

# Lightening Round – Parts I and II

answers to your retirement plan questions



# Presenter Information

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# Long-Term Part-Time (LTPT) Questions



# LTPT Eligibility

- I have a question concerning Long Term Part Time Employees, when the Plan has an age requirement that is less than age 21.
- For example, if a plan's eligibility requirements are the attainment of age 18 and 1 year of service with 1,000 hours.
  1. Would the employee who is age 18 and is credited with 500 hours in 2023 and 2024, under Secure 2.0, enter the Plan on 1/1/2025?
  2. Or, having met the hour requirement in 2023 and 2024, would they enter the Plan once they attained age 21?
- One webinar said that they are not an LTPT employee if they enter the Plan prior to age 21.
  3. If they are not considered an LTPT employee, because they entered the Plan prior to age 21, do you include them in discrimination testing because they do not meet the LTPT discrimination testing exemption?
  4. Also, would their vesting be based on 500 or 1,000 hours?

# Answers

1. **No. The LTPT rules require the employee to attain age 21 by end of the year in which he/she satisfies the LTPT service requirement.**
2. **An employee would enter the plan as a LTPT employee if the employee was age 21 or older by the end of the period in which the employee satisfies the LTPT service requirement.**
3. **If the employee satisfies the normal eligibility requirement, the employee would be subject to the plan's coverage and nondiscrimination requirements.**
4. **If the employee satisfied the plan's normal requirements before he/she satisfies the LTPT rules, the plan would be subject to the 1,000 vesting rules.**

# Age 21 Requirement

- The LTPT rules require an EE to attain age 21 before the end of the last year of the eligibility requirements (second or third year)
  - The age 21 requirement presents an administrative challenge if the EE fails to complete 500 HOS in the year in which he/she attains age 21
- The age 21 requirement will be difficult for an employer with younger EEs



# Exclusions

- I am of the understanding that the LTPT rules only go forward but not backward. If a plan excludes a PRN job type (which is typically part-time) and a participant starts as a full time employee and meets the plan's regular eligibility, enters but later changes to excluded PRN, they would be excluded from participation. However, if a participant starts as an excluded PRN but meets two years of 500 hours they would fall into the LTPT rules and participate.
  1. In those instances, is it correct that the same job class of PRN could have some participants participating and some excluded based on when they moved to that class?
  2. Has there been any further guidance on what job classes could truly be excluded?

# Answers

1. If a PRN satisfies the plan's normal eligibility rules, the employee will never be a LTPT employee, even if the employee changes to part-time.
2. No. A plan can include an exclusion class in it's plan and it will apply to LTPT employees unless the exclusion class is a proxy for a service requirement.



# LTPT – Counting HOS

- What are acceptable methods for counting hours of service to determine if an employee satisfies the long-term part-time employee requirements?
- **Actual or any of the Equivalencies.**

# Coverage and Nondiscrimination

- How does a 401(k) plan with LTPT EEs apply ADP, ACP, ADP safe harbor, ACP safe harbor, nondiscrimination requirements, and coverage requirements?
- **A plan may elect to exclude LTPT employees from all of the coverage, nondiscrimination (including the ADP and ACP safe harbor), and the top heavy requirements. The safe harbors and the top heavy exclusions must be in the plan document.**

# Elapsed Time

- May a plan using elapsed time avoid applying the LTPT rules?
- **No. The plan may use elapsed time, but the plan must also apply the LTPT rules on the basis of hours of service.**

# LTPT – nonresident aliens

- NRA (nonresidential aliens) – statutory exclusion – do we have to worry about LTPT situation pertaining to NRA?
- **No.**

# Form 5500

# Nondiscrimination Testing

- Question 14b on the 5500-SF asks “If this is a Code section 401(k) plan, check all boxes that apply to indicate how the plan is intended to satisfy the nondiscrimination requirements for employee deferrals and employer matching contributions (as applicable) under Code sections 401(k)(3) and 401(m)(2).” And gives us the following options:
    - Design-based safe harbor method
    - “Prior year” ADP test
    - “Current year” ADP test
    - N/A
1. What would you select if the plan terminated 12/31/2023 while filling out the 2024 final 5500? **N/A**
  2. Would it be appropriate to check N/A as nondiscrimination testing wasn’t needed for the 2024 year (no contributions)? **Yes**
  3. Let’s say the plan was a Safe Harbor Plan, would you check box “Design-based safe harbor method”? or maybe select both of those? **N/A**

# Audit

- This happens every year...an audit client does not have the audit ready by the Oct 15th deadline and the CPA tells them to just file the 5500 as is with a letter stating the audit is being worked on.

1. What does ERISA/IRS/DOL say (if anything) about this practice?

**ERISA does not provide any guidance regarding this situation.**

2. Shouldn't the correct method be just to file late under DFVCP?

**Some practitioners file the 5500 with an attachment explaining the situation and then later amend the plan including the audit. Others just delay filing until the audit is ready and then file under DFVCP.**

# Compliance Questions

- 2023 Form 5500 - IRS Compliance Questions: how should we answer the question below if the employer (plan sponsor) is sponsoring only one plan? **Answer with “no.”**
- Does the plan satisfy the coverage and non-discrimination tests of Code section 410(b) and 401(a)(4) by combining this plan with any other plans under permissive aggregation rules? Y/N **No.**
- Since it is not applicable – should we leave it unchecked? **Check “no.”**

Part VII	IRS Compliance Questions
21a	Does the plan satisfy the coverage and nondiscrimination tests of Code sections 410(b) and 401(a)(4) by combining this plan with any other plans under the permissive aggregation rules? <input type="checkbox"/> Yes <input type="checkbox"/> No
21b	If this is a Code section 401(k) plan, check all boxes that apply to indicate how the plan is intended to satisfy the nondiscrimination requirements for employee deferrals and employer matching contributions (as applicable) under Code sections 401(k)(3) and 401(m)(2). <input type="checkbox"/> Design-based safe harbor method <input type="checkbox"/> "Prior year" ADP test <input type="checkbox"/> "Current year" ADP test <input type="checkbox"/> N/A
22	If the plan sponsor is an adopter of a pre-approved plan that received a favorable IRS Opinion Letter, enter the date of the Opinion Letter ___/___/___ (MM/DD/YYYY) and the Opinion Letter serial number _____.



# Timing

- I am clear on timing of deposit for deduction (tax filing deadline, incl. extension) and annual additions purposes (30 days after that), but just need some clarification on the timing requirement for a discretionary profit sharing contribution to be treated as an allocation for a given year on 5500 and in testing.
- **In order for a contribution to be treated as a contribution for the prior year, it needs to be contributed by the end of the following plan year. Generally, if the contribution is not been made by the date of filing, the plan doesn't include the contribution on its 5500.**

# Miscellaneous Questions

# Safe Harbor 401(k) Compensation

- 414 (s) compensation test and SH Match – even if the test is failing, there is no action needed unless we have additional ER contribution – right?
- **No. For purposes of allocating the safe harbor contributions, the plan must allocate on the basis of a 414(s) definition.**

# Mandatory Automatic Enrollment

- If a plan is subject to the SECURE 2.0 mandatory auto enroll requirement, does the EACA have to apply to all EEs effective 1/1/25 or can they apply it to new hires only as of 1/1/25?
- **EACA will apply to all employees. However, if an employee has made an affirmative election, the plan will not automatically enroll the participant.**

# PEP Transfer

- If an employer is a member of a PEP but wants to move to another PEP, can they transfer their portion of the PEP's assets directly to the other PEP and are there any things we should focus on with these kind of transactions?
- **Yes, the plan should be able to transfer to another PEP.**
- We feel as though it can happen but we're nervous that there might be some challenges that we're not thinking about.

# 401(k) Startup

- A start-up 401(k) Plan states deferrals start 2/1/2024. Is it permissible to add failsafe language such as “or as soon as administratively feasible after such date” to account for unforeseen situations where deferrals are not setup by the deferral start date?
- **Yes.**
- A situation could include enrollment meeting were delayed or bookkeeper was out unexpectedly, and deferrals didn't start till the next pay date or maybe two pay dates are missed.

# Forfeitures – 415 Limit

- Do forfeiture allocations to employees count against 415(c) limits?
- **Yes.**
- Using 2023 limits as an example: If an employee is already at \$66,000, would the employer be allowed to give forfeitures or would that put the employee over the limit?
- **A plan may return deferrals to make room for the forfeiture allocation as long as it does it within 9 ½ months.**

# MEP – Coverage and Nondiscrimination

- We currently provide TPA services for a multiple employer plan. There are numerous employers that participate in the plan and each has a separate adoption agreement of sorts allowing for customization of many provisions of typical interest including eligibility requirements, entry date definitions, eligible compensation definitions, employer contribution formulas (including Safe Harbor options under IRC 401(k)(12) to address testing limits), distribution options, etc. It has subsequently come to light that two of the adopting employers otherwise previously thought to be unrelated employers participating in the multiple employer plan in actuality form a controlled group of common controlled entities. We're still investigating when this occurred, but are starting to give some thought to implications within the MEP.
- In the construct of separate individual plans for members of such a controlled group, we understand that plans can be permissively disaggregated for administration and testing issues AS LONG AS testing as the necessary coverage requirements are satisfied under IRC 410(b).
- However, our question in specific regard to this MEP is such permissive disaggregation is possible within the single existing plan? For example, the two companies both utilize IRC 401(k)(12) Safe Harbor methodologies, but one is the basic match formula and the other utilizes a 3.00% Non-Elective design.
- Notwithstanding an acquisition/transition situation where a mergers and acquisition exception could arguably apply for some period of time, we were wondering if such permissive disaggregation is possible within the MEP or if each employer in such a controlled group would have to either have identical provisions or be separated into physically different plans.
- Is there any set of circumstances under which two or more employers who form a controlled group and participate in a single shared plan (in this case a MEP with other unrelated employers) can similarly maintain different provisions like Safe Harbor 401(k)(12) options that differ?



# Coverage and Nondiscrimination

- Notes:
  - The proper terminology is not permissive disaggregation
  - Rule regarding an employer (including a controlled group of employers) maintaining separate plans for two or more different groups of employees:
  - **If the each plan can pass coverage taking into account all employees (including employees of a controlled group of employers) in the denominators of the coverage calculation, the employer may maintain separate plans and test each plan separately for nondiscrimination.**

# Testing coverage for a “controlled group” plan

- X maintains a plan that covers only its EEs
- Non-excludible EE data for the corporations is specified below

	HCE	NHCE
X	4	12
Y	1	8
Total	5	20
Ratio	80%	60%

X Coverage Ratio =  $60\%/80\% = 75\%$

Y Coverage Ratio =  $40\%/20\% = 200\%$

# Ratio percentage test

- Q: *Do the plans satisfy the ratio percentage test?*
  - **Yes** – Satisfies ratio percentage test since the NHCE coverage ratio is at least 70% of the HCE coverage ratio
  - **No** – Plan only covers 60% of the NHCEs



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  - **No** – Plan only covers 60% of the NHCEs



# Too many nonbenefiting NHCEs

- *Q: If Y had 12 NHCEs instead of 8, would the X plan satisfy the ratio percentage test?*

NHCE ratio:                       $12/24$                       = 50%

HCE ratio:                          $4/5$                          = 80%

Coverage ratio:                   $50\%/80\%$                   = 62.5%

- **Yes** – Satisfies ratio percentage test since HCE coverage is not 100%
- **No** – Does not satisfy ratio percentage test since NHCE coverage ratio is less than 70% of HCE coverage ratio

# Too many nonbenefiting NHCEs

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NHCE ratio:  $12/24 = 50\%$

HCE ratio:  $4/5 = 80\%$

Coverage ratio:  $50\%/80\% = 62.5\%$

- **Yes** – Satisfies ratio percentage test since HCE coverage is not 100%
- **No** – Does not satisfy ratio percentage test since NHCE coverage ratio is less than 70% of HCE coverage ratio

# Controlled group coverage testing alternatives

- *Q: If X's plan does not pass ratio percentage test, what alternatives are available to X in order to preserve qualified status of X plan?*
  - [ ] **Terminate** – Terminate plan
  - [ ] **Increase coverage** – Cover Y EEs
  - [ ] **Test coverage alternatives** – Pass average benefit test, possibly aggregate the plan with Y's plan for testing

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  - **Increase coverage** – Cover Y EEs
  - **Test coverage alternatives** – Pass average benefit test, possibly aggregate the plan with Y's plan



# Timing

- Client had a \$60,000 PS contribution reflected on their 2022 5500 and valuation. \$44,000 was deposited in 2023. Of this, the \$22,000 allocation to non-keys was deposited by 9/15/2023 (they extended their tax return) and, so, was both deductible for 2022 and counted as annual additions for 2022. The additional \$22,000 (for keys) was not deposited until December 2023, so is not deductible in 2022 and is a 2023 annual addition. I believe this is still ok to be counted on the 5500 as a 2022 contribution and would not trigger any top heavy or testing requirements for 2023, assuming no other 2023 employer contributions. Is that right?
- **Unless it is a required contribution, it should not be included unless it is contributed by the close of the following plan year. In order for the contribution to be included for top heavy purposes, the contribution must be contributed by the 415 deadline.**
- At this point in 2024, are they still able to deposit the additional \$16,000 and have it be a 2023 annual addition and deduction, but still be reflected on 5500 as a 2022 employer contribution and used toward meeting any 2022 top heavy and 401(a)(4) testing requirements? Or did it need to be deposited by 10/15/2023 or 12/31/2023, in which case they would need to amend the 2022 Form 5500 to reflect the correct employer contribution amount?
- **Unless it is a required contribution, the contribution should not be included on the 2022 Form 5500.**

# Compensation

- Client wants to change their definition of compensation mid-year, effective the first day of the current plan year, to exclude bonuses for non-elective contributions. Is that permissible or do they need to include bonuses for non-elective contributions up until the date they informed us they would like to make that change (and therefore, the amendment would have a mid-year effective date)?
- **As long as the plan is not a safe harbor 401(k) plan and it doesn't violate the anticutback rule, the employer can change the compensation definition mid-year.**
- Can you give some examples of deemed section 125 compensation and when it comes into play? I don't think we see it often, but I want to make sure I understand what all it encompasses.
- ***Deemed 125 Compensation means, in accordance with Revenue Ruling 2002-27, any amounts not available to a Member in cash in lieu of group health coverage because the Member is unable to certify that he or she has other health coverage. An amount shall be treated as Deemed 125 Compensation only if the Employer does not request or collect information regarding the Member's other health coverage as part of the enrollment process for the health plan.***

# Correction

- We have a single employee plan sponsored by a sole proprietor. For 2023 the sole prop deferred more than earned income. We are having difficulty deciding what type of excess this is.
- Is it a 402(g) excess or a 415 excess or something else? what is the best correction method?
- **415 violation. The correction is to return the deferrals in excess of the 415 limit.**

# 403(b) Compensation

- A 403(b) plan excludes “stipends” from all contributions. The employer also uses the “Under 20 HOS” rule for all contributions, including Elective Deferrals. Essentially, the employer wants 403(b) contributions to be available only from base compensation for both Exempt and Non-Exempt Employees. Come to find out, many of the “Under 20 HOS” Employees (who are excluded) are paid only by stipends. Some of these may satisfy the LTPT eligibility rule for Elective Deferrals. However, they will not have any eligible compensation from which to defer if the exclusion of “Stipends” stands.
- Can excluding “Stipends” still be allowed, if it is deemed eligible for these LTPT “Stipend Only” employees? **No. This would be an unreasonable compensation definition.**
- And if not, would Stipends have to be allowed for all employees? **Not necessarily.**

# Eligibility

- We had a question regarding how service would be counted for an employee in the following situation. The employee is employed by a leasing company and is provided to Recipient Company A. After 2 months, Recipient Company A hires the employee full time and the employee's relationship with the leasing organization ceases.
- Our specific question is should the service during the first 2 months be counted for plan purposes for Recipient Company A's 401(k) plan, or would the employee's service start with his DOH with Recipient Company A?
- **The plan should start counting service from the date the employee starting providing services as a leased employee.**

# Cross-Tested Plan

- Client sponsors Safe harbor 401k plan and a cash balance plan. The employer deposits safe harbor nonelective per payroll period as well as a profit sharing contribution each payroll period (no allocation requirements in doc). The document allocates the PS contribution placing each participant in a separate group. The employer is now having a change in circumstances as well as testing results that is leading to wanting a different profit sharing allocation.
- We need to explain why they can or cannot do what they are asking and reference the code section or rules that would prevent it. Can you please help?
  1. Can they remove some of the 2023 profit sharing from the participant accounts and reallocate it in 2023 to other participants? **No. Violates the anticutback rule. Also, probably is a breach of fiduciary duty.**
  2. Does answer to #1 change if the contributions are removed from HCE accounts only and now provided to NHCEs? **No.**
  3. Can they remove the 2023 profit sharing contribution from participant accounts and use for funding in 2024? **Also no.**

# Allocation Conditions

- Can a plan impose a post-plan year allocation condition? Client is wanting to add an employment condition on a year-end match to 'only those currently employed at the time of deposit'. My gut instinct went straight to no, but it's not a question I've ever encountered before.
- **Not typical, but there is nothing preventing the plan from imposing such a condition.**

# Early Participation Rule

- I've heard of the early participation rule. Is that different from the OEE rule? How?
- **See the following slide.**



# Early participation rule

- Identical to OEE except
  - One plan, not two
  - Disregard Quadrant B
  - Test all HCEs (A + C) vs. upper group NHCEs (D)
- Must pass coverage on OEE basis
- Available for ADP and ACP tests only
  - Not available for ADP/ACP safe harbors
  - Not available for nonelective contributions
- Useful when there are lower group HCEs (Quadrant A)

	Lower Group	Upper Group
HCE	A	C
NHCE	B	D

# Compensation

- This Plan's compensation definition is compensation from entry date. The Plan is Top Heavy and has the 3% Safe Harbor Non-Elective contribution.
- The participant's entry date is 7/1/2023. However, she did not have any compensation for 7/1/2023 - 12/31/2023 due to maternity leave.
- I understand that the participant will get 3% Top Heavy contribution based on her 2023 compensation. However, I have two questions:
  1. What is her testing compensation (since her 7/1/2023 - 12/31/2023 compensation was \$0)? When I run the gateway testing? If it is \$0, it won't pass the gateway test. What should I do? **If the employee has no compensation, I would not include the employee in the testing.**
  2. Do you concur that this participant's Safe Harbor contribution should be \$0? **Yes.**

# Employee

- Our plan's definition of Employee states that: The term 'Employee' shall not include a person who is classified by the Employer as an independent contractor or a person (other than a Self-Employed Individual) who is not treated as an employee for purposes of withholding federal employment taxes.
- **Situation 1** - Partner receives 2023 K-1 income to cover health insurance. The Partner had no service hours during 2023, but the K-1 reflected profits interest on 1/1/2023. Retirement date provided was end of 2022. If no service hours, is he included in the plan testing? **No**
- **Situation 2** - This is where the excerpt above may be relevant or may not be. A former owner of an S-Corp still receives W-2 pay in 2023 that consists only of S-Corp Health insurance. No hours. Retired in 2021. Is he to be included in the Plan and testing? **No**

# Top Heavy and Minimum Gateway

- We have a Safe Harbor Match plan that has eligibility of 3 months for deferrals and Safe Harbor and 1 year for Profit Sharing. The sponsor is making a profit-sharing allocation for the plan year and the plan is Top Heavy.
- Should anyone who is eligible to defer receive the 3% top heavy allocation? **All non-key's would need to receive the top heavy minimum. However, commencing in 2024, employees with less than a year of service would not need to receive the top heavy minimum.**
- Since we are putting the top heavy allocation into the profit sharing bucket, do these people also need to receive a gateway contribution for cross-testing purposes even if they did not meet the 1 year eligibility requirement?
- **If the plan applies the otherwise excludible employee rule, employees with less than a year of service would not need to receive a minimum gateway contribution.**

# Associated Match

- A plan had to refund deferrals so it can pass the ADP test. The plan also needs to forfeit associated matching contributions on those deferrals to pass 401(a)(4).
- Is there an excise tax related to the forfeited matching contributions if the deferrals aren't distributed by March 15?
- **No excise tax on forfeited matching contributions.**

# Associated Match

- A plan is late in making ADP/ACP corrections and so will be subject to the 4979 excise tax. It also needs to forfeit associated matching contributions. I know that usually we should address ACP failures before addressing associated match.
- But in a case like this, aren't I better off fixing the associated match first because it isn't subject to the excise tax?
- **Probably not. The employee gets to receive a corrective excess aggregate contribution. In the case of a forfeiture, the employee loses the contribution.**

# Post-severance bonus

- We are unclear on the definition of post-severance compensation. the plan has 3 employees who terminated in January, 2024 but will receive 2023 bonuses on 4/19/24.
- the plan includes bonuses in their definition of compensation but we're uncertain as to the 2 1/2 month period for payout. does the bonus paid in 2024 count for the 2023 elections, i.e., do the deferral elections previously made hold up, safe harbor match eligibility, etc. Or, if it's counted as separate 2024 compensation, do they need to have them sign an election for deferral purposes and be eligible for any employer contributions
- **If the plan applies the 2 1/2 month rule (later of 2 1/2 months after termination of employment or the end of the plan year), the plan would include the bonus as long as it is paid by the end of the plan year.**

# Top heavy

- Will a plan with immediate eligibility for deferrals and one year of service/ age 21 for the matching and profit sharing contributions need to provide the top heavy minimum contribution to the employees who have not met the one year of service/ age 21 requirement? **2023: Yes; 2024: No.**
- *Let's assume the plan is a safe harbor 401(k) match plan and some of the employees do not defer. Will the employer have to make a top heavy contribution for those employees? **For 2023, all non-key employees are guaranteed a top heavy minimum irrespective of whether they defer. For 2024, all non-key employees are guaranteed a top heavy minimum irrespective of whether they defer except for those employees who have less than a year of service.***



# Top-Heavy and Otherwise Excludable Employees

- 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, this means they don't need to receive the TH minimum

<b>Act Section</b>
310
<b>Code Section</b>
416
<b>Qualified</b>
DC
<b>403(b)</b>
No
<b>457(b)</b>
No
<b>Eff. Date</b>
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
Tina	Secretary	\$39,000	\$1,000	\$1,000	\$0	Full	Yes
Frank	Filing Clerk	\$24,000	\$0	\$0	\$0	Full	Yes
Tonia	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 Tonia 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 Tina 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 need to make a TH minimum contributions for all eligible EEs, including those EEs with less than a year of service (Tonia, 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
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Anne	Associate	\$84,000	\$6,000	\$3,360	\$0	Full	Yes
Maria	Office Manager	\$58,000	\$2,000	\$1,870	\$0	Full	Yes
Tina	Secretary	\$39,000	\$1,000	\$1,000	\$200	Full	Yes
Frank	Filing Clerk	\$24,000	\$0	\$0	\$720	Full	Yes
Tonia	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
- Tina, Frank and Tonia 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
  - Carl is eligible to defer under LTPT employee rule
  - 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	\$345,000	\$30,500	\$13,800	\$0	Full	Yes
Sue	Shareholder	\$345,000	\$23,000	\$13,800	\$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
Tina	Secretary	\$39,000	\$1,000	\$1,000	\$200	Full	Yes
Frank	Filing Clerk	\$24,000	\$0	\$0	\$720	Full	Yes
Tonia	Secretary	\$29,500	\$500	\$0	\$0	Full	No
Carl	Law Clerk	\$13,500	\$0	\$0	\$0	800 HOS	No

- **Eligibility:** Immediate eligibility for deferrals (Tonia can defer) and Carl can defer under LTPT employee rule; 1 YOS/age 21 for SH match (so Tonia and Carl don't participate)
- SECURE §310 states that the plan doesn't need to give TH minimum to OEE (Tonia), however, it doesn't preserve safe harbor TH exemption (Tina and Frank)

# Roth matching contributions

- If a participant elects to have his/her matching contributions treated as Roth contributions, in which year is the employee taxable? How are the matching contributions reported for tax purposes?
- **In the year of contribution. Form 1099-R.**



# How Are Roth Matching and Nonelective Contributions Reported?

- Roth employer contributions are includable income in the tax year in which they are allocated regardless of when they would be treated as annual additions for purposes of Code §415 (or the year in which they are deductible)
- Roth employer contributions are reported to the IRS on **Form 1099-R**, the same form that is used for distributions
  - Use Code G in box 7
  - Treated as though it they were the only contributions for the participant, and they were immediately subject to in-plan Roth rollover
    - Eliminates basis questions

# Example

- Company X maintains a 401(k) profit sharing with payroll matching contributions
  - X decides to provide for Roth employer contributions
  - X will contribute its 2023 profit sharing contribution on April 10, 2024
  - On March 1, 2024, Ann elects to treat her profit sharing and matching contributions as Roth contributions
  - *To which 2024 matching contributions, will the Roth election apply? May she change the election during the year?*
  - *With the exception of the last 2024 payroll match which is allocated in 2025, for which tax year(s) are the matching contributions included in income?*
  - *On what form does the plan report the matching contributions? How does the plan report the matching contributions?*

# Mandatory Automatic Enrollment

- If an employer maintaining a grandfathered plan (pre-12/29/22) 401(k) plan acquires an employer with a 401(k) plan that is not grandfathered and the purchaser merges the plans, will the resulting plan be subject to the mandatory enrollment requirement?
- **If the employer merges the non-grandfathered plan into the grandfathered plan, the resulting plan is not subject to mandatory enrollment.**

# SIMPLE IRA Conversion

- We have a client that will be replacing their SIMPLE IRA with a Safe Harbor 401(k), as allowed under SECURE 2.0. In addition to this, the employer would like to establish a second plan in the year of safe harbor transition.
- In this case, a cash balance plan. Is this allowed to establish a second plan in the year of transition, or must they wait until the following plan year?
- **No. The employer needs to wait for the following plan year.**

## 5% Owner

- A partner in a partnership has continued working for the company after selling his ownership stake in 2019. I refer to him as a partner, despite his 0% ownership, because his 2023 K-1 still indicates that he is a “General partner or LLC member-manager”. His services are a material income-producing factor for the business, and he receives guaranteed payments that are reported on the K-1. The partner’s share of profit, loss, and capital are reflected as 0.00% on the K-1. His self-employment earnings on line 14a are equal to the guaranteed payment amounts.
- We know that, for an entity taxed as a partnership, ownership is based on the ownership of either capital or profits. Although this person does not, apparently, have any ownership in the company’s capital or profits, his self-employment earnings make up greater than 5% of all self-employment earnings reported by the partners for the year.
- Question:
  - Is this person a 5% owner for Key/HCE purposes? **No.**

# Top paid group

- If an employer wants to make the top-paid group election, by what date must the employer make the election? Must the election be in the plan document?
- **The employer must make the election in the plan document no later than the end of the plan year to which it will apply the top paid group.**

# Form 5330

- The days of mailing paper forms and checks to the IRS are over how do you file Form 5330 and make payments?
- **Under the IRS's e-file program.**

# RMDs - beneficiary

- Determining if/when a beneficiary needs an RMD, whether it should be based on the deceased's life expectancy, the bene's age on the single life expectancy table, the deceased's age on the single life expectancy table minus one each year, or any other calculation.
- **Generally determined on the basis of the beneficiary's life expectancy. Each year you reduce by one, unless the beneficiary is the surviving spouse.**
  - What to do if there are multiple beneficiaries, how is the RMD calculated the first year and for the following years? **If there are separate shares, you calculate each beneficiary separately.**
  - What to do if a deceased's RMD was not paid for a given year due to delays in the beneficiary taking a distribution or us getting the necessary information on the beneficiary. **The beneficiary is subject to an excise tax unless it can be waived for reasonable cause.**



# Beneficiary

- We have a participant who wants to designate her child as 100% beneficiary for her 401k.
- She has a domestic partner and they have registered their partnership with the state of Maine.
- The question is whether that domestic partner is considered the same as a spouse and would she need his signature to designate her child as 100% beneficiary?
- **The participant does not need to obtain the consent of the domestic partner.**

# Safe Harbor Match Funding

- If I have a partnership with K-1's that has a Safe Harbor match funded on a per payroll basis, what's the best guidance regarding the timing for funding the partners Safe Harbor match?
- Assume the partners are funding their deferral contributions throughout the year thru draws.
- **The employer can fund with the draws but will have to true up the match.**

-

# Spin-off Transaction

- 100% owner of two businesses A & B. A has plan and B is a participating employer. Owner sells company B (stock sale). New owner will set up new plan and employee balances of company B will transfer to new plan.
- For the original plan, do they amend to no longer be a controlled group and exclude those employees as of the date of sale? Is anything additional needed for the plan?
- **Yes, they should amend the plan to spin-off the former controlled group member unless they want to create a multiple employer plan.**
- The 5500 will show a spin off of B's assets to new plan.

# Controlled Group

- I have a controlled group that one of the companies ownership has changed so no longer considered part of controlled group, but there is still common ownership. Do I amend now for Closed MEP or can I do retroactive for 2023? Can I correct up to the end of this year? **Amend retroactive to the date of the change.**
- If in a later year one company wants their own plan, then they set up same type of plan and assets spin out? **Yes.**

# THANK YOU

A stylized graphic consisting of two parallel blue wavy lines that curve from left to right, positioned below the 'THANK YOU' text.

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