



# SECURE 2.0 – The latest updates

## What we wish we knew

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# CARRYOVER QUESTIONS

# 1099-R processing for unnecessary RMD



- ▶ Plan distributed \$10,000 to Jane
  - ▶ Thought it was RMD but it turned out it wasn't because of SECURE 2
- ▶ Plan issues Jane 1099-R
  - ▶ \$10,000 total distribution
  - ▶ \$10,000 taxable distribution
  - ▶ \$1,000 withholding
- ▶ If Jane rolls it back to the plan, it doesn't change the 1099-R
  - ▶ Jane can claim the withholding on her return
- ▶ Can't Jane just give it back and cancel the 1099-R
  - ▶ Not if she had a distributable event under the plan

# Question about RMD



- ▶ IRA account owner passes away in 2009, prior to RBD
- ▶ Non-spousal bene takes life expectancy payments in subsequent years
- ▶ 2022 the bene passes away
- ▶ The successor beneficiary is ODB
  - ▶ Note, classification of successor beneficiary is irrelevant
- ▶
- ▶ They must continue taking life expectancy payments and take full distribution by 12/31/2032, correct?
  - ▶ YES
  - ▶ But the IRS has said no penalty if RMD not taken in 2023

# Getting in the cycle



- ▶ In light of the potential of more extensions to the effective date of provisions into or near when Cycle 4 starts, is there a likelihood that the IRS will extend the SECURE deadlines to synch up with Cycle 4?
- ▶ Guess:
  - ▶ Cycle 4 cumulative list will be issued this year
  - ▶ Few, if any, SECURE 2 provisions will appear
  - ▶ Don't expect SECURE 2 until DC Cycle 5
  - ▶ Interim amendments until then
  - ▶ Don't expect a delay

# SECURE 2 CHANGES

# 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
311	QBAD recontribution deadline 3 years after distribution	Yes	Yes	Gov't
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

# 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
106	403(b) MEPs and PEPs	No	Yes	No
306	457(b) deferral elections can be effective immediately	No	No	Gov't
320	Elimination of most notices to unenrolled participants	DC	Yes	No
102	Increased plan startup credit	Yes/DC	No	No
112	Military spouse credit	Yes	No	No



# 2023 Optional Changes (Other Than Distributions)



Act §	Provision	Qual	403(b)	457(b)
301	EPCRS overpayment	Yes	Yes	No
305	EPCRS self-correction	Yes	Yes	No
350	EPCRS automatic enrollment 0% correction made permanent	Yes	Yes	Yes
601	SEP and SIMPLE Roth IRAs	No	No	No
118	SEPs for household employees	No	No	No
119	Compensation limit for DB rural electric cooperative plans	DB	No	No



# 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
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	Yes

# 2023 Optional Changes – Distributions (cont.)



Act §	Provision	Qual	403(b)	457(b)
333	IRA corrective distributions exempt from penalty tax	No	No	No
201	Expands commercial annuity provisions for DC plan that can satisfy RMD rule (e.g., return of premium death benefit)	Yes	Yes	Yes
202	Increases premium limit for qualified longevity annuity contracts (QLACs)	Yes	Yes	Yes
204	Facilitates partial annuitization of account	Yes	Yes	Yes



# 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) <b>DELAYED</b>	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

# 2024 Optional Changes (Other Than Distributions)



Act §	Provision	Qual	403(b)	457(b)
110	Match student loan repayments	401(k)	Yes	Gov't
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

# 2024 Optional Changes (Other Than Distributions)



Act §	Provision	Qual	403(b)	457(b)
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



# 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

# LONG-TERM PART- TIME EMPLOYEES



# Long-Term Part-Time Employees



- ▶ The SECURE Act established the LTPT rules
  - ▶ Defined LTPT as an EE who has 3 consecutive eligibility computation periods with 500 to 999 HOS and attained age 21
  - ▶ Can disregard service < 2021 for eligibility purposes (but not for vesting)
  - ▶ Only applicable to 401(k) plans

# Long-Term Part-Time Employees



- ▶ The SECURE 2.0 Act modified the LTPT rules
  - ▶ Defines LTPT as an EE who has 2 consecutive eligibility computation periods with 500 to 999 HOS and attained age 21, effective January 1, 2025
  - ▶ Disregards < 2021 service for vesting purposes
  - ▶ Expands to 403(b) plans subject to ERISA (can disregard service < 2023 for all purposes)
  - ▶ Clarifies SH plan not TH just because LTPT don't get SH

# LTPT: What We Know, What We Don't



## ▶ Vesting Service

- ▶ Notice 2020-68 reiterated that the SECURE Act < 2021 service exclusion is only available for eligibility, not for vesting purposes
- ▶ Thanks to SECURE 2.0, we know < 2021 service doesn't count for LTPT vesting
  - ▶ Notice 2020-68 differentiation now moot

# LTPT: What We Know, What We Don't



## ▶ Class exclusions

### ▶ Can a plan apply otherwise permitted class exclusions to LTPT employees?

- ▶ Such as excluding clerical staff, the employees in the Miami office, the employees in Division B, or even all employees of related-employer XYZ, Inc.

### ▶ We don't know for certain

- ▶ **One guess:** ultimate guidance will likely permit class exclusions, provided the plan passes coverage testing
- ▶ But cannot use a service-based classification (part-time, temporary, seasonal, etc.)

# LTPT: What We Know, What We Don't

## ▶ Class exclusions (cont.)

- ▶ Can 403(b) plans exclude student-EEs and those expected to work < 20 hrs/wk?
- ▶ We don't know for certain
  - ▶ Common reading of the legislative language suggests such EEs are subject to the LTPT requirements, but perspectives differ...



# Immediate Eligibility, Top-Heavy, and LTPT



- ▶ Current IRS guidance: to take advantage of the top-heavy exception for SH 401(k) plans, all participants must receive the SH contribution
- ▶ Per SECURE 2.0: a SH 401(k) plan will not fail to qualify for the top-heavy exception solely because LTPT participants do not receive SH contributions

# Immediate Eligibility, Top-Heavy, and LTPT



▶ So, here's an idea:

▶ Have immediate eligibility for deferrals

▶ Avoids need to administer LTPT rules separately, keep separate hours, etc.

▶ Have SH plan for non-LTPTs

▶ Since LTPTs are excluded from TH, no problem?

▶ Yes, problem: What if you have a SH match and a non-LTPT person doesn't defer?

# PENSION LINKED EMERGENCY SAVINGS ACCOUNTS (PLESAs)



# PLESAs: In-Plan Emergency Savings



- ▶ Pension-linked emergency savings account rules:
  - ▶ NHCEs can contribute up to \$2,500 to the account
    - ▶ Plan may set lower limit
  - ▶ Treated as Roth contribution
  - ▶ Treated as salary deferral for purposes of limits/match
    - ▶ Plan must match PLESA contribution at same rate as deferrals
  - ▶ Account must be invested for capital preservation
  - ▶ Must allow at least 1 distribution per calendar month
    - ▶ No fee for 4 per plan year
    - ▶ Reasonable fees for additional withdrawals



## PLESAs: In-Plan Emergency Savings (cont.)



- ▶ Pension-linked emergency savings account rules:
  - ▶ May use auto-enrollment
  - ▶ Plan must give notice 30-90 days before first PLESA deferral



# Questions About PLESAs



- ▶ Why would any plan sponsor permit this?
- ▶ Will a failure to deposit a PLESA deferral be treated like an elective deferral failure?
  - ▶ Normal EPCRS correction?
  - ▶ Will a QNEC/missed match be required?
  - ▶ Form 5330/excise tax apply?
  - ▶ Earnings: how to calculate for a maximum \$2,500 deposit invested in money market or stable value fund?

## Questions About PLESAs (cont.)



- ▶ What are the consequences of a missed PLESA notice?
- ▶ May a plan charge fees only to participants who have PLESA account balances?
- ▶ If PLESA contribution exceeds \$2,500:
  - ▶ Can the participant request a refund, rather than converting the excess PLESA to a regular Roth deferral?
- ▶ May plans impose an annual \$2,500 contribution limit so that a participant who takes a complete distribution of the PLESA account cannot make another contribution until the following year?

## Questions About PLESAs (cont.)



### ▶ Ins and Outs ...

#### ▶ Concerns re participants contributing, distributing, and recontributing amounts to maximize match

- ▶ May a plan limit ins-and-outs or limit match to the net increase in principal for the year?
- ▶ Any other way to limit “abuse”?

### ▶ Can plans provide participants debit card access to PLESAs (e.g., to allow participants to link their Amazon Prime account directly to their 401(k) PLESA)

# STUDENT LOAN MATCH

# Student Loan Matching Contribution



- ▶ Permits employers to make matching contributions with respect to qualified student loan payments
  - ▶ Defined: repayment of debt incurred to pay educational and related expenses associated with a college or post-graduate education studied on a full-time basis
  - ▶ Does not treat the student loan repayment as an elective contribution for other purposes
  - ▶ Available to 401(k), 403(b), governmental 457(b), and SIMPLE IRA plans

# Student Loan Matching Contribution



- ▶ Cannot consider student loan repayments in excess of the 402(g) limit, less the amount of any elective deferrals made by the participant
- ▶ Participant must certify to the employer annually that the payment was made on behalf of a qualified student loan
  - ▶ Employer may rely on the certification





# More About the Match



- ▶ The provision is optional, but if included, plan must:
  - ▶ Make the feature available only to participants otherwise eligible to receive matching contributions on deferrals
  - ▶ Make available to all participants eligible to receive matching contributions on deferrals
  - ▶ Match student loan repayments at the same rate as match on deferrals
  - ▶ Vest student loan matching contributions in the same manner as vesting on an elective deferral match

# More About the Match



- ▶ ADP testing can be performed separately for employees who receive student loan match and those who do not
  - ▶ ACP test is performed as normal (include everyone)
  - ▶ Question: the law requires that we offer this feature to “all employees eligible to receive” a match, but can we exclude HCEs to avoid nondiscrimination testing issues?

# Awaiting Promised Guidance

- ▶ IRS directed to publish regulations that:
  - ▶ Create reasonable procedures for participants to claim student loan matching contributions
    - ▶ The annual deadline may not be earlier than three months after the close of the PYE (note: the ACP correction deadline to avoid excise taxes is still 2½ months after PYE)
  - ▶ Permit employers to make matching contributions on student loans at a different frequency than matching contributions on elective deferrals
  - ▶ Provide model plan amendments
- ▶ Much more guidance is needed...



# More Unanswered Student Loan Match Questions



- ▶ Claiming student loan matching contributions:
  - ▶ Does the “deadline not earlier than 3 months after the PYE” requirement for claiming a student loan match mean that plans cannot not know their prior year match liability until at least 3 months after the PYE?
    - ▶ As noted earlier, cannot perform ACP test in time to correct any failure within the period to avoid excise tax
      - ▶ Will clients want to do ADP test and correction by 3/15 anyway to save excise tax on at least that part of the testing?
    - ▶ May need to extend tax return to properly claim deductions

# ROTH EMPLOYER CONTRIBUTIONS

# Roth Employer Contributions



- ▶ Plans may permit participants to elect Roth treatment for NECs and/or matching contributions
  - ▶ Participant must elect the Roth treatment “at such time and in such manner as the Secretary may prescribe”
  - ▶ Legislation includes some interesting language:
    - ▶ “any designated Roth contribution ... which is a nonelective contribution shall be nonforfeitable and shall not be excludable from gross income” (IRC §402A(c)(1)(B))
- ▶ Contributions must be 100% vested when contributed
- ▶ Available for contributions after 12/29/2022 (already effective)

# Roth Employer Contribution Questions



- ▶ Can the participant elect to convert the vested portion of the contribution to Roth or does entire contribution need to be fully vested?
  - ▶ Example: John gets a contribution of \$10,000 and is 50% vested. Can he elect to have \$5,000 contributed as Roth?
- ▶ What is the participant's deadline to make the Roth election? Prior to accrual? Prior to PYE? Prior to allocation?
  - ▶ If prior to PYE or accrual, participants might miss the opportunity if the employer didn't make a discretionary contribution in prior years
  - ▶ If prior to allocation, could cause income tax filing issues
    - ▶ Example: Employer has discretion to make a NEC, but has traditionally elected not to make a contribution. On October 15, 2024, the employer decides to make a 15% of comp NEC for 2023

# Roth Employer Contribution Questions



- ▶ How is the Roth employer contribution reported to the IRS (W-2 or 1099-R)?
- ▶ What taxes must be withheld from the Roth employer contribution?
  - ▶ If so, from what source?
  - ▶ Is it treated like wages or like a conversion/distribution?
    - ▶ If wages, what about FICA taxes?
  - ▶ Example: Fully-vested participant earning \$200,000 in 2023 elects to have \$50,000 NEC treated as a Roth contribution. NEC is declared on 10/7/2024. 20% withholding = \$10,000
    - ▶ Does the plan deduct the \$10,000 from the participant's next paychecks?
    - ▶ What if the participant terminated (after the PYE)?
    - ▶ What if the participant wants to pay taxes from the contribution? Or their account balance?
    - ▶ Again, what about FICA?



# Approach for 401(k) and 403(b) Plans Until We Have Guidance



- ▶ Add in-plan Roth rollover feature
  - ▶ We know exactly how that operates and how to report the income
  - ▶ Does not require revision to payroll systems
  - ▶ Won't work for a plan that does not allow elective deferrals
  - ▶ Negative: causes employee to make election at end of year or repeatedly during the year, unless the law and the plan will permit “standing order” for rollover

WHAT DO WE DO  
IF WE ONLY HAVE  
INSUFFICIENT  
GUIDANCE AS OF  
1/1/24?

# Thank you!



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