



## Be Our Guest!

### Upcoming 2024 Changes





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## Your Co-Hosts



Maureen Pesek



Joanne Pecina



Tim McCutcheon




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- All attendees' lines are muted.
- Use the Q&A icon for questions.
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- Click on "Live Transcript/Closed Captioning to see a transcript of what is being said.



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## CE Credits

- Our process for CE issuance is completely automated. Once registrations are submitted, **we cannot make changes**.
- Please review your registration before submitting to make sure
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  - ✓ You've added your correct PTIN number for us to report ERPA credit to IRS
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- Certificates for ASPPA/NIPA will be emailed within a couple of days of the webinar.
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## CE Credits – New ERPA Process

- Attendees hoping to receive ERPA credit will receive their certificate by email within a few days of the webinar PROVIDED:
  1. Your email address is correct on registration and the same one is used when logging in.
  2. If you would like us to report ERPA credit to the IRS you must provide a PTIN number at the time of registration. If you would just like to get a certificate for ERPA credit without a PTIN, you should enter "Certificate" instead of a PTIN when registering.
  3. You must answer 3 poll questions/50-minute webinar or 6 poll questions/100-minute webinar. ASPPA and NIPA attendees will receive credit without answering the poll questions, but are free to answer if you would like.



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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



Ilene H. Ferenczy



S. Derrin Watson



Alison J. Cohen



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## Here We Are ... November 2023



- A whole bunch of new legal provisions are currently or imminently effective
- Where's the IRS? Crickets ...
- Where's the DOL? Crickets ...
- What should plan sponsors (and their advisors) do?



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## What We Will Do Today

- Highlight the SECURE and SECURE 2.0 provisions that are effective now or in 2024 for which there are significant questions outstanding
- Give our best **guess** as to what we think the ultimate guidance will provide (but no promises!)
- Discuss what plans should do in the meantime and the risks of any options



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## Standard for Compliance

- Before regulations or other guidance is issued, plan sponsors must exercise *good faith compliance*
  - What does that mean?
    - Cannot ignore rules that become effective
    - Make reasonable guess as to what the IRS will require
    - Be consistent
  - Be prepared to correct if worse comes to worst



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## Example

- LTPT is effective 1/1/24
  - Cannot ignore the law and continue to exclude LTPTs
  - Cannot go against any legal provision that is clear
    - E.g., cannot “interpret” the rules to mean that LTPTs need 700 hours of service to enter the plan when the law is clear that the cut-off is 500 hours
  - Can interpret what to do about class exclusions that apply to all employees (but see below)



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## TALE AS OLD AS TIME: AMENDMENTS FOR CHANGED PROVISIONS



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## Plan Amendments

- Plan documents do not have to be updated for SECURE/CARES/SECURE 2.0 until the last day of the first plan year beginning on or after 1/1/2025
  - Governmental/union plans have 2 more years after that
  - Anti-cutback relief available
  - Must operate in accordance with law and amendment as ultimately adopted



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## Restatements

- The Cycle 3 restatements for DB plans (due 3/31/2025) do not incorporate the new laws
- We do not expect the Cycle 4 restatements for DC plans (likely due 2027-2029) to incorporate the new laws
- What this means:
  - The 2025 deadline will be amendments, not restatements, unless the IRS does something
  - We will have patch amendments for a long time



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## Amendments

- What needs to be amended now, rather than at end of SECURE/CARES/Taxpayer Certainty and Disaster Tax Relief Act/SECURE 2.0 remedial amendment period?
  - Unlike prior laws, SECURE/CARES/SECURE 2.0 specifically extends amendment deadline to anything being adopted “pursuant to any amendment made by this Act or pursuant to any regulation issued” by Treasury or Labor
  - So, embodies mandatory and discretionary issues



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## Remember ...

- Terminating plans need to be amended for any changes that were effective prior to termination
- Deadline: date of termination (?)
- If not done, can we “self-correct” by adopting the amendment when we realize we’ve got a problem?



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**KILL THE BEAST!  
LONG-TERM PART-TIME  
EMPLOYEES**



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## Long-Term Part-Time Employees

- Must be let into the plan as of 1/1/2024, if eligible
- Get no employer contributions
- Not in ADP/ACP/Coverage testing
- Not eligible for TH minimum benefits



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## Long-Term Part-Time Employees

- Key unanswered question: Can we exclude:
  - People in groups that are generally excluded by the plan (e.g., by location, by job classification, by employer)?
  - Seasonal and part-time employees?



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## Long-Term Part-Time Employees

- What we **think** the IRS will ultimately say
  - Can exclude people in generally excluded classes that (i) have nothing to do with service; (ii) pass coverage
    - Do not need to take the LTPTs into account in coverage testing ... *maybe* ... but OEE separate testing will help
    - Cannot use classification that is a proxy for hours of service, such as seasonal or part-time
      - The “1,000 hour” failsafe doesn’t work for LTPT



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### Long-Term Part-Time Employees

- What do we recommend in the meantime?
  - Include the seasonal, part-time people in the plan for deferrals if they are LTPTs
  - Advise clients of the risk of excluding LTPTs in excluded classes (other than seasonal/PT) and let them select risk level
    - If IRS says they cannot be excluded, they will be required to get EPCRS corrective contributions



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### Long-Term Part-Time Employees

- Note: need special notices for LTPTs for auto-enrollment and safe harbor rules
  - Due 12/1!
  - See sample:  
<https://www.relius.net/News/Docs/Long%20Term%20Part%20Time%202024%20notice.docx>
  - What to do if notices are already issued?



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### LTPT Rules Only Apply if the Only Reason a Person Participates is LTPT

- Can avoid LTPT complexities if part-time people come into the plan under the eligibility provisions
  - e.g., passage of 12 months since hire
  - e.g., 500 hours in eligibility computation period
- But, exclusions from ADP, coverage testing do not apply
- S2.0 permits TH exclusion for all “otherwise excludible employees” (<1 year, age 21), so LTPT would not get TH minimum



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### Be Careful of Dual Eligibility in SH Match Plan

- If some Ps are not eligible for all contributions, SH Match plan is not exempt from TH
  - E.g., immediate eligibility for deferral, 1 year wait for SH or NEC
  - Can still exclude otherwise excludables from SH and TH (can still use OEE for testing)
  - BUT, any other employee who does not defer or gets match of <3% of pay must get TH minimum



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**I USE ANTLERS IN ALL  
OF MY DECORATING:  
ROTH EMPLOYER  
CONTRIBUTIONS**



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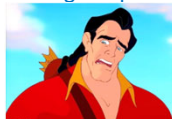
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### Roth Employer Contribution

- Currently effective
- But, the pointy ends of this provision make it unworkable without guidance:
  - How/when to make elections
  - How/when to tax through to participants?
  - Subject to FICA?



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## Roth Employer Contribution

- What we **think** the IRS will ultimately say:
  - Election made anytime before allocation date
    - If made after such date, need to do conversion instead
  - Taxed when? Absolutely no idea
    - Use same reporting system as Roth conversions, i.e. Form 1099-R
    - No FICA withholding (like conversion)



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## Roth Employer Contribution

- What we **think** the IRS will ultimately say:
  - Election is irrevocable as to contributions already so classified (can revoke for future contributions)



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## Roth Employer Contribution

- What do we recommend in the meantime?
  - Don't do it!
    - It's a discretionary provision, so no need to put plan at risk before we have guidance
  - If client really wants to offer this, use Roth conversion/in-plan Roth rollover rules
    - Can the plan permit "standing" conversion election?
    - Probably best just to allow participant to convert once per year



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## Roth Employer Contribution

- What do we recommend in the meantime?
  - Risk:
    - If FICA withholding is needed, failure to do so puts the plan/company at risk for withholding liability



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**THERE MAY BE  
SOMETHING THERE THAT  
WASN'T THERE BEFORE:  
PLESAs**



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## PLESAs



- Yeah, this ain't no fairy tale, guys ...
- No matter how paternalistic this employer is, no matter how kind they want to be to their employees ...
- We recommend that everyone hold off on PLESAs until there is guidance ... and perhaps even after that



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**TRY THE GRAY STUFF,  
IT'S DELICIOUS!  
OK PROVISIONS TO  
INSTITUTE**



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### Provisions That We Think Can Safely Be Instituted Without IRS/DOL Guidance

- Other distributions
  - Domestic violence
  - Disasters
  - Personal Emergency
  - Terminal Illness (but note, need a distributable event other than illness)
- \$7,000 cashout
- No TH for otherwise excludable employees



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### Provisions That We Think Can Safely Be Instituted Without IRS/DOL Guidance

- Hardship (and other distribution) self-certification
  - But weigh pros and cons and client attitudes towards potential fraud vs. ease of administration
  - If you are 3(16) and administer distributions, consider addendum for this to your service agreement
- No required RMD from Roth accounts
- Deferral incentives of less than [?]



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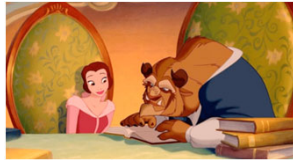
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## Provisions That We Think Can Safely Be Instituted Without IRS/DOL Guidance

- 403(b) hardship flexibility
- 457(b) deferral election timing
- Change from SIMPLE IRA TO 401(k) midyear/ permit rollovers from SIMPLE IRA
- Notice to unenrolled participants



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## 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.



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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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