesses are community property, each business is owned 50/50
  - Not attribution!
- Clear controlled group



Adriana



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## SPOUSAL ATTRIBUTION – CONTROLLED GROUPS

I am deemed to own my wife's stock unless:

- We divorce (final or interlocutory) or legally separate, or
- The noninvolvement exception applies
  1. I don't own **any stock** in the business directly
  2. I'm not a director or employee and I don't participate in management
  3. At least 50% of the business's gross income is from active business
  4. The stock isn't subject to transfer restrictions running in favor of me or my children under age 21



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## NONINVOLVEMENT EXAMPLE

Adam owns 100% of Adam's Apples, Inc.

His wife, Eve, owns 100% of Eve's Furs, Inc.

The two corporations are held as separate property

Neither has any involvement in the other's business

The noninvolvement exception applies.

The corporations are not in a controlled group



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## NONINVOLVEMENT WITH COMMUNITY PROPERTY

Assume the same facts as the prior example

Except they live in California and the corporations are community property

Regardless of the title on the stock certificate, Adam owns half of Eve's Furs and

Eve owns half of Adam's Apples

Before 2024, the noninvolvement exception does not apply because each spouse owns an interest in the other's business. Adam's Apples and Eve's Furs are in a controlled group.



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## SECURE 2.0 CHANGES

Community Property is disregarded for plan years beginning after December 31, 2023

Continuing our prior example –

For plan years beginning after 2023, the noninvolvement exception will apply because community property ownership is disregarded. Adam's Apples and Eve's Furs are not in a controlled group.



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## SPOUSAL ATTRIBUTION – AFFILIATED SERVICE GROUPS

Each spouse is deemed to own the other's business

- Unless they are divorced (final) or legally separated
- Interlocutory divorce isn't enough

No noninvolvement exception



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## EXAMPLE – SPOUSAL ATTRIBUTION

Perry's owns 100% of law firm, Perry's Justice

Mason owns 100% of Mason Law, and is of counsel to Perry's firm: NOT an employee

Perry and Mason are married; practices are separate property

Because of the noninvolvement exception, Perry's Justice and Mason Law are NOT a controlled group

However, they are an ASG because Mason is deemed to own Perry's Justice through spousal attribution

Notice: In this example, it doesn't matter if the practices are separate or community, and so the result doesn't change in 2024



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## ASG EXAMPLE – COMMUNITY PROPERTY

Doctor Phillip owns 100% of Phil's Clinic

His daughter-in-law, Diana, is also a doctor and regularly performs for the Clinic through her S Corporation, Diana's Corp

Separate property.

There is no attribution between the Phil's Clinic and Diana's Corp

Therefore, the two businesses are not an affiliated service group

But if Diana's Corp is community property with her husband, Charles, you do have an ASG for 2023.



Derrin\*



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## SECURE 2.0 CHANGES – ASG

Continuing our prior example –

For plan years beginning after 2023, Charles is not considered to own Diana's Corp as community property is disregarded. **Phil's Clinic and Diana's Corp are not in an ASG.**



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## ASG EXAMPLE – COMMUNITY PROPERTY

Elizabeth owns 66% of Elizabeth's Horses; Her daughter-in-law, Camilla, owns the remaining 34%

Elizabeth also owns 100% of Windsor Hills, a real estate venture

**Without attribution, the two companies are not in a controlled group**

However, Camilla lives in Texas, and her stock is community property with her husband (Elizabeth's son), Charles.

Elizabeth is deemed to own Charles' stock for the purposes of determining a controlled group (giving her 83%)

**Before 2024, Horses and Windsor are in a controlled group; after 2024 community ownership is disregarded and the two companies are not in a controlled group.**



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## PARENT-CHILD ATTRIBUTION

ASG is easy: There is always attribution from parent to child and from child to parent

Controlled group is more complex:

If child is under 21:

- There is always attribution between parent and child

If child is over 20:

- Parent is deemed to own child's stock in a company if parent already owns or is deemed to own more than 50% of the company
- Child is deemed to own parent's stock in a company if child already owns or is deemed to own more than 50% of the company



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## PARENT-CHILD ATTRIBUTION UNDER SECURE 2.0

SECURE 2.0 doesn't change parent-child attribution

What it does say is if:

- Parent 1 owns an interest in a business;
- Parent 2 owns an interest in another business; and
- The two businesses are not otherwise a controlled group or ASG

Then they won't become a controlled group or ASG because of parent-child attribution with a child under age 21



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## PARENT-CHILD CONTROLLED GROUP EXAMPLE

Harry and Megan are married

Harry owns 100% of his medical practice

Megan owns 100% of her law practice

Neither is involved in the other's business, and the two businesses are separate property

The noninvolvement exception applies; no spousal attribution.

But Harry and Megan have a minor son, Archie.

Archie is deemed to own both practices

Before 2024, the two businesses are in a controlled group

They cease to be in a controlled group for plan years after 2023



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## ASG EXAMPLE – NO CHILDREN

Lucy and Desi are attorneys

Lucy is a 10% partner of the Law Firm

Desi has his own incorporated practice, Desi's Practice

Desi is of counsel to the Law Firm and regularly provides services to the Law Firm

Lucy and Desi are not married or otherwise related

Desi's Practice is not in an ASG with the Law Firm because no common ownership



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## ASG EXAMPLE – CHILDREN COMPLICATE THINGS

Lucy and Desi have a child, Junior, age 19

Junior is deemed to own 100% of Desi's Practice and Lucy's 10% of the Law Firm

Desi's Practice, in turn, is deemed to own Lucy's 10% of the Law Firm.

Attribution from Lucy to Junior to the corporation

For plan years before 2024, the Law Firm and Desi's Practice are in an A-Org ASG

They cease to be in an ASG on the first day of the first plan year beginning in 2024



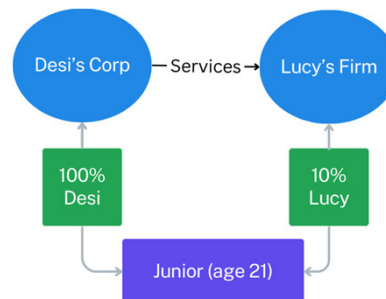
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## PARENT-CHILD ATTRIBUTION UNDER SECURE 2.0\*

SECURE 2.0 only changes affiliated service groups involving **MINOR** children.

Continuing the prior example, when Junior turns 21, Desi's Practice and the Law Firm are in an A-Org ASG.



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## OTHER ATTRIBUTION

ASG attribution rules also apply to:

- HCE Status

- Key employee status

- 5% owner status

No SECURE 2.0 changes



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## SO, WHAT DOES THIS MEAN?



Adriana\*



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## COVERAGE TRANSITION RULE

The coverage transition rule applies to any changes to controlled groups or affiliated service groups as a result of SECURE 2.0 attribution changes

Can provide a free pass of coverage for 2024 and 2025

Still must pass ADP/ACP/General nondiscrimination test

Transition rule ends with a significant change in coverage or benefits other than as a result of the SECURE 2.0 change



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## SEPARATE PLANS

Suppose Adam and Eve have separate plans:

To pass coverage, either:

They have been permissively aggregating the plans, or

Each plan passes coverage separately,

Taking into account in the denominator all employees of both companies

Now each ignores the other

And each plan has a free pass of coverage for 2024 and 2025 so long as they don't change coverage or benefits

May want to consider if this allows plan design change



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## POSSIBLE CHANGE

Dora is a dentist with 10 employees

Her husband, Larry, is a lawyer with no employees

Their practices have been controlled group before 2024 but will now be two separate employers

Larry wanted to set up a cash balance plan, but doesn't want to cover Dora's employees

In 2024, he can



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## SINGLE PLAN

Suppose Dora and Larry have jointly maintained one calendar year plan for both practices

January 1, 2024, that plan is a multiple employer plan (MEP)

Coverage transition rule doesn't change this

Each tests ADP/ACP/nondiscrimination separately

In 2026, each tests coverage separately

Each applies top heavy separately



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## MEP?

Suppose Dora and Larry have jointly maintained one calendar year plan for both practices

January 1, 2024, that plan is a multiple employer plan (MEP)

Coverage transition rule doesn't change this

Each tests ADP/ACP/nondiscrimination separately

In 2026, each tests coverage separately

Each applies top heavy separately

Do you file a single 5500 for the MEP?



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## SUPPOSE YOU WANT TO KEEP THEM TOGETHER

Break one element of the noninvolvement exception:

1. Larry doesn't own any stock in the business directly
2. Larry isn't a director or employee and doesn't participate in management
3. At least 50% of the business's gross income is from active business
4. The stock isn't subject to transfer restrictions running in favor of Larry or his children under age 21



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## A FEW REMINDERS

- ASPPA/NIPA and ERPA certificates will be emailed within a day or two.
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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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