

# SECURE Act 2.0

A deeper dive



## Presenter Information

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# What we'll cover

- Mandatory enrollment
- Roth provisions
- Catch-up contributions
- Long-term part-time employees
- SECURE 2.0 Amendments
- Retroactive adoption of plans
- Top heavy changes
- Hardship distributions
- Required minimum distributions
- Distributions to firefighters
- Unenrolled participants
- EPCRS changes
- Pooled employer plans



# Plan Amendments





# Legislation

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

# 2025 Amendment Deadline

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

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

# More On Amendments

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

# Elective deferral provisions

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





# Mandatory Automatic Enrollment

- New 401(k) and 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)

|                          |
|--------------------------|
| <b>Act Section</b>       |
| 101                      |
| <b>Code Section</b>      |
| 414A                     |
| <b>Qualified</b>         |
| 401(k)                   |
| <b>403(b)</b>            |
| Yes                      |
| <b>457(b)</b>            |
| No                       |
| <b>Eff. Date</b>         |
| Plan Years after<br>2024 |

# 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



# Mandatory Auto-Enrollment in MEPs/PEPs

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



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

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

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

# Catch-Ups Must Be Roth

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

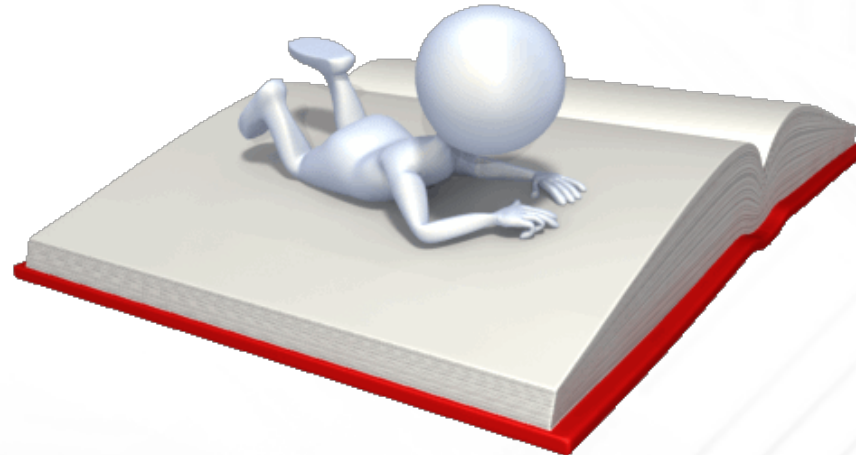
| Act Section             |
|-------------------------|
| 603                     |
| Code Section            |
| 414(v)                  |
| Qualified               |
| 401(k)                  |
| 403(b)                  |
| Yes                     |
| 457(b)                  |
| Govt              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



# Catch-Ups Must Be Roth

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

*That's pretty complex for a participant...*



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

# Roth Employer Contributions

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

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

# SEP and SIMPLE Roth IRAs

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



|                         |
|-------------------------|
| <b>Act Section</b>      |
| 601                     |
| <b>Code Section</b>     |
| 408                     |
| <b>Qualified</b>        |
| No                      |
| <b>403(b)</b>           |
| No                      |
| <b>457(b)</b>           |
| No                      |
| <b>Eff. Date</b>        |
| Tax years after<br>2022 |

# Retroactive Sole Proprietor Deferrals

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

| <b>Act Section</b>       |
|--------------------------|
| 317                      |
| <b>Code Section</b>      |
| 401(b)                   |
| <b>Qualified</b>         |
| 401(k)                   |
| <b>403(b)</b>            |
| No                       |
| <b>457(b)</b>            |
| No                       |
| <b>Eff. Date</b>         |
| Plan Years After<br>2022 |

# Retroactive Sole Proprietor Deferrals

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

|                          |
|--------------------------|
| <b>Act Section</b>       |
| 317                      |
| <b>Code Section</b>      |
| 401(b)                   |
| <b>Qualified</b>         |
| 401(k)                   |
| <b>403(b)</b>            |
| No                       |
| <b>457(b)</b>            |
| No                       |
| <b>Eff. Date</b>         |
| Plan Years After<br>2022 |



# Example

- Mary Smith's (sole proprietor) accountant contacts you on March 1, 2024 and shares with you that 2023 was a good year for Mary and she would like to reduce her tax liability by establishing a retirement plan
- *Can she establish a plan retroactively for 2023? Can the plan be a 401(k) plan? **Yes, Yes***
- *How much can she contribute? **\$66,000 + \$7,500 (catch-up)***
- *What if she had one employee? **She could establish the Profit Sharing plan retroactively but not the 401(k) portion of the plan***

# Retroactive Increase in Employer Contributions

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

|                          |
|--------------------------|
| <b>Act Section</b>       |
| 316                      |
| <b>Code Section</b>      |
| 401(b)                   |
| <b>Qualified</b>         |
| Yes                      |
| <b>403(b)</b>            |
| No                       |
| <b>457(b)</b>            |
| No                       |
| <b>Eff. Date</b>         |
| Plan years after<br>2023 |

# 401(k) Long-Term Part-Time (LTPT) Employee Provision

**SECURE Act 1.0**  
**SECURE Act 2.0**



# Long-Term Part-Time Employee Coverage Changes

- LTPT rules added to ERISA §202 and to Code §403(b)(12)(D)
- LTPT is EE who has 2 consecutive eligibility computation periods with 500 – 999 HOS and attained age 21
  - SECURE 1.0: 3 consecutive years
- Technical corrections:
  - Years before 2021 are disregarded for 401(k) vesting (applies immediately; 2023 for 403(b) vesting)
  - Safe harbor plan not TH just because LTPT don't get SH

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

# LTPT: 2024 vs. 2025

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



# 403(b): LTPT EE Rules

- **LTPT rules apply to 403(b) plans**
  - **Limited to 403(b) plans subject to ERISA**
    - **Doesn't apply to governmental or church 403(b) plans**
  - **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**
- **Why do you need LTPT EE rule when 403(b) plans apply universal availability?**
  - **Overrides 20-hour and student employee exemptions from universal availability**

# Eligibility Rules

- **Age requirement.** The LTPT employee also must satisfy the plan's age requirement to enter the plan
- **Entry dates.** In applying the new long-term part-time employee provision, the plan may apply plan entry date provisions – early of the first day of the plan year or 6 months following completion of the eligibility requirements (e.g., semi-annual entry dates)
- **Service periods.** In apply the service requirements, the plan determines the service periods (12-month periods) in the same manner as it determines years of service
  - Anniversaries of the employment commencement date or the plan may switch to the plan year
- **Crediting service.** A plan doesn't have to begin crediting eligible service until 2021
  - First entry would be in 2024

# Example

- **Company X maintains a calendar year 401(k) plan**
  - Eligibility: 1 YOS/age 21/semi-annual entry dates
  - Eligibility computation period: switches to plan year after first year
- **Mary is a part-time employee (50hrs/month)**
  - Commenced employment on December 1, 2023
  - She will complete 2 consecutive years under LTPT rule on December 31, 2024 and enter the plan on January 1, 2025
- **Assume the same facts except the plan measures computation periods on anniversaries of the employment commencement date**
  - Mary will complete 2 consecutive years on November 30, 2025 and enter the plan on January 1, 2026

# Employer Nonelective and Matching Contributions

- The new LTPT employee rule only requires the plan to make elective deferrals available to such employees
- The plan does not need to provide employer nonelective or matching contributions for the LTPT employees
  - However, an employer may provide employer contributions to LTPT employees

# Nondiscrimination Testing

- **Exclude LTPT employees.** In the case of employees who are eligible solely by reason of the new rule (500 HOS in three consecutive years), the employer may elect to exclude such employees from:
  - Coverage and nondiscrimination testing, including the ADP and ACP tests
  - If the employer elects to provide employer nonelective or matching contributions to LTPT employees, the employer may elect to exclude such employees from nondiscrimination and testing
- **Cross-testing plans.** An employer may find that providing nonelective contributions to LTPT employees and including them in the nondiscrimination testing may be beneficial
  - Employers have the option to include the LTPT employees





# Top Heavy

- Employees who are eligible to participate in the plan solely because of the new part-time provision are excluded from the vesting and benefit provisions of the top heavy rules
  - Such employees also are **not** included in determining whether the plan is top heavy
- **A Safe Harbor 401(k) plan that is designed to be top heavy exempt will not lose its top heavy exempt status because a LTPT employee doesn't receive Safe Harbor 401(k) nonelective or match**

# Vesting

- **Vesting YOS.** If the part-time employee receives an employer contribution, the plan will determine his/her vesting percentage, the plan will treat each 12-month period for which the employee has at least 500 hours of service as a year of service
- **BIS rules.** The plan will apply the break-in-service rules by substituting 'at least 500 hours of service' for 'more than 500 hours of service
- **Crediting vesting YOS.** **Years before 2021 are disregarded for 401(k) vesting (applies immediately). SECURE 2.0 Technical Correction to SECURE 1.0**
  - Unless an exception exists (e.g. disregarding of years of service prior to age 18), a LTPT employee will receive credit for all service from January 1, 2021 for purposes of vesting

# Employees Who Become Full-Time Employees

- The new LTPT employee provision will cease to apply (with the exception of the vesting provision) to any employee as of the first plan year beginning after the plan year in which the employee meets the plan's normal eligibility requirements

# Exclusions

- If the LTPT employee is part of a plan exclusion class (e.g., mailroom employees, division A employees, truck drivers), will the employee be excluded even if he/she satisfies the eligibility requirements?
  - **Questionable. We will need to see additional guidance from the IRS. An exclusion could be used to undermine the new provision.**
  - **Ex.: All the LTPT employees worked in the mailroom**
- If the plan excludes part-time employees, will a LTPT employee be excluded from participating?
  - **Probably not. The part-time employee exclusion is effectively a service requirement and not an exclusion. Accordingly, if an employee satisfied the conditions of the LTPT employee provision, the plan would need to allow them to participate in the 401(k) plan irrespective of the part-time employee exclusion.**

# Example

- Forbes Family Dentistry (FFD) maintains a 401(k) plan
  - Eligibility requirements: 1 YOS/Age 21
  - Semi-annual entry dates: 1/1 and 7/1
  - Matching and Profit Sharing contributions
  - Top heavy
- Ann, a dental assistant, has worked part-time (600-800 HOS/year) for FFD since 2018
  - Because of the plan's eligibility requirements she has never participated in the plan

## Example (cont.)

- *Will Ann be eligible under the new law? If so, when?*
- *Will Ann be eligible for the match? Profit sharing contribution?  
Top heavy minimum?*
- *Will Ann be included in the coverage test? ADP test? ACP test?  
Top heavy determination?*
- *If the plan excluded all dental assistants, would Ann be eligible to participate in the plan?*
- *If the plan excluded part-time employees, would Ann be eligible to participate in the plan?*



# Example

- Corporation X maintains a 401(k) plan with one YOS/age 21 eligibility conditions and semi-annual entry dates (1/1 and 7/1)
  - Plan provides for deferrals, matching contributions and profit sharing contributions
  - In addition to its 30 full-time employees, X employs 4 part-time employees who have been with the company for several years
- **How will the new LTPT employee rule affect their participation in the 401(k) plan?**

# Example

- Corporation X maintains a 401(k) plan with one YOS/age 21 eligibility conditions and semi-annual entry dates (1/1 and 7/1)
  - Plan provides for deferrals, matching contributions and profit sharing contributions
  - In addition to its 30 full-time employees, X employs 4 part-time employees who have been with the company for several years
- *How will the new LTPT employee rule affect their participation in the 401(k) plan?*

|             | <b>Ann</b> | <b>Ben</b> | <b>Cathy</b> | <b>Don</b> |
|-------------|------------|------------|--------------|------------|
| <b>2021</b> | 500        | 500        | 400          | 500        |
| <b>2022</b> | 500        | 1000       | 400          | 500        |
| <b>2023</b> | 500        | 500        | 400          | 400        |
| <b>2024</b> | 500        | 500        | 500          | 400        |
| <b>2025</b> | 500        | 500        | 500          | 500        |
| <b>2026</b> | 400        | 500        | 400          | 500        |

|      | Ann                      | Ben  | Cathy | Don |
|------|--------------------------|------|-------|-----|
| 2021 | 500 V E                  | 500  | 500   | 500 |
| 2022 | 500 V E                  | 1000 | 400   | 500 |
| 2023 | 500 V E                  | 500  | 500   | 400 |
| 2024 | 500 V P<br>(enters plan) | 500  | 500   | 400 |
| 2025 | 400 P                    | 500  | 500   | 500 |
| 2026 | 500 V P                  | 500  | 500   | 500 |

|      | Ann | Ben     | Cathy | Don |
|------|-----|---------|-------|-----|
| 2021 | 500 | 500 V E | 400   | 500 |
| 2022 | 500 | 1000    | 400   | 500 |
| 2023 | 500 | 500 V P | 400   | 400 |
| 2024 | 500 | 500 V P | 500   | 400 |
| 2025 | 500 | 500 V P | 500   | 500 |
| 2026 | 400 | 500 V P | 400   | 500 |

|      | Ann | Ben | Cathy                  | Don |
|------|-----|-----|------------------------|-----|
| 2021 | 500 | 500 | 500 V E                | 500 |
| 2022 | 500 | 400 | 400                    | 500 |
| 2023 | 500 | 500 | 400                    | 400 |
| 2024 | 500 | 500 | 500 V E                | 400 |
| 2025 | 500 | 500 | 500 V E                | 500 |
| 2026 | 400 | 500 | 400 P<br>(enters plan) | 500 |



|      | Ann | Ben | Cathy | Don                      |
|------|-----|-----|-------|--------------------------|
| 2021 | 500 | 500 | 500   | 500 V E                  |
| 2022 | 500 | 400 | 400   | 500 V E                  |
| 2023 | 500 | 500 | 400   | 400                      |
| 2024 | 500 | 500 | 500   | 400                      |
| 2025 | 500 | 500 | 500   | 500 V P<br>(enters plan) |
| 2026 | 400 | 500 | 400   | 500 V P                  |

# LTPT Questions and Issues

- Does the new LTPT employee provision apply to 457(b) plans?
  - No.
- Are LTPT employees part of Form 5500 participant account?
  - Should be.

# Top Heavy Changes

Secure Act 2.0 §310



# Top-Heavy and Otherwise Excludable Employee

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

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

# Example

- Law firm maintains a safe harbor 401k plan
  - One YOS/age 21 eligibility requirements
  - In addition to deferrals, the plan provides a basic SH match and PS contributions
  - For 2023, the law firm doesn't make a profit sharing contribution
  - The plan is top heavy exempt and the firm doesn't have to make an additional TH minimum contribution

# Example: Law Firm, Inc. (2023)

| Name  | Position       | Net Comp  | Deferral | Basic SH Match | TH Minimum | Fulltime? | 1 YOS? |
|-------|----------------|-----------|----------|----------------|------------|-----------|--------|
| Sam   | Shareholder    | \$330,000 | \$30,000 | \$13,200       | \$0        | Full      | Yes    |
| Sue   | Shareholder    | \$330,000 | \$22,500 | \$13,200       | \$0        | Full      | Yes    |
| Anne  | Associate      | \$84,000  | \$6,000  | \$3,360        | \$0        | Full      | Yes    |
| Maria | Office Manager | \$58,000  | \$2,000  | \$1,870        | \$0        | Full      | Yes    |
| Tony  | Secretary      | \$39,000  | \$1,000  | \$1,000        | \$0        | Full      | Yes    |
| Frank | Filing Clerk   | \$24,000  | \$0      | \$0            | \$0        | Full      | Yes    |
| Tina  | Secretary      | \$30,000  | \$0      | \$0            | \$0        | Full      | No     |
| Carl  | Law Clerk      | \$13,500  | \$0      | \$0            | \$0        | 800 HOS   | No     |

- Eligibility: 1 YOS/age 21 (so Tina and Carl don't participate)
- Safe harbor 401(k) plan is top heavy exempt
- The firm doesn't need to make a TH minimum contribution for Tony and Frank



# Example

- Assume the same facts as in the previous example, except the law firm amends the plan to provide immediate eligibility for deferrals (one YOS/age 21 continues to apply for the SH match) and excludes part-time employees
  - For 2023, X applies the OEE rule for coverage and nondiscrimination
  - Under the OEE rule, the upper group plan is SH and doesn't need to apply the ADP or ACP tests
  - Since the OEE doesn't apply for TH purposes, X will have to make TH minimum contributions for all eligible EEs, including those EEs with less than a year of service (Tony, Frank and Tina)

# Example: Law Firm, Inc. (2023)

| Name  | Position       | Net Comp  | Deferral | Basic SH Match | TH Minimum | Fulltime? | 1 YOS? |
|-------|----------------|-----------|----------|----------------|------------|-----------|--------|
| Sam   | Shareholder    | \$330,000 | \$30,000 | \$13,200       | \$0        | Full      | Yes    |
| Sue   | Shareholder    | \$330,000 | \$22,500 | \$13,200       | \$0        | Full      | Yes    |
| Anne  | Associate      | \$84,000  | \$6,000  | \$3,360        | \$0        | Full      | Yes    |
| Maria | Office Manager | \$58,000  | \$2,000  | \$1,870        | \$0        | Full      | Yes    |
| Tony  | Secretary      | \$39,000  | \$1,000  | \$1,000        | \$200      | Full      | Yes    |
| Frank | Filing Clerk   | \$24,000  | \$0      | \$0            | \$720      | Full      | Yes    |
| Tina  | Secretary      | \$29,500  | \$500    | \$0            | \$900      | Full      | No     |
| Carl  | Law Clerk      | \$13,500  | \$0      | \$0            | \$0        | 800 HOS   | No     |

- Safe harbor 401(k) plan is NOT top heavy exempt
- Tony, Frank and Tina must receive the TH minimum

# Example

- Assume the same facts as in the previous example, except the plan year is 2024
  - For 2024, X applies the OEE rule for coverage and nondiscrimination
  - Under the OEE rule, the upper group plan is SH and doesn't need to apply the ADP or ACP tests
  - Commencing in 2024, Section 310 provides that the firm will not need to make a TH minimum contribution to the OEEs (Tina)
  - Unfortunately, Section 310 doesn't address the top heavy exemption for the "upper" group
    - Accordingly, the firm will need to make a TH minimum contribution for the upper group employees

# Example: Law Firm, Inc. (2024)

| Name  | Position       | Net Comp  | Deferral | Basic SH Match | TH Minimum | Fulltime? | 1 YOS? |
|-------|----------------|-----------|----------|----------------|------------|-----------|--------|
| Sam   | Shareholder    | \$330,000 | \$30,000 | \$13,200       | \$0        | Full      | Yes    |
| Sue   | Shareholder    | \$330,000 | \$22,500 | \$13,200       | \$0        | Full      | Yes    |
| Anne  | Associate      | \$84,000  | \$6,000  | \$3,360        | \$0        | Full      | Yes    |
| Maria | Office Manager | \$58,000  | \$2,000  | \$1,870        | \$0        | Full      | Yes    |
| Tony  | Secretary      | \$39,000  | \$1,000  | \$1,000        | \$200      | Full      | Yes    |
| Frank | Filing Clerk   | \$24,000  | \$0      | \$0            | \$720      | Full      | Yes    |
| Tina  | Secretary      | \$29,500  | \$500    | \$0            | \$0        | Full      | No     |
| Carl  | Law Clerk      | \$13,500  | \$0      | \$0            | \$0        | 800 HOS   | No     |

- Eligibility: Immediate eligibility for deferrals (Tina can defer) but excludes part-time EEs (Carl can't participate); 1 YOS/age 21 for SH match (so Tina and Carl don't participate)
- SECURE §310 states that the plan doesn't need to give TH minimum to OEE (Tina), however, it doesn't preserve TH exemption (Tony and Frank)

# Distributions





# Employer Can Rely on Employee Certification for Hardships

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

| <b>Act Section</b>       |
|--------------------------|
| 312                      |
| <b>Code Section</b>      |
| 401(k)(14)               |
| <b>Qualified</b>         |
| 401(k)                   |
| <b>403(b)</b>            |
| Yes                      |
| <b>457(b)</b>            |
| Yes                      |
| <b>Eff. Date</b>         |
| Plan Years after<br>2022 |



# Hardship Distributions from 403(b) Plans

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



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

# Increase Cash-Out Limit

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

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

# Distributions for Emergency Personal Expenses

- Effective for distributions beginning in 2024, SECURE 2.0 permits a participant to receive a distribution of up to \$1,000 for the purpose of meeting unforeseen or immediate financial needs relating to necessary personal or family emergency expenses
- Participants would be limited to one emergency distribution each calendar year
- The plan administrator is permitted to rely on the employee's self-certification that he or she is eligible for the emergency distribution
- This is an optional plan feature that may be added to the plan
- Subject to 411(d)(6) cutback prohibition unless IRS regulations provide an exception

# Distributions for Emergency Personal Expenses

- The amount distributed is taxable but exempt from 20% withholding and the additional income tax under IRC §72(t)
- Emergency distributions may be repaid within 3 years of the distribution date
- Emergency distributions are not permitted for 3 years after the original distribution unless the distribution has been fully repaid (or the aggregate amount of elective deferrals and after-tax voluntary contributions made after the distribution are at least equal to the amount of the prior distribution).

# Exemptions from Early Distribution Penalty Tax for Public Safety Officers

- 10% early distribution penalty doesn't apply to distributions after separation from service after attaining 55
- For qualified public safety employees, age 55 is changed to age 50
  - Expanded to include private sector firefighters
  - Expanded to corrections officers and forensic security employee
- Changed to earlier of age 50 or 25 YOS under the plan
- Plans from which such distributions can be made is expanded to include defined contribution plans, 403(a) annuities and 403(b) plans

| Act Section   |
|---------------|
| 308, 329, 330 |
| Code Section  |
| 72(t)         |
| Qualified     |
| Yes           |
| 403(b)        |
| Yes           |
| 457(b)        |
| Govt          |
| Eff. Date     |
| Enactment     |

# Required Minimum Distributions (RMDs)



# Increased RBD

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

| Year |    |
|------|----|
| 2020 | 72 |
| 2023 | 73 |
| 2033 | 75 |

| Date of birth     | Required beginning date |
|-------------------|-------------------------|
| Before 7/1/49     | Based on 70 ½           |
| 7/1/49 - 12/31/50 | Based on 72             |
| 1/1/51 - 12/31/59 | Based on 73             |
| After 12/31/58    | Based on 75             |



# 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
- Correction window ends
  - Two years after year RMD should have been taken
  - Unless IRS assesses/issues deficiency notice sooner

|                       |
|-----------------------|
| <b>Act Section</b>    |
| 302                   |
| <b>Code Section</b>   |
| 401(a)(9)             |
| <b>Qualified</b>      |
| Yes                   |
| <b>403(b)</b>         |
| Yes                   |
| <b>457(b)</b>         |
| Yes                   |
| <b>Eff. Date</b>      |
| Plan years after 2022 |

# Correction

- In a defined contribution plan, the correction is simply to distribute a make-up distribution of the RMD (with earnings from the date of the failure)
  - The make-up distribution is calculated by dividing the adjusted account balance on the applicable valuation date by the applicable distribution period
  - For this purpose, the adjusted account balance means the actual account balance reduced by the amount of the total missed RMDs for prior years
- In a defined benefit plan, the permitted correction method is to distribute the RMD plus interest based on the plan's actuarial equivalence factors

# Correction option #1: Self-Correction

- Make-up missed RMDs (plus earnings)
  - The failure is operational so SCP should be available
- Rely on regulatory waiver of excise tax for “reasonable cause”
  - Recommendation: write-up reasonable cause statement and place in the file
- If the IRS doesn’t audit the plan, then no disqualification or excise tax issues
- If the IRS audits the plan, inform them that failure was self-corrected and that excise tax should be waived because of reasonable cause
- **With the new reduced excise tax, is the reasonable cause waiver of the excise tax still available?**

## Correction Option #2: Form 5329 Waiver

- Self-correct the qualification failure by making-up missed RMDs
- Request waiver of excise tax on Form 5329
- The instructions to the form permit the participant to calculate the penalty and enter “RC” and the amount you want waived in parentheses on the dotted line of line 54
- The participant also would attach a statement to the form requesting the waiver and explaining the reasonable error
- *Note: Although the Form 5329 provides a reasonable method for requesting a waiver of the excise tax, many participants are reticent to report their error to the IRS.*

# Surviving Spouse RMDs

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

|                       |
|-----------------------|
| <b>Act Section</b>    |
| 327                   |
| <b>Code Section</b>   |
| 401(a)(9)             |
| <b>Qualified</b>      |
| Yes                   |
| <b>403(b)</b>         |
| Yes                   |
| <b>457(b)</b>         |
| Yes                   |
| <b>Eff. Date</b>      |
| Plan years after 2023 |

# No Lifetime RMDs From Roth Plans

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

| Act Section        |
|--------------------|
| 325                |
| Code Section       |
| 402A               |
| Qualified          |
| DC                 |
| 403(b)             |
| Yes                |
| 457(b)             |
| Govt               |
| Eff. Date          |
| DCYs after<br>2023 |

# Statute of Limitation Penalties for RMDs and Excess Contributions

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

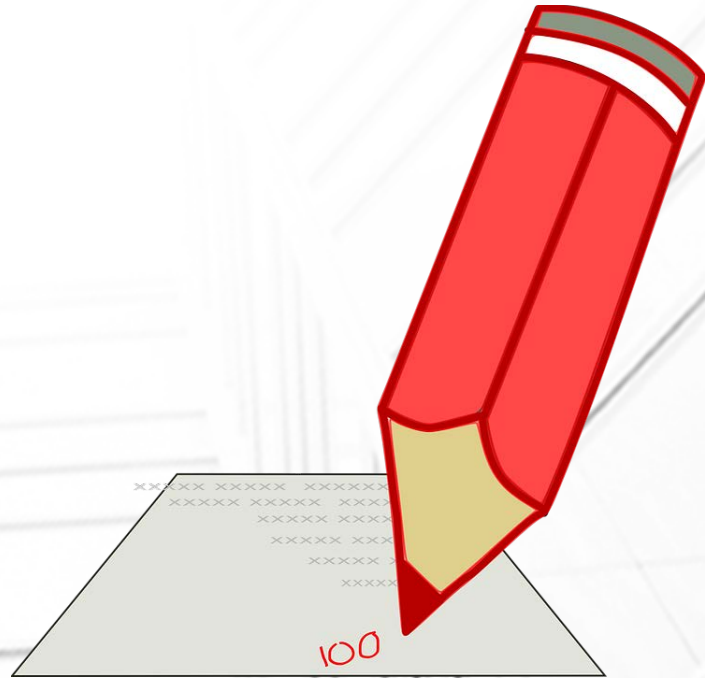
| Act Section  |
|--------------|
| 313          |
| Code Section |
| 6501         |
| Qualified    |
| Yes          |
| 403(b)       |
| Yes          |
| 457(b)       |
| Yes          |
| Eff. Date    |
| Enactment    |



# Other RMD Changes

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

# EPCRS Changes



# Unlimited Self-Correction

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

|                     |
|---------------------|
| <b>Act Section</b>  |
| 305                 |
| <b>Code Section</b> |
| EPCRS               |
| <b>Qualified</b>    |
| Yes                 |
| <b>403(b)</b>       |
| Yes                 |
| <b>457(b)</b>       |
| No                  |
| <b>Eff. Date</b>    |
| ????                |

# Eligible Inadvertent Failures

- Eligible inadvertent failures includes:
  - Plan document failures
    - Restatement
    - Interim and discretionary amendments
  - Demographic failures (coverage, nondiscrimination, minimum participation)
  - Employer or related employer failing to adopt plan
  - Scrivener's error?

# Unlimited Self-Correction - Loans

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

# Unlimited Self-Correction – Methods, Failures

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

# Insignificant Error

- Under the current EPCRS procedure (Rev. Proc. 2021-30), an employer can correct an insignificant error at any time, including if the error is caught in an IRS audit
  - Under the SECURE Act 2.0 changes, will the ability to correct an insignificant error at any time still be available? ***Not clear. However, IRS has stated that they are planning on liberalizing self-correction and they will not be taking options away.***



# Unlimited Self-Correction – Guidance

- Correction must be in conformity with correction principles in Code, regulations, EPCRS, and other guidance
- IRS to update EPCRS within 2 years
- No effective date specified!
  - Is it immediately effective?
  - Do we have to wait for the updated EPCRS?
  - **IRS verbal statements indicate that we can use expanded self-correction now**

# Correction of Inadvertent Benefit Overpayments

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

|                     |
|---------------------|
| <b>Act Section</b>  |
| 301                 |
| <b>Code Section</b> |
| 414(a)(aa)          |
| <b>Qualified</b>    |
| Yes                 |
| <b>403(b)</b>       |
| Yes                 |
| <b>457(b)</b>       |
| No                  |
| <b>Eff. Date</b>    |
| Enactment           |

# Inadvertent Overpayments

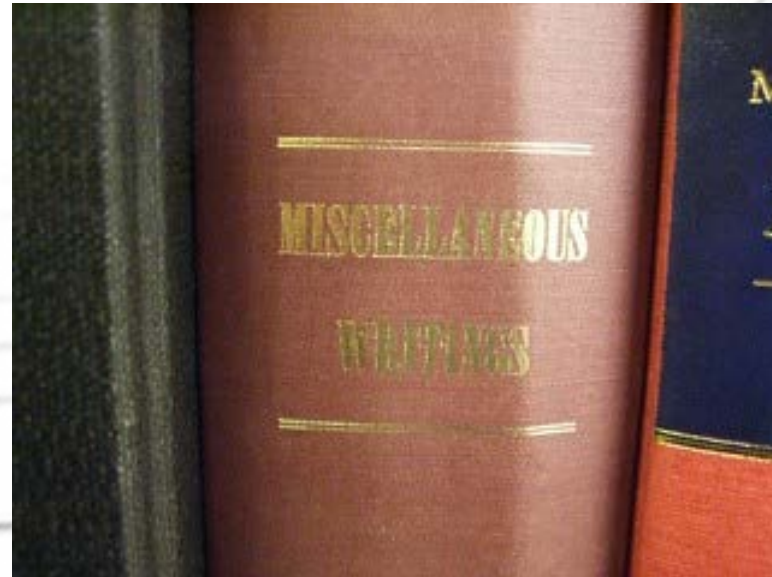
- If overpayment has been rolled over:
  - The rollover is ok if plan does not seek to recoup
  - If plan does seek to recoup, can roll the money back without tax
- Can continue prior installment payments or benefit reduction
- Many details in new ERISA §206(h) to protect innocent recipient
  - If fiduciary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

# Safe Harbor Correction – auto enrollment

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

|                        |
|------------------------|
| <b>Act Section</b>     |
| 350                    |
| <b>Code Section</b>    |
| 414(cc)                |
| <b>Qualified</b>       |
| Yes                    |
| <b>403(b)</b>          |
| Yes                    |
| <b>457(b)</b>          |
| Yes                    |
| <b>Eff. Date</b>       |
| Failures after<br>2023 |

# Miscellaneous Provisions



# Notices to unenrolled participants

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

|                          |
|--------------------------|
| <b>Act Section</b>       |
| 320                      |
| <b>Code Section</b>      |
| 414(bb)<br>ERISA 111     |
| <b>Qualified</b>         |
| DC                       |
| <b>403(b)</b>            |
| Yes                      |
| <b>457(b)</b>            |
| No                       |
| <b>Eff. Date</b>         |
| Plan years after<br>2022 |

# Participant Notices

- Beginning in 2026, SECURE 2.0 will require that at least once each calendar year, one of the quarterly benefit statements must be delivered on paper
- Participants can elect out of annual paper statement
- Paper disclosure requirement is once every three years for DB plans
- Does not apply to plans using “wired at work” e-delivery safe harbor in ERISA Reg. § 2520.104b-1(c).



# Participant Notices

- SECURE 2.0 permits suspension of retirement plan notices and disclosures to a participant who is not participating in the plan and does not have an account balance
- All notices and disclosures required to be furnished in conjunction with the employee's initial eligibility to participate must still be given
- The **unenrolled participant** must receive an annual notice reminding the participant of his or her eligibility and the key features and benefits of the plan
- The relief is available under both Title I of ERISA as well as the Internal Revenue Code
- May be more trouble than it's worth to have a special notice procedure for these individuals
- Effective for plan years beginning after December 31, 2022

# 403(b) MEPS/PEPs Allowed

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

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

# Elimination of PEP Corporate Trustee Requirement

- Under the original SECURE Act, pooled employer plans (PEPs) must have a corporate trustee who is responsible for collecting contributions and holding the assets of the plan
- SECURE 2.0 substantially modifies this provision by eliminating the corporate trustee requirement and permitting any named fiduciary (other than an employer in the plan) to be responsible for collecting contributions to the plan
  - ERISA 3(16) Fiduciary?
- This is effective for plan years beginning after December 31, 2022

# Group of Plans

- **Group of Plans Annual Audit – SECURE 1.0** authorized a single consolidated Form 5500 for a group of defined contribution plans if they meet certain requirements
- **SECURE 2.0** provides that only plans sponsored by large employers (100 or more participants) participating in the group arrangement are required to have a plan level audit to accompany the consolidated Form 5500 filing

# 403(b) Investments

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



|                     |
|---------------------|
| <b>Act Section</b>  |
| 128                 |
| <b>Code Section</b> |
| 403(b)(15)          |
| <b>Qualified</b>    |
| No                  |
| <b>403(b)</b>       |
| Yes                 |
| <b>457(b)</b>       |
| No                  |
| <b>Eff. Date</b>    |
| Enactment           |

# What's in effect now (2023 plan year)?

- Rely on employee hardship certification
- Sole proprietor deferrals for retro adopted plan
- Roth employer contributions
- SEP and SIMPLE Roth IRAs
- Small deferral incentives
- QACA NEC Notice for ACP SH
- 403(b) MEPs and PEPs
- 457(b) deferral elections

# What's in effect in 2024 (\*Mandatory)

- Match student loan repayments
- LTPT vesting changes\*
- Starter 401(k)/Safe harbor 403(b)
- Midyear conversion from SIMPLE to SH 401(k)
- Expanded 403(b) hardship sources
- Emergency savings accounts
- Catch-ups must be Roth\*
- 10% higher SIMPLE deferral
- Roll from 529 savings to Roth IRA



# What comes after 2024? (\* mandatory)

- 2025
  - Mandatory automatic enrollment\*
  - 2 years for LTPT/ 403(b) LTPT\*
  - Larger catch-ups at 60, 61, 62, 63
  - Plan document deadline (2027 for govt/union)\*
- 2027
  - Saver's match

**THANK YOU**

The text "THANK YOU" is written in a bold, dark blue, sans-serif font. Below the text is a thick, light blue wave graphic that starts under the 'T', goes down, then up and over the 'A', 'N', 'K', and 'Y', and finally curls under the 'O'.