SECURE 2.0 Grab bag:

The IRS Christmas Present

And here we didn't get the IRS anything

Ilene Ferenczy

S. Derrin Watson

Alison Cohen

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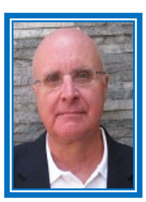
Your Co-Hosts

Maureen Pesek

Joanne Pecina



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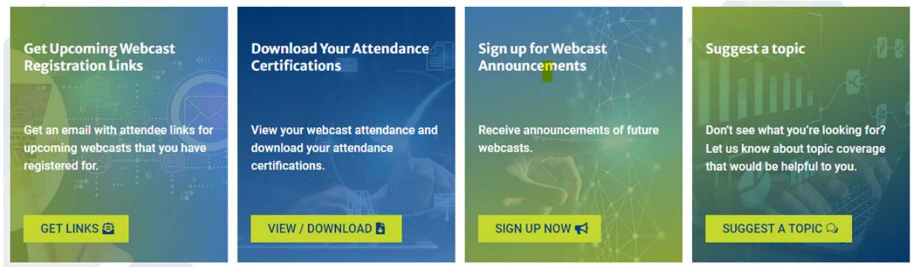

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Your Presenters Today

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What's Happened

- December 29, 2022: President signed SECURE 2.0
- November 25, 2023: Treasury released proposed LTPT regulations
- December 20, 2023: IRS released Notice 2024-2
  - Q&As on 12 issues in SECURE 2.0 – Grab Bag Guidance
    - Out of over 90 provisions
- December 20, 2023: IRS released Notice 2024-3
  - Cumulative List of Changes
    - Dictate provisions in Cycle 4 DC documents

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Topics in Grab Bag

- Extension for interim amendments
- 2025 automatic enrollment
- Automatic enrollment correction
- De minimis deferral incentives
- Small employer credits
  - Cover in future webcast
- Terminally ill individual distributions
- Roth employer contributions
- Roth SEP/SIMPLE IRA
- Additional SIMPLE contributions
- SIMPLE conversion to safe harbor
- Cash balance plans
  - Won't cover here

AMENDMENT DEADLINES CUMULATIVE LIST

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SECURE 2.0 Deadlines

- SECURE 2.0 extended amendment deadlines for interim and discretionary amendments
  - SECURE 2.0
  - SECURE Act
  - CARES
  - 2020 Disaster Act
- Provided anti-cutback relief
- Most plans: Last day of 2025 plan year; gov't plans 2 years longer
  - Unless IRS further extends it

Applies to:
- Qualified plans
- 403(b) plans
- Governmental 457(b) plans
- Tax-exempt 457(b) plans

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IRS Extends Deadlines

- Also includes Miner's Act
- December 31, **2026**
  - Qualified plans in general
  - 403(b) plans in general
  - IRA
- December 31, **2028**
  - Union qualified plans
  - Tax-exempt union 403(b) plans
  - Applies if plan maintained under CBA ratified before 12/29/2022
- December 31, **2029**
  - Governmental qualified plans
  - Public school 403(b) plans
  - Governmental 457(b) plans
    - Or 180 days after end of year IRS notifies plan of failure

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Notes on Extensions

- No extension for tax-exempt 457(b) plans
  - They have until last day of 2025 plan year to comply with the new laws
- IRS notes that other (possibly longer) deadlines might be available
  - Example: Issue hasn't appeared on required amendments list
  - However, if amendment is adopted after Notice 2024-2 deadline, no anti-cutback relief
- Extension gives more time for IRS to issue guidance
  - But highlights need to keep track of operations in the meantime

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2023 Cumulative List of Changes
Notice 2024-3

- Lists issues IRS will review in Cycle 4 (SECURE) DC restatements
  - If plan doesn't address mandatory issue, reviewer will ask for inclusion
  - If plan addresses SECURE 2.0 issue that isn't on the list, reviewer will require it to be removed
    - Example: Student loan match
- IRS will accept Cycle 4 preapproved plans from February 1, 2024, to January 31, 2025
  - They take two years to review and issue letters
  - Restatement period likely to run from early 2027 to early 2029

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SECURE Scorecard

- Essentially all SECURE Act issues are on Cumulative List
- Many SECURE 2.0 issues are also on the list – will be on Cycle 4
- "The IRS has included on this 2023 Cumulative List each SECURE 2.0 Act provision applicable to the form of a defined contribution qualified pre-approved plan that the IRS believes may be appropriately reflected by plan providers in plan documents submitted for Cycle 4 either because:
  1) no interpretive guidance is needed for a plan provider to draft plan language with respect to the provision, or
  2) the IRS has issued sufficient interpretive guidance prior to publication of this list for a plan provider to draft plan language with respect to the provision."

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SECURE Act Issues on Cumulative List

- MEP bad apple rule
  - 2022 proposed regulations
- QACA deferrals
  - Notice 2020-86
- Retroactive 401(k) safe harbor
  - Notice 2020-86
- Lifetime income investments
- LTPT
  - 2023 proposed regulations
- Qualified birth and adoption distributions
  - Notice 2020-68
- RMD rules
  - 2022 proposed regulations
- Difficulty of care payments
  - Notice 2020-68
- Miners Act Age 59½ distributions
  - Notice 2020-68

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SECURE 2.0 Issues on Cumulative List

- RMD age 73/75
- Higher catch-up at 60-63
- Distributions
  - Emergency personal expense
  - Domestic abuse
  - Disaster relief
  - Public safety officer
- SIMPLE nonelective contribution
- SIMPLE deferral limit
  - Notice 2024-2
- Starter 401(k)
- QLAC limits
- $7,000 cash-out limit
- No top-heavy for otherwise excludable employee
- Sole proprietor retro 401(k)
- Roth employer contributions
  - Notice 2024-2

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SECURE 2.0 Issues Not on Cumulative List

- Student loan match
- Pension linked emergency savings
- Mandatory Roth catch-ups
  - Notice 2023-62
- ESOP publicly traded definition
- Items that may not need language
  - Rely on hardship certification
  - Retroactive plan adoption
  - Retroactive deferral increase
  - Overpayment correction
- Notice to unenrolled participants
- Long-term care distributions
- RMD rules
  - Disregard Roth balances
  - Surviving spouse election
  - Special needs trust
- 3 issues from Notice 2024-2
  - Mandatory automatic enrollment
  - Small deferral incentive
  - Distributions to terminally ill

2025 AUTOMATIC ENROLLMENT

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Mandatory Auto Enrollment

- SECURE 101 Refresher:
  - 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)

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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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What Is a New Plan?

- Notice 2024-02 – A is for Auto Enrollment
- A defined contribution plan with a CODA established before 12/29/2022 will be a “pre-enactment qualified CODA” or “pre-enactment section 403(b) plan”
  - We’re just going to call them “Grandfathered Plans”

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New Plan Precision

- Example provided by IRS in Notice
  - New Plan is effective January 1, 2023
  - Plan document is signed October 1, 2022
    - Before Enactment of SECURE 2.0
  - Still counts as a Grandfathered Plan for mandatory auto enrollment
- For 401(k) plans, what counts is when deferral provisions are in document
  - Employer adopts PS plan January 1, 2022; adds 401(k) feature January 1, 2023
    - Not Grandfathered Plan

This is the Key!

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Spin-Off Plans

- Single Employer Plans
  - Original plan is a Grandfathered Plan
    - Then, the spin-off plan will be treated as Grandfathered Plan
  - Original plan is NOT Grandfathered (signed after 12/29/22)
    - Then, the spin-off plan won't be Grandfathered either
- Multiple Employer Plans
  - Participating employer's portion of plan is treated as Grandfathered and is spun off into a new separate plan
    - Then the new plan is Grandfathered

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Spin-Off Plans – The PEP/MEP Edition

- The clue is the date the Participating Employer originally adopted the PEP/MEP and elected a CODA, <u>not</u> the effective date of the PEP/MEP
  - Example:
    - Participating Employer adopted MEP 4/1/2023
    - MEP was originally effective 1/1/2018
    - It isn't a Grandfathered Plan for Participating Employer
      - Doesn't impact the other MEP/PEP employers
    - When the Participating Employer spins-out, it won't count as Grandfathered because of its adoption date

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About Plan Mergers – Part 1

- Merger of two single-employer Grandfathered Plans
  - Resulting plan is Grandfathered
- Merger of single employer Grandfathered Plan into Grandfathered Plan with more than one employer
  - Resulting plan is Grandfathered

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About Plan Mergers – Part 2

- Plan A is not Grandfathered; merges into Plan B that is Grandfathered
  - Resulting plan is NOT Grandfathered, unless:
    - Merger is in connection with merger/acquisition under coverage transition rule of Code §410(b)(6)(C)
    - Grandfathered Plan B is the surviving plan, AND
    - Merger occurs by end of coverage transition rule period
      - Last day of following plan year

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MEP/PEP Merger Scenarios

- Remember – the determination is based on the participating employer and not the MEP/PEP original effective date
- Example 1: Rudolph's 401(k) was originally effective 1/1/2020. It merges into Santa's MEP. It will be Grandfathered within the MEP.
- Example 2: Hermie's 401(k) was originally effective 1/1/2024. Even though Santa's MEP is Grandfathered, Hermie won't be Grandfathered as a participating employer

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403(b) and Starter 401(k) Plans

- 403(b) plans are subject to all the same rules discussed above with 401(k) plans
  - Except: it doesn't matter when the elective deferral feature was added
  - If the 403(b) plan was signed before 12/29/2022, it is Grandfathered, even if deferral feature is added later
- Starter 401(k) Plans (new in 2024) will be subject to the mandatory auto enrollment rules
  - Unless the plan sponsor qualifies for an exemption due to size or recent establishment of the employer

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AUTOMATIC ENROLLMENT CORRECTIONS

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Mistakes Happen

- And that is why we have EPCRS!
  - Rev. Proc. 2021-30, Appendix A special fix for automatic enrollment/escalation is now embodied in Code section 414(cc)
  - Same basic correction principles apply:
    - Correction window is the earlier of
      - 9½ months following the end of the plan year in which the failure occurred; OR
      - The last day of the month following the date on which the participant brings the failure to the plan sponsor's attention
    - 0% QNEC
    - Must contribute missed match + earnings

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Correction Method

- QNEC is 0% if corrected timely and a 45-day notice is provided
  - Now, 0% QNEC applies even for terminated employees
    - Language in notice must be modified to remove reference to correcting future deferrals
  - Matching contributions must still be funded for all affected participants
    - Deadline to fund is reasonable time after correct deferrals begin
      - 6 months is automatically reasonable

Can Apply to Failures That Began Earlier

- New rules apply to failures for which the correction window <u>ends</u> after December 31, 2023
- Example:
  - Plan has March 31 plan year end
  - Plan failed to automatically enroll Vixen on April 1, 2022
  - Vixen terminated employment November 14, 2023
  - Correction period ends January 15, 2024 (9½ months after end of plan year during which Vixen should have been enrolled)
  - New rules apply, even though failure was pre-2024.

DE MINIMIS DEFERRAL INCENTIVES

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Exception to Contingent Benefit Rule

- Law forbids employers sponsoring 401(k)/403(b) plans from conditioning any benefits (other than a match) on whether an employee does or does not defer
- SECURE 2.0 §113 allows plan to offer *de minimis* incentive to employees to make deferral elections
  - Can't be paid for with plan assets
  - Effective for plan years beginning after December 29, 2022

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What is *De Minimis*?

- Value is $250 or less
- Can be spread out
  - Example:
    - Offer extended to employees who are not deferring on February 1, 2024
    - If employee files deferral election by May 31, 2024, employee will receive $100 gift card
    - If election still in effect May 31, 2025, employee receives another $100 card
    - If election still in effect May 31, 2026, employee receives another $50 card

Other Rules

- Can't use incentive to encourage <u>increase</u> in deferrals
  - Limited to those who are not deferring
- Matching contributions aren't deferral incentives
- Deferral incentives aren't plan contributions
  - Not subject to IRC §415, nondiscrimination, top heavy, etc.
  - Not subject to deduction limits
- Gift cards (cash equivalents) are taxable wages
  - Many other gifts (sporting event tickets) are not

Questions the IRS Didn't Answer

- Suppose employer says "all employees who file new deferral elections will be entered into a drawing for an iPad (value $1,300)"
- Suppose 10 employees file deferral elections out of 100 eligible for the incentive
- Is the value of the incentive:
  - $1,300 value of iPad
  - $130 value of each lottery ticket issued
  - $13 value of each lottery ticket available
  - Something else

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ROTH EMPLOYER CONTRIBUTIONS

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Employer Roth Contributions

- SECURE section 604 added ability to allow participants to elect Employer Contributions to be Roth
- Already effective as of 12/29/2022
- Notice provides the answers that we have all needed to be able to implement this provision

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Employer Roth Contributions

- Election will look and smell like designated Roth elective contributions
  - Election must be made no later than the time the contribution is allocated and must be irrevocable
  - Notice says the ability to designate must be given at least once annually
  - NO requirement to offer Roth for all money types
    - Can separate elective contribution Roth election from match/nonelective Roth election
    - May want to skip match if funded on a payroll basis

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Employer Roth Contributions

- Contribution is includable in gross income for the taxable year in which it is allocated
  - E.g., The Plan allocates the 2023 plan year's profit-sharing contribution on 4/12/2024. It will be taxable to the participant for the 2024 taxable year.
- Designated Roth Employer Contributions will NOT be considered wages for purposes of FICA or FUTA
  - Governmental 457(b) plan Roth IRA contributions subject to FICA if employer is subject to FICA
- Not considered compensation for plan purposes

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Employer Roth Contributions

- Employee must be fully vested in the contribution money type at the time of the election
- Does the fact that a participant must be fully vested create a benefits, rights, and features problem?
  - No. Notice specifically states that a plan will not be treated as failing Code section 401(a)(4) just because only some participants are fully vested.
  - But availability of Roth employer contributions is otherwise a BRF issue

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Employer Roth Contributions

- Reporting will be done on Form 1099-R, just like In-Plan Roth Conversions
  - Using Code G in box 7
- Treated as though it they were the only contributions for the participant, and they were immediately subject to in-plan Roth rollover
  - Eliminates basis questions

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Availability

- Plan can offer Roth employer contributions even if it doesn't offer Roth deferrals
- Opens it up to profit-sharing and money purchase plans
- Plan that offers Roth employer contributions can offer in-plan Roth rollovers and can accept Roth rollovers from other Roth plans

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Be Our Guess Scoreboard

- We said
  - Report on 1099-R, not W-2
    - We were right!
  - Not subject to FICA
    - We were right except for some gov't 457(b) plans
  - Election must be made before allocation and election is irrevocable
    - We were right!

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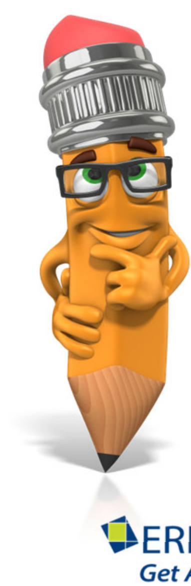
SEP, SIMPLE IRA, SIMPLE 401(K)



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Limits on SIMPLE Plans

- SECURE 2.0, Section 117
- SIMPLE IRA and 401(k) deferrals have been limited:
  - $16,000 deferral limit, $3,500 catch-up for 2024
- New law allows 10% higher deferral (e.g., $17,600/$3,850)
  - Automatic if fewer than 26 eligible employees
  - Employers with 26 – 100 employees can elect higher limit
    - But must increase employer contributions
      - 3% nonelective (up from 2%)
      - 4% match (up from 3%)

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Counting Employees

- No special rules for counting number of employees – still uses Notice 98-4
- At least $5,000 of compensation in the preceding year
  - Given a 2-year grace period if the number goes over 25 employees
    - Unless the increase is due to acquisition, disposition, or similar transaction

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Reflecting the Changed Limits

- Both employers who get the automatic limit and the employers who elect the increased limit, are required to include increase in participant notice
  - Would have been nice to know this 2 months ago
  - Elected increase, which includes the increased match or nonelective, must also include the increased employer contribution in the notice
  - For SIMPLE IRA, should also notify financial institution and payroll provider

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Effective Date for Increase

- Because it must be in annual notice, and annual notice for 2024 was due November 1, 2023, no SIMPLE plan can implement until 2025
  - Unless they were sufficiently clairvoyant to include it in the notice
- Election remains in place until revoked by the employer (where elected)

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Going SIMPLE to Safe Harbor

- SECURE 2.0 Section 332
- New law lets you convert a SIMPLE IRA to a SH 401(k) mid-year
  - Replacement plan may be a SIMPLE 401(k), SH nonelective 401(k), nonelective contribution QACA, or Starter 401(k)
- Deferral limit is prorated (by day) between SIMPLE and 402(g)

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Terminating the SIMPLE IRA Plan

- Formal written action must be taken by the employer
- Once terminated, no contributions can be made after the termination date (except deferrals made prior to termination date or accrued employer contributions)
- 30-day advance notice must be given to employees
  - As opposed to normal November 1 notice of termination

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Rollover Rules

- Normally, cannot rollover within the first two years of participation in the SIMPLE IRA
- Notice permits rollover if goes to (a) 401(k) plan or (b) 403(b) plan
- Regular rules state you can't have a qualified plan in the same year as a SIMPLE IRA
  - Notice clarifies SIMPLE IRA can be replaced with a section 401(k) safe harbor plan

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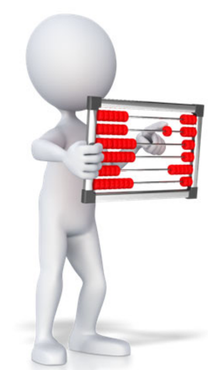
Calculation of Deferral Limits



- Pro-ration of limits by days
- Warning: There is math on this test
- Example
  - Convert SIMPLE IRA to 401(k) plan March 1, 2024
  - Dasher (under age 50) deferred $2,000 to SIMPLE IRA
- 401(k) deferral limit is $19,912.33
  - Pro-rated SIMPLE Limit: $16,000 limit x 60 days/365 = $2,630.14
  - Plus: Pro-rated 402(g) Limit: $23,000 x 306 days/365 = $19,282.19
  - Minus: deferrals to date in SIMPLE: $2,000

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Other Issues

- Participant notice must include the limit of contributions available under the 401(k) safe harbor plan
- There is NO mention in Notice 2024-2 of what happens with catch-up contributions
  - Careful reading of the statute suggests that the catch-up limit is also pro-rated ($3,500 SIMPLE vs $7,500 402(g))
  - Pro-rated SIMPLE limit could be adjusted for the 10% extra SIMPLE deferrals, if applicable

SIMPLE/SEP Roth Contributions

- SECURE 2.0 Section 601
- Employer <u>may</u> allow participants to elect to designate a Roth IRA for contributions
  - Must be employee's affirmative decision
- Timing must match election for salary reduction agreement
  - Available in SARSEP arrangement

SIMPLE/SEP Roth Contributions

- Similar to the Employer Roth Contributions discussed earlier, employer contributions are includable in gross income for the taxable year in which contributions are actually made
- Salary reduction contributions made to a Roth IRA will be reported on Form W-2, using Code F (SARSEP) or Code S (SIMPLE IRA)
  - Subject to income tax withholding, FICA, and FUTA

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SIMPLE/SEP Roth Contributions

- Employer contributions will be reported on Form 1099-R using codes 2 or 7 in Box 7
  - Contributions are not wages, and not subject to FICA or FUTA
  - Check the IRA/SEP/SIMPLE checkbox
- Coming 'soon' – new forms for 5304-SIMPLE, 5305-SIMPLE, 5305-SEP, or 5305A-SEP
- Also pending, guidance on deletion of Code section 408A(f)(2) (Roth IRA contribution limit)

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TERMINALLY ILL INDIVIDUAL DISTRIBUTIONS ("TIID")

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TIIDs

- SECURE 2.0 §326 exempts TIIDs from plans or IRAs from 10% premature distribution penalty tax
  – Not currently distributable event for plans (participant needs to qualify for a distribution some other way)
  – Technical correction bill would change that
- Can recontribute TIID within 3 years
- Notice 2024-2 comments at length on these distributions
  – Available for qualified (including DB plans) and 403(b) plans; not 457(b) plans

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TIID definition

- Distribution made on or after date physician certifies in writing that individual has an illness or physical condition such that death is reasonably expected to occur in 84 months or less
  - Detailed rules on certification
  - Plan or IRA custodian must receive certification before distribution to treat it as TIID
- No limit on amount of TIID

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Options

- Plan doesn't have to offer TIIDs
  - Only impact is how TIIDs are treated on Form 1099-R
- Participant receiving in-service plan distribution from a plan that doesn't offer TIIDs can treat it as a TIID if:
  - Participant has previously received written physician certification
  - Participant claims TIID treatment by filing Form 5329

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Post-Severance Distributions

- Notice 2024-2 doesn't acknowledge that post-severance distributions could be TIIDs
  - Could be because statute refers to "employees"
- Easy way around it:
  - Roll post-severance distribution to IRA
  - Provide physician certificate to IRA custodian
  - Take TIID from IRA

YOUR QUESTIONS

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A Few Reminders

- ASPPA/NIPA and ERPA certificates will be emailed within a day or two.
- 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.
- Joanne Pecina will demonstrate how to find more information on today's topic from the ERISApedia.com resources

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