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SECURE 2.0
Your Questions Answered

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Your Co-Hosts


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- Please join us for a brief educational session on how to find more information on today's topic on ERISApedia.com.
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- Slides and recordings will be available on ERISApedia.com webcast tab.

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Your Presenters Today

Ilene H. Ferenczy

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INTRODUCTION

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January Programs

- Comprehensive overview of SECURE 2.0
  - We won't repeat here
  - You can download the slides and watch the program at http://www.erisapedia.com/webcasts/
- Generated nearly 500 questions

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What We Will Do Today

- Answer roughly 90% of the questions we received
  – We will simply give the answer; not restate the question
  – Refer to Act § so you can tie into prior webcast
- Clarify and correct some of our comments
- Identify provisions as mandatory or optional
  – Most items will require a plan document provision to take effect
    - Deadline for most plans is last day of 2025 plan year
    - Deadline for gov't and union plans last day of 2027 plan year
    - Terminating plans should amend prior to termination or file Form 5310
      – Form 5310 extends RAP until determination letter received
      – No need for plan that terminated in 2022

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Guidance? Corrections? Changes?

- Anything's possible
- Expect some guidance to come in 2023
  – Other issues will take years (we're still waiting on SECURE 1.0)
  – There are always some surprises
- Don't bet on technical corrections any time soon
  – In some cases, the IRS may be able to work around problems
- ▲ This bullet indicates our opinion/best guess
  - ▲ Other interpretations are possible
  - ▪ If question is pure speculation, we won't answer it

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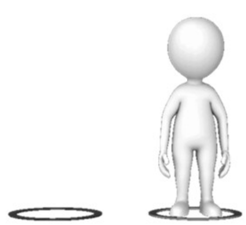
2023 CHANGES

- Retroactive effective date
- Effective 12/29/2022
- Effective first plan year beginning in 2023



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2023 Mandatory Changes

Act §	Provision	Qual	403(b)	457(b)
401	QACA ACP Safe Harbor Notice Required	401(k)	Yes	No
107	Age 73 RMD	Yes	Yes	Yes
348	Cash balance interest crediting rate for variable rate must be reasonable rate not greater than 6%	DB	No	No
349	End of variable rate PBGC premium; replaces it with flat $52/$1000 unfunded vested benefit	DB	No	No
105	Named fiduciary (not trustee) responsible to collect contributions for PEP	DC	Yes	No
311	QBAD recontribution deadline 3 years after distribution	Yes	Yes	Gov't

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QACA Notice Technical Correction

- SECURE 1.0 said a 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 notice requirements
  - Presumably can use "maybe" notice for nonelective
- Example:
  - Plan has QACA with 3% nonelective and discretionary match
  - Plan provides ACP safe harbor for match
  - Plan must give safe harbor notice before start of year
    - If you didn't already do one for 2023, give it now

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

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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!

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

- Non-owner participant born in 1950 retires in 2023;
  - RBD is 4/1/2024; First DCY is 2023
- Participant born in 1951: RBD is 4/1/2025
- People born in 1959: may be 73, may be 75 (need correction)

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

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QBADs

Act Section
311
Code Section
72(t)
Qualified
DC
403(b)
Yes
457(b)
Gov't
Eff. Date
Enactment
Repayment Deadline Mandatory

- 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 for repayment
- 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
    - So, deadline is December 31, 2025
- Can apply to governmental 457(b) plans

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2023 Optional Changes (Other Than Distributions)

Act §	Provision	Qual	403(b)	457(b)
604	Roth employer contributions	DC	Yes	Gov't
113	Small deferral incentives	401(k)	Yes	No
317	Sole proprietor deferrals for retroactively adopted plan	401(k)	No	No
601	SEP and SIMPLE Roth IRAs	No	No	No
118	SEPs for household employees	No	No	No
106	403(b) MEPs and PEPs	No	Yes	No
306	457(b) deferral elections can be effective immediately	No	No	Gov't
301	EPCRS overpayment	Yes	Yes	No
305	EPCRS self-correction	Yes	Yes	No
350	EPCRS automatic enrollment 0% correction made permanent	Yes	Yes	Yes
320	Elimination of most notices to unenrolled participants	DC	Yes	No

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2023 Optional Changes (Other Than Distributions)

Act §	Provision	Qual	403(b)	457(b)
102	Increased plan startup credit	Yes/DC	No	No
112	Military spouse credit	Yes	No	No
119	Compensation limit for DB rural electric cooperative plans	DB	No	No
606	Extension of overfunded plan assets providing retiree health benefits	DB	No	No
322	PT of one IRA doesn't impact others	No	No	No
307	Enhancement of qualified charitable distributions	No	No	No
345	Group of Plans audit requirements determined by each plan	Yes	Yes	No
339	Tribal courts can issue QDROs	Yes	Yes	Yes

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Roth Employer Contributions

- Vested employer contributions can be Roth
  - Now all vested contributions can be Roth
  - ▲ Could apply to a plan without deferrals
  - ▲ Possibly not available to partially vested participant
- Participant must make election to designate as Roth
  - Will require written/electronic election form
  - Separate recordkeeping buckets needed
  - ▲ Designate all or selected future contributions as Roth?
- Can apply to 2022 contributions deposited in 2023 (if we get guidance on how to do this)

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

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Roth Employer Contributions

- Roth employer contributions likely starts 5-year clock, if it hasn't already started
  - For year included in income
- Shouldn't impact testing
- Tax reporting
  - ▲ Probably appear on Form W-2, box 1 in year contribution made; maybe Form 1099-R
    - ▲ Probably doesn't increase FICA or Medicare wages
    - ▲ Employee likely should increase withholding or make estimated tax payments
  - ▲ Employee responsible for taxes; employer gets deduction
  - ▲ Shouldn't be counted as compensation for plan purposes
  - ▲ Alternatively, could be done as in-plan Roth conversation and Form 1099R

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Small Deferral Incentives Allowed

- §401(k)(4)(A) 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)"
  - Could come from employer or others, so long as plan assets not affected
  - Presumably could be tied to amount of deferral
  - Likely no amendment needed
  - ▲ $25 is likely safe; be conservative until there's guidance
  - ▲ Extra vacation day? If paid vacation, not sure it's de minimis

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

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Retroactive Sole Proprietor Deferrals

- SECURE 1.0 allowed retroactive plan adoption
  - Up to extended due date of tax return
  - Only applied to employer contributions
- New law allows deferral election for 1st year of retro adopted plan
  - Limited to unincorporated sole proprietor with no employees
    - Could apply to LLC taxed as sole proprietorship
  - 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
    - First year is 2023 (adopted in 2024)

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

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Retro Deferrals

- Current rules:
  - The deadline to make a deferral election is the last day of the partnership's or sole proprietor's tax year. [Treas. Reg. §1.401(k)-1(a)(6)(iii)]
    - You can fund it later, but the election needs to be in place by last day
  - You can adopt a plan in 2023, and have it retroactively effective for 2022, but it is too late to make deferral election for 2022
- Change provides *limited exception,* allowing a sole proprietor to adopt plan in 2024, retroactively effective for 2023, and make a 2023 deferral election
  - Provided there were no other employees in 2023
- Partnerships still out in the cold
  - Congress didn't say why

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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)
    - Many church 403(b) plans already in existence
- Can qualify for SECURE 1.0 relief of one bad apple
- ▲ For-profit company could be PPP, but may not be able to be sponsoring employer (i.e., 403(b) plans must be sponsored by non-profit organization)

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

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457(b) Deferral Elections

- §457(b) provided that 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
  - Limited to governmental 457(b) plans
    - Tax-exempt must still follow first day rule

Act Section
306
Code Section
457(b)(4)
Qualified
No
403(b)
No
457(b)
Gov't
Eff. Date
Tax Years after 2022
Optional

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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
  - But still watch overpayments to HCEs (§401(a)(4))
- Overpayment can qualify as eligible rollover distribution
- Doesn't relieve employer of funding obligations
  - Or obligation to make other participants whole
- Plan must still comply with §415 and compensation limits

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

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Inadvertent Overpayment

- Overpayment is defined term in EPCRS (Rev. Proc. 2021-30)
  - You got more money than you were supposed to get
    - For example, a failure in applying correct vesting schedule
  - You got money sooner than you were supposed to get it
    - For example, an "impermissible withdrawal"
- Suppose HCE rolls over entire account to IRA and then ACP test fails, and part of distribution is excess aggregate contribution
  - Would this rule allow the funds to stay in the IRA?
  - No; the excess isn't an overpayment - it's simply not an eligible rollover distribution

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Unlimited Self-Correction

- Any eligible inadvertent failure to comply with the rules may be self-corrected
  - Doesn't extend to 457(b) plans
    - Gov't 457(b) already has generous self-correction
- 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
- IRS to update EPCRS Revenue Procedure within 2 years

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

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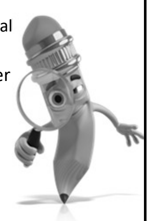
Unlimited self-correction

- Still must follow EPCRS correction principles
  - Wouldn't allow retroactive amendment to correct operational failure in situations for which EPCRS currently doesn't allow
- How does this impact the failure of a participating employer to sign participation agreement?
  - Query whether it's a benefit, right, or feature
  - We still like VCP for this, but can make an argument supporting self-correction
- Requires practices and procedures
  - How do you establish for a new plan?



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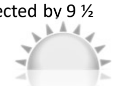
Safe Harbor Correction of Elective Deferral Failures

- EPCRS has 0% QNEC "safe harbor" correction of deferral in auto enrollment/auto escalation plan if corrected by 9 ½ months after end of plan year
- EPCRS had sunset 12/31/2023
- Congress made it permanent; no sunset!
- Other rules to qualify for the safe harbor still apply
  - Will we be able to apply this to terminated participants?
  - 0% correction can apply to terminated participants



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

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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)
  - Based on the year plan established, even if no contributions until later
  - Must have an NHCE in plan
- SECURE 2.0 changes that to 100% of plan startup costs for employers with no more than 50 employees
  - Higher credit can apply to plans established in 2021 or 2022
  - Employee count includes employees with at least $5,000 comp in prior year
- Same limits: Greater of $500 or $250/NHCE up to $5,000 max
- Still limited to employer expenses for administration and education
- Applies to qualified plans (DB/DC), 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
  - Match and nonelective
- 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)
  - No limitation on more than 5% shareholders
- 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

▲ Example: plan adopted in 2022; 2023 is year 2

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

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More on Startup Credits

- If you claim a credit, you can't claim a deduction
  - Impacts computation of earned income for self-employed
- Credit is nonrefundable
  - So, nonprofits can't claim it
- Expense credit calculation example: 12 NHCEs: Max Credit $3,000
  - $5,000 in expenses
  - Can claim $3,000 credit and $2,000 deduction

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More on Startup Credits

- Employee Contribution credit calculation for one employee =
  Min($1000, Applic% X EmployerCont) X (1 - .02 X EE#)
  - EE# is number of employees in year plan established – 50 (but not < 0)
  - Example: 0-50 EEs-100%, 60 EEs-80%, 75 EEs-50%, 100 EEs-0%
- Applic% = 100% in years 1 & 2, 75% in year 3, 50% in year 4, 25% in year 5
- EmployerCont = Match and nonelective for that employee
  - EmployerCont = $0 if EE FICA wages > $100,000
  - ⚠ EmployerCont may be $0 for sole proprietor or partner

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Credit Calculation Example

	Applic%	Participant A	Participant B	Participant C	Total
Contribution		$5,000	$1,600	$600	$7,200
Credit years 1,2	100%	$1,000	$1,000	$600	$2,600
Credit year 3	75%	$1,000	$1,000	$450	$2,450
Credit year 4	50%	$1,000	$800	$300	$2,100
Credit year 5	25%	$1,000	$400	$150	$1,550

- Min($1000, Applic% X EmployerCont) X (1 - .02 X EE#)
- If there were 60 employees when plan established, credit would be only 80% of numbers shown here (e.g., reduced 2% x 10 employees over 50 = 20% reduction)

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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
    - ⚠ Presumably, employee with ER or rollover money in plan is participating
  - 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
Optional

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Notes on "Unenrolled Participant" Rules

- Notices you can avoid:
  - Fee and investment disclosures
  - Benefits statements
  - Summary annual reports
  - QDIA/EACA notices
  - Safe harbor notices
- Doesn't excuse you from delivering SMM
- Applies to new plans and existing plans
- ▲ Means that you have to maintain 2 different mailing lists

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2023 Optional Changes – Distributions

Act §	Provision	Qual	403(b)	457(b)
312	Rely on employee hardship/unforeseeable emergency certification	401(k)	Yes	Gov't
302	Reduced RMD Penalties	Yes	Yes	Yes
201-2,4	Expand RMD annuity rules and QLACs	Yes	Yes	Yes
313	RMD and excess IRA statute of limitations triggered by 1040	Yes	Yes	Yes
326	Terminal illness distribution exempt from penalty tax	Yes	Yes	Yes
328	Govt plan long-term care insurance	Yes	Yes	Gov't
308, 329, 330	Public safety officer distributions exempt from penalty tax	Yes	Yes	Gov't
331	Disaster relief provisions	Yes	Yes	Gov't
333	IRA corrective distributions exempt from penalty tax	No	No	No

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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 governmental 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)	Gov't
Eff. Date	Plan Years after 2022
	Optional

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Hardship Verification

- Plan now has three choices:
  1. Get copies of documents showing existence of hardship and amount
     - Only option for non-safe harbor hardships
  2. IRS detailed summary verification system (substantiation guidelines)
     - Sponsor must provide information re: hardship rules to participant
     - Sponsor must obtain summary information from the participant
     - Participant required to retain source documents
  3. New: Participant certifies existence of hardship and amount
     - I need a $5,000 hardship distribution to cover medical expenses for my kid
- Many employers want to stick with old systems: Fine
- Can satisfy fiduciary responsibilities with any of the three

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Reduced 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
  – Available for plans, as well as for IRAs
- 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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More on Reduced RMD Penalties

- Penalty tax applies in year RMD should have been taken
- Reduced penalty applies to tax years after 2022
- Example: RMD not taken in 2021, 2022, or 2023
  – Discovered in 2024
  – Penalty is 50% for 2021 and 2022; 25% for 2023
    - Potential to reduce 2023 tax to 10%
- Penalty tax can still be forgiven under EPCRS and possibly IRS Form 5329

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Statute of Limitations Penalties for RMDs and Excess Contributions

- Individual reports RMD and excess IRA contribution penalties on Form 5329
- Old rule: 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
- ▲ Should apply to assessments of tax after Enactment
  - ▲ It could apply to penalties for 2020 that aren't yet assessed

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

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
- ▲ Likely 1099-R Code 1 (like QBAD)

Act Section	326
Code Section	72(t)
Qualified	Yes
403(b)	Yes
457(b)	Yes
Eff. Date	Enactment

Permanent Disaster Relief

- Similar to relief packages for 2020 disasters and COVID
  - Big difference: Distributions limited to $22,000 (down from $100,000)
    - $22,000 limit is per disaster
    - These distributions are different from hardship distributions
  - Double participant loan limits
    - Lesser of $100,000 or 100% of vested balance
  - Loan repayment suspension and extension
    - Can be automatic or upon participant request
- Check FEMA.gov to see if disaster qualifies for individual assistance

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

CHANGES THAT GO INTO EFFECT IN 2024

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2024 Mandatory Changes

Act §	Provision	Qual	403(b)	457(b)
125	LTPT Vesting Changes (Only changes in place for 2024)	401(k)	No	No
603	Catch-ups must be Roth (for certain EEs)	401(k)	Yes	Gov't
315	Fix of spousal and child attribution for controlled groups and ASGs	Yes	Yes	No
335	Updated funding mortality tables	DB	No	No
343	Add new information to annual funding notice	DB	No	No

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Long-Term Part-Time Employee 2024 ONLY

- Just two changes from SECURE 1.0 for 2024
  - Years of service for vesting limited to years after 2020
  - Safe harbor plan not TH just because LTPT don't get SH
- LTPT becomes eligible to defer to 401(k) after 3 consecutive years (after 2020) with 500 – 999 HOS
  - Watch for shifting eligibility computation periods
- Applies to owner-only plan with part-time employees
- Under new regulations (effective for 2023 returns), DC plans count for 5500 purposes employees with account balances
- Doesn't impact DB plans except perhaps AB%T
- ▲ Shouldn't cut off coverage transition period

Act Section
125
Code Section
401(k)(15)
Qualified
401(k)
403(b)
No
457(b)
No
Eff. Date
2024
Mandatory

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Some Age 50 Catch-Ups Must Be Roth

- Catch-ups must be Roth for:
  - Participants whose prior calendar year FICA wages from the employer exceeded $145,000 (indexed)
    - Arguably this excludes self-employed because no FICA wages
    - 5% owner with < $145,000 can do regular catch-up
  - Means non-Roth plan cannot take catch-ups for these folks
- Would start Roth 5-year clock
- So, ADP or §415 catch-up needs to be Roth
  - Either requires making Roth up front
  - ▲ Allowing participant to elect to recharacterize rather than receive distribution (or permit it to be deemed recharacterized)
    - ▲ Maybe reflect recharacterization on Form 1099-R

Revenue estimate $16B

Act Section
603
Code Section
414(v)
Qualified
401(k)
403(b)
Yes
457(b)
Gov't
Eff. Date
Tax Years after 2023
Mandatory

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Red Card! Congress Makes Boo-Boo

- In error, when Congress changed catch-up rules for HCE, they amended out the income exclusion for all pre-tax catch-up contributions
- We (and everyone else) expect this will be part of technical corrections bill in near future …

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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
  - Could result in controlled group plan becoming a MEP

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

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2024 Optional Changes (Other Than Distributions)

Act §	Provision	Qual	403(b)	457(b)
110	Match student loan repayments	401(k)	Yes	
121	Starter 401(k)/Safe harbor 403(b)	401(k)	Yes	No
332(a)	Midyear conversion from SIMPLE to safe harbor 401(k)	401(k)	No	No
332(b)	Rollover from SIMPLE IRA to 401(k) or 403(b)	401(k)	Yes	No
127	Emergency savings accounts	401(k)	Yes	Gov't
117	10% higher SIMPLE deferral	401(k)	No	No
316	Retroactive increase in employer nonelective contributions	Yes	No	No
310	No top-heavy for otherwise excludable employees	Yes	No	No
108	IRA catch-ups indexed for inflation	No	No	No
126	Roll from 529 Plan to Roth for beneficiary with no 10% penalty	No	No	No

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Student Loan Repayments Can Be Matched Like Deferrals

- Applies to "Qualified Student Loan Payment"
  - Incurred on behalf of employee ! (not employee's children)
  - For qualified higher education expenses
    - Applies to current payments, not past
    - Expenses incurred while carrying at least half-time full student load
  - Can't exceed §402(g) limit minus elective deferrals
    - Payments don't reduce §402(g) limit; excess payments not matched
- Employee must annually certify payment made on loan
  - Employer may rely on certification

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

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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
    - Add deferrals and loan repayments
    - Uncertain how this applies to payroll period match
  - Match would be in ACP test/ACP safe harbor
  - The match related to the loan must vest in the same manner as match on deferrals (100% if ACP safe harbor match)
- Eligibility limited to employees otherwise eligible to receive match for elective deferrals
  - So, included in coverage test for deferrals and match and Form 5500 count

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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 (no limit on # EEs)
    - Can exclude union and nonresident alien
  - Automatic enrollment at 3% - 15% (uniform)
  - Maximum deferral = $6,000 (indexed) + IRA catch-up
  - No ER contribution; rollovers likely ok
- ERISA plan subject to ERISA rules and Form 5500 filing
- No limit on how long a company can use a Starter 401(k)
- Employer can't have another qualified plan that year
- Conceivably could be part of MEP or PEP

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

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Midyear 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) midyear
  - Obviously need to establish 401(k) plan
    - New plan can be SIMPLE 401(k), SH, QACA, or Starter
    - Match or nonelective ER SH contributions
- Deferral limit is prorated (by day) between SIMPLE and §402(g)

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

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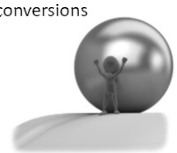
Rollover from SIMPLE IRA to 401(k) or 403(b)

- Typically, cannot roll from SIMPLE IRA to plan in first two years of participation (no issue for SEP IRA rollovers)
- 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) distribution restrictions
- Not limited to midyear conversions



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

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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
  - Limit applies to portion of account "attributable to contributions"
  - ▲ Presumably, contributions net of withdrawals (i.e., not including earnings)
- 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; plan does not permit excess to be treated as catch-up

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

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More on ESAs

- Investment can have gains and losses, although required investment intended to be very safe:
  - Interest bearing account; or
  - Investment designed to preserve 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
  - Maximum annual match with regard to ESAs is $2,500

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Notes on ESAs

- Contributions maybe count against §402(g) limit
  - §402(g) failures must be corrected first by returning that year's ESA $
  - Since HCEs can't use ESA, §402(g) and §415 may be academic
- Can't charge account (including for Form 1099 preparation) a fee for the first 4 withdrawals/year
  - Subsequent withdrawals can have reasonable fee
  - Can charge employer ! or general plan accounts
  - ▲ Must exhaust ESA before taking hardship
- Can do auto-enroll up to 3%
  - Can combine with auto enroll for regular deferrals

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More ESA notes

- ESAs treated like another source
  - Although subject to different investment and withdrawal rules
- Distributions "at discretion of" participant
  - Sounds like no need for spousal consent
  - ▲ No minimum withdrawal
- Distribution treated as qualified Roth distribution
  - Allows tax-free distribution of earnings
  - Not subject to normal Roth 5-year clock/distributable event rules

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We Got a Lot of ESA Questions

▲ Presumably, ESA is subject to QDRO

- HCEs can't contribute to ESA
  - But can draw from ESA
  - Doesn't allow HCE to roll funds

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Termination of ESA

- Employer can terminate arrangement at any time
  - No anti-cutback right
- After termination of employment or arrangement:
  - Participant can choose to move money to another Roth account in plan
    - And roll from there to a Roth IRA or other Roth account
  - Otherwise, plan makes account available to participant
  - Participant's choice

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Retroactive Increase in Employer Contributions

- Allows employer to amend plan to retroactively increase DB benefits or DC 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)
  - Doesn't allow retroactive change in eligibility requirements
  - Uncertain how this relates to Code §412(d)(2) amendment
- Applies to 2025 amendment for 2024 (not earlier)
- 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
	Optional

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Top-Heavy and Otherwise Excludable Employee

- If plan covers otherwise excludable employees (less than 1 YOS), don't have to provide them with top-heavy minimum
- First year to which this applies is the plan year beginning in 2024 (for which contribution could be made in 2025)
- Congress didn't address problem of plan that otherwise consists solely of safe harbor money but would become 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
	Optional

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2024 Optional Changes – Distributions

Act §	Provision	Qual	403(b)	457(b)
602	Expand 403(b) hardship sources	No	Yes	No
304	$7,000 cash-out limit	Yes	Yes	No
115	Emergency personal expense distributions	PS/401(k)	Yes	Gov't
314	Domestic abuse withdrawals	PS/401(k)	Yes	Gov't
327	Surviving spouse RMD conversion	Yes	Yes	Yes
325	No lifetime RMDs from Roth plans	DC	Yes	Gov't
323	Substantially equal payment exception to early distribution penalty	Yes	Yes	Yes
120	Auto portability prohibited transaction exemption	Yes	Yes	Gov't

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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
  - DB and DC
- Increased to $7,000 (not indexed)
  - Can implement operationally as of 1/1/2024 and amend by 2025/2027
- No change in participant notices

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

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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

Act Section
115
Code Section
72(t)
Qualified
Yes except pension
403(b)
Yes
457(b)
Gov't
Eff. Date
Distributions after 2023
Optional

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Notes on Emergency Distributions

- Can limit to specific accounts
- Must take before taking hardship distribution
  - Could take hardship and emergency for same event
- Issue a check like other distributions; no debit cards
- Unless repaid, no new emergency personal expense distributions for 3 calendar years
  - But can take hardship or age 59½ distributions
- Plan provision required, as with all distributions

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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 (including PS plans subject to QJSA)
- Can repay (similar to QBADs)
- Distributable event if plan document allows
- Distribution is taxable but no mandatory 20% withholding

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

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Surviving Spouse RMDs

- Surviving spouse has been able to convert IRA into spouse's own IRA without a rollover
  - Includes DB and DC
  - RMDs based on spouse's age using ULT
    - No option to use participant's age if you convert
- 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
327
Code Section
401(a)(9)
Qualified
Yes
403(b)
Yes
457(b)
Yes
Eff. Date
Years after 2023
Optional

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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
  - Only after participant enters new employer's plan
    - Funds stay in IRA until then

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

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CHANGES THAT GO INTO EFFECT AFTER 2024

Mandatory Changes After 2024

Act §	Provision	Qual	403(b)	457(b)
125	Most LTPT changes – 2025	401(k)	Yes	No
101	Mandatory automatic enrollment – 2025	401(k)	Yes	No
501	Plan document deadline (Last day of 2025 plan year/ 2027 for gov't and union)	Yes	Yes	Yes
303	Retirement savings lost & found – 2025	ERISA	ERISA	No
342	Risk mitigation notice – After final regulations	DB	No	No
337	Charitable remainder special needs trust is EDB – 2025	Yes	Yes	Yes
338	One paper statement/year – 2026	ERISA	ERISA	No

Long-Term Part-Time Employee Coverage Changes

- LTPT employees are eligible to defer
  - Under new regulations (effective for 2023 returns), DC plans count for 5500 purposes employees with account balances
- 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
- No requirement to provide employee contributions
- Can exclude LTPT employees from testing
- No minimum number of employees

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

LTPT Notes

- 2024 plan years must apply most SECURE 1.0 Rules
  - 3-year eligibility rule
  - Only 2024 changes relate to vesting and top-heavy
- 2025: begins new LTPT Rules
  - 2-year eligibility
  - 403(b) now subject to LTPT
- Could you go with 2-year rule in 2024?
  - Yes, but uncertain whether you get LTPT testing benefits
- Yes, we will do LTPT webinar later in the year

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Comparison of 401(k)/403(b) LTPT

401(k)	ERISA 403(b)
• Ignores years beginning before 2021 for eligibility and vesting – All years beginning after 2020 with at least 500 HOS for someone who enters as LTPT count as YOS for vesting • Requires 3 consecutive years 500-999 for 2024/Age 21 • Requires 2 consecutive years 500-999 for 2025/Age 21 – Could be 2021 and 2022	• Ignores years beginning before 2023 for eligibility and vesting – All years beginning after 2022 with at least 500 HOS for someone who enters as LTPT count as YOS for vesting • LTPT has 2 consecutive years with at least 500 HOS/Age 21 • Overrides 20-hour and student-employee exemptions from universal availability

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Mandatory Automatic Enrollment

- New 401(k) and deferral 403(b) plans required to have automatic enrollment EACA (not necessarily QACA)
  - Applies to first pay period in 2025 plan year
    - Example: Plan established in 2023; mandatory auto enroll starts in 2025
  - Must give EACA notice before start of year
  - Must allow permissible withdrawals (up to 90 days after first auto deferral; normal distribution fee)
- Does not apply to plans without deferrals
  - ▲ Likely would apply if PS adds deferrals after 2022

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

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Automatic Enrollment

- Applies to all participants eligible to defer
  - Participant can opt out of deferrals or choose different %
- Default deferral percentage applies to all participants unless opt out
  - First year 3% to 10%
  - Auto increase of 1%/year thereafter
    - Capped at 10 – 15%
    - Can start at 10% and leave it there
  - May change auto enrollment for plans established in '23 or '24
- Invest in QDIA unless participant makes different choice

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Exemptions

- Plans established before 12/29/2022
  [Code 414A(c)(2), SECURE 101]
  - ▲ Conservative approach: adopted and effective before 12/29/2022
  - ▲ Uncertain about grandfather for spin-offs
- Plans sponsored by ER that normally employs fewer than 11 EEs
  - Presumably includes part-time and new hires
  - Exemption expires 1 year after close of first tax year after employer goes over limit
    - Example: Calendar year employer has 9 employees in 2024, and grows to 11 in 2025
    - Mandatory auto enrollment applies in 2027
  - ▲ Controlled group rules probably apply

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Exemptions (Cont.)

- SIMPLE 401(k)
- Governmental and church plans
- 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/PEO Plan

- 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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Optional Changes After 2024

Act §	Provision	Qual	403(b)	457(b)
109	Larger age-50 catch-ups at 60, 61, 62, 63 – 2025	401(k)	Yes	Gov't
341	Consolidated QDIA/ACA/EACA/QACA/Safe harbor notices – 2025	401(k)	Yes	No
318	Blended-index benchmarks for comparative chart – 2025	ERISA	ERISA	No
334	Long-term care insurance distributions (12/29/25)	Yes	Yes	Yes
103	Saver's match – 2027	Yes	Yes	Gov't
309	Tax exemption for post-retirement first responder disability payments – 2027	Yes	Yes	Gov't
114	Deferral of gain for stock sale to S Corp ESOP – 2028	ESOP	No	No
123	Expand definition of publicly traded securities – 2028	DC	No	No

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Larger Catch-ups at 60, 61, 62, or 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
Optional

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Long-Term Care Insurance

- SECURE 2.0 allows Qualified Long-Term Care Distributions
  - Distributable event
- 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

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

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Saver's Match

- Replaces Saver's Credit with Saver's Match
  - Funded by United States taxpayers
- 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

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

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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)
  - Based on income, not wages; could apply to owner
- 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 Go?

- Participant claims match on tax return
- Participant elects where the matching contribution should go:
  - 401(k)
  - 403(b)
  - 457(b)
  - IRA
    - Not Roth IRA unless convert
- Plan can choose not to accept Saver's Match contributions
  - Employee can elect to put in IRA instead (very likely IRAs will accept)
- If amount under $100, participant can take as tax credit

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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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