



What should we be doing about the LTPT rules?

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REVIEW AND CLARIFICATION



“500 Year”



- ▶ Eligibility Computation Period with at least 500 HOS (and not more than 999)
 - ▶ Disregard periods starting before 1/1/2021
- ▶ Can count actual HOS or use an approved equivalency method
 - ▶ Can't use elapsed time

Method	Hours
Daily	10
Weekly	45
Semi-monthly	95
Monthly	190

What years do we count?



- ▶ 401(k) plans are based on effective date of Code provisions:
 - ▶ Count all years beginning after 12/31/2020
 - ▶ Disregard years beginning before 1/1/2021
 - ▶ Applies for eligibility and vesting
- ▶ 403(b) plans are based on ERISA provisions:
 - ▶ Count all years beginning after 12/31/2022
 - ▶ Disregard years beginning before 1/1/2023
 - ▶ Applies for eligibility and vesting



Mark started work 4/1/2020



Works 50 hours/month; 600 hours in 12 months



Plan switches eligibility computation periods to calendar plan year



401(k) plan:

Mark has 500 Years in 2021,
2022, 2023, 2024, etc.



403(b) plan:

Mark has 500 Years in 2023,
2024, etc.

EXAMPLE

403(b) plans disregard **periods** beginning 1/1/23



▶ New ERISA 202(c)(4) (for 403(b) plans):

- ▶ 12-month periods beginning before January 1, 2023, shall not be taken into account

▶ Example:

- ▶ Mary was hired by private school 12/1/2022
- ▶ Works 50 hours/month; 600 hours in 12 months
- ▶ Plan uses anniversaries of hire date for LTPT status
- ▶ Mary's first 500 year begins 12/1/2023
- ▶ 11/30/2025 she completes her second 500 Year

“Normal Requirements”



▶ Plan’s normal age and service requirements for deferrals

▶ Example: Age 21/1 YOS

▶ Example: 6 months after hire

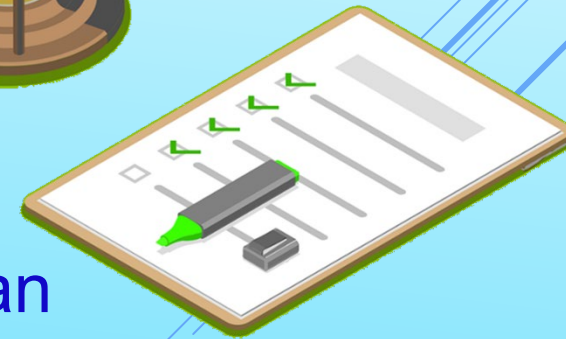
▶ Example:

▶ Full time employees enter immediately

▶ Part time employees enter after 1 YOS

▶ 403(b) Example: Employees who normally work fewer than 20 hours/week are excluded

▶ Any age/service requirement earlier than LTPT rules is a Normal Requirement



LTPT Employee



1. Complete 2 consecutive 500 Years
 - ▶ For plan years beginning before 2025, 3 consecutive 500 Years
2. Attain age 21 by second (third) 500 Year
3. Not union employee/nonresident alien (union HOS count)
4. Does not otherwise satisfy Normal Requirements
 - ▶ Employee who satisfies Normal Requirements before (or at same time) as LTPT conditions is NEVER an LTPT Employee
 - ▶ Employee who satisfies Normal Requirements after becoming LTPT Employee ceases to be LTPT Employee and becomes Former LTPT Employee

Example: LTPT Employee



- ▶ Normal Requirements: 1 YOS/Age 21
- ▶ Employee hired 3/1/2020, age 30
- ▶ Plan bases subsequent eligibility computation periods on calendar plan year
- ▶ Eliza has 500 Years in 2021, 2022, and 2023
 - ▶ Becomes LTPT Employee on December 31, 2023
- ▶ Eliza has only 400 HOS in 2024
 - ▶ She stays an LTPT Employee





OPTIONS

Choices for LTPT



- ▶ Can be different from what you do for other eligibility purposes:
 - ▶ Eligibility computation period (plan year/anniversary of hire date)
 - ▶ Hours of service method (actual hours/equivalency)
 - ▶ Entry dates (semiannual, quarterly, monthly)
- ▶ Design eligibility requirements so never have LTPTs
- ▶ Provide employer contributions
- ▶ Testing elections

Eligibility Computation Period Example



- ▶ Calendar year 401(k) plan
- ▶ Mark is hired on 12/15/2024
 - ▶ Works 50 hours/month
 - ▶ First LTPT Period is 12/15/2024 to 12/14/2025
 - ▶ 600 HOS
- ▶ Plan switches to plan year for subsequent periods
 - ▶ Second LTPT Period is 2025 calendar plan year
 - ▶ 600 HOS
- ▶ Result: “2-year period” becomes tantamount 1 year



The Problem With Not Switching LTPT Period ...



- ▶ Because LTPT involves tracking more than one consecutive year period, keeping eligibility on employment year means getting employment year hours of service for eligibility purposes for more than the first year
 - ▶ Vesting, on the other hand, is usually based on plan years
 - ▶ So, this requires getting and collecting hours of service for different computation periods for each potential LTPT
 - ▶ Are you requesting that information?
 - ▶ Where will you keep that information on your system?

Significance of LTPT Status



Must be eligible to defer

- Don't have to give employer contributions

Vest for years (after 2020)
with at least 500 HOS

- Includes former LTPT Employees

Exclude from employer
contributions

- Including safe harbor contributions

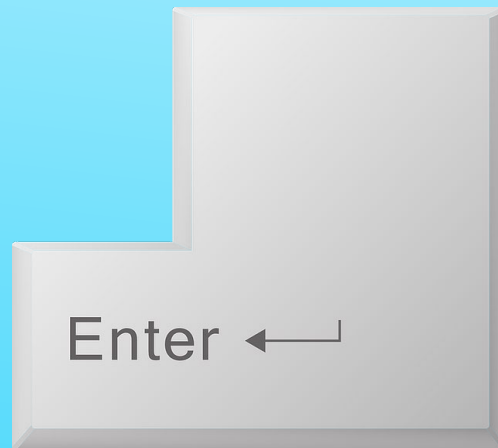
Exclude from testing

- Two separate elections

LTPT Entry Dates



- ▶ An LTPT Employee generally must be eligible to defer on earlier of the first day of the first plan year following the date he or she becomes an LTPT Employee or the date which is 6 months after the date those requirements are satisfied
 - ▶ Same as normal entry date rules
- ▶ Can use semiannual, quarterly, monthly, immediate entry dates



Two Conditions for Entry



- ▶ LTPT Employee doesn't enter on entry date if:
 - ▶ He or she is no longer employed on that date
 - ▶ He or she does not satisfy Other Conditions on that date
- ▶ However, LTPT Employee retains LTPT Employee status and enters plan immediately on rehire/satisfying Other Conditions



“Other Conditions” “Excluded Class”



- ▶ Proposed Regs say plans don't have to let LTPT Employees defer if they don't satisfy other requirements to participate that are not related to age and service
- ▶ We call these requirements “Other Conditions”
 - ▶ Employees who don't meet the Other Conditions are in the “Excluded Class”
- ▶ Proposed regulations say Other Conditions cannot be “a proxy for imposing an age or service requirement”

Examples of Other Conditions



Condition	Example
Job classification	Associate attorneys aren't eligible
Hourly/salaried	Hourly employees aren't eligible
Participating employer	Employees of a related employer that has not signed a participation agreement aren't eligible
Reclassified employees	Employees who do not receive a W-2 aren't eligible
Geographic	Only California employees are eligible

Example: Exclusions



- ▶ Law firm maintains a 401(k) plan that excludes associate attorneys and law clerks
 - ▶ Most of the associate attorneys are full-time employees
 - ▶ All of the law clerks are part-time employees
- ▶ The exclusion of the associate attorneys is an Other Condition because it's not a proxy for a service condition
- ▶ Is the classification of Law Clerks a proxy for a service condition?
 - ▶ Similar issue for interns

Example: Immediate Eligibility (Avoiding the LTPT EE Rules)



- ▶ Company X maintains a calendar year 401(k) plan (with discretionary match and profit sharing) with 1 YOS/age 21 eligibility provision
- ▶ X amends the plan effective 1/1/24 to provide for immediate eligibility for elective deferrals
 - ▶ Will the plan have any LTPT Employees? No.
 - ▶ Will the plan need to apply the LTPT Employee vesting rules? No.
 - ▶ Can the plan keep 1 YOS/Age 21 for employer contributions? Yes.

Other possible eligibility conditions to avoid LTPT



- ▶ 1 500 Year
- ▶ Passage of 12 months since date of hire
- ▶ Earlier of 1 YOS or passage of 24 months since date of hire
- ▶ Earlier of 1 YOS or 2 500 Years (no age restriction)

Advantages and disadvantages of avoiding LTPT rules



Advantage

- ▶ Don't have to track LTPT vesting
 - ▶ LTPT employees and former LTPT employees vest for vesting computation periods with at least 500 YOS

Disadvantages

- ▶ Letting part-time employees defer earlier than law requires
- ▶ Miss out on special LTPT testing and contribution rules

FIXING MISTAKES



What do you do if haven't followed rules?



- ▶ Issue now for 401(k) plans

- ▶ LTPT Employees are eligible to defer on first entry date after LTPT status

- ▶ Could be in 2023

- ▶ Mitch was hired 2/1/2021

- ▶ Plan has April 1 – March 31 plan year

- ▶ Shifts eligibility computation periods to plan year

- ▶ Mitch has 500 Years beginning 2/1/2021, 4/1/2021, 4/1/2022

- ▶ Mitch is eligible to defer 4/1/2023

Improper exclusion



- ▶ If auto enrollment would have applied to Mitch
 - ▶ Deadline to correct without cost is 1/15/2025 (9½ months after end of plan year ending 3/31/2024)
 - ▶ Let them defer
 - ▶ Give timely correction notice
- ▶ If auto enrollment wouldn't have applied to Mitch
 - ▶ Deadline to correct without cost was 6/30/2023
 - ▶ Can correct now with 25% QNEC
 - ▶ Give timely correction notice

Design and testing for LTPT employees



Employer Contributions



- ▶ Don't have to make employer contributions for LTPT Employees
 - ▶ Includes safe harbor contributions (but see testing)
 - ▶ Includes top heavy minimum contributions (but see testing)
- ▶ Can make contributions for them if plan chooses
 - ▶ Don't have to be the same as contributions for others
- ▶ Exception: SIMPLE 401(k) plan must make SIMPLE employer contributions for LTPT Employees
 - ▶ Note: LTPT rules do not apply to SIMPLE IRAs



Two Testing Elections for LTPTs

- Do you count them for satisfying coverage and nondiscrimination?
 - Coverage 410(b)
 - ADP test
 - ADP safe harbor
 - ACP test
 - ACP safe harbor
 - 401(a)(4) nonelective nondiscrimination
 - 401(a)(4) benefits, rights and features
 - 414(s) compensation ratio
- Do you provide them with top-heavy minimums?
 - Can't see a reason you ever would
 - Note: they still count in determining if plan is top-heavy



Key Plan Document Provisions



- ▶ Don't have to show testing elections in plan document
- ▶ But document must specify
 - ▶ Whether you will give LTPTs safe harbor contributions
 - ▶ That does not blow top-heavy exemption
 - ▶ Whether you will give LTPTs top-heavy minimums
- ▶ Deadline to adopt interim amendment with elections is 12/31/2026
- ▶ Amendment will need to conform to operations starting in 2024
- ▶ Need to track how plan is operating prior to adoption of amendment

More Elections That Impact LTPTs



- ▶ Test coverage and nondiscrimination using otherwise excludable employee rule (OEE)
 - ▶ ALL LTPTs are OEEs; plan may have other OEEs
 - ▶ Example:
 - ▶ Plan allows full-time employees to defer immediately on hire
 - ▶ Part-time employees can't defer until 1 YOS or LTPT
 - ▶ OEEs include full-timers who don't have YOS and LTPTs
- ▶ Dual eligibility: exclude OEE employees from safe harbor contributions
- ▶ Exclude OEE employees from top-heavy minimum starting in plan years after 12/31/2023

Safe Harbor Top-Heavy Exemption



- ▶ To claim safe harbor top-heavy exemption, plan must consist solely of safe harbor money for the year and EITHER:
 - ▶ All NHCEs who are eligible to defer receive SH, or
 - ▶ ALL NHCEs (other than LTPTs) who are eligible to defer receive SH
 - ▶ So OEEs who aren't LTPTs have to get SH
 - ▶ Plan must elect to exclude LTPT from nondiscrimination and top-heavy
 - ▶ The two elections specified earlier, with all their baggage
- ▶ Result: If plan excludes OEEs in general from SH, it loses SH top-heavy exemption
 - ▶ If SH is match, eligible employees who do not defer enough to get a 3% safe harbor match contribution will need to get TH minimum

Top Heavy Example 1



- ▶ **Plan: Basic Safe Harbor Match**
 - ▶ In 2024, Plan excludes LTPT Employees from the safe harbor match and all other employer contributions (including top-heavy minimums)
 - ▶ The Plan also excludes LTPT Employees from determining if the plan satisfies the top-heavy contribution requirements
- ▶ **Result – The plan satisfies the safe harbor top-heavy exclusion for 2024 and therefore is not top-heavy. The plan need not make a top-heavy minimum contribution for any employees**

Top Heavy Example 2



▶ Plan: Basic Safe Harbor Match

- ▶ In 2025, the Plan is amended to exclude all otherwise excludable employees (employees with less than a year of service or who haven't attained age 21) from the safe harbor match and all employer contributions. Deferral eligibility is 3 months of service

▶ Result: Because the exclusion reaches beyond LTPT Employees, the plan loses the top-heavy exemption

▶ Because the plan no longer has the top-heavy exemption:

- ▶ John Doe is a full-time employee who entered the plan several years ago. John does not defer and, therefore, does not receive a safe harbor match
- ▶ However, because the plan is now top-heavy, John must receive a top-heavy minimum contribution

ADP Test Example 1



- Example 1: Plan has 5 regular NHCEs and 3 NHCE LTPTs
 - NHCE LTPTs don't defer
 - If ADP Test *includes* LTPTs:

Participant	Group	Deferral %
John	NHCE	5%
Jane	NHCE	0%
Joseph	NHCE	2%
Janine	NHCE	3%
Josephine	NHCE	10%
Laura	LTPT NHCE	0%
Lenny	LTPT NHCE	0%
Larry	LTPT NHCE	0%

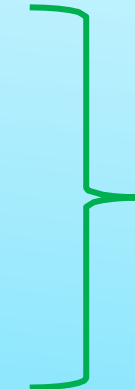
NHCE ADP %
2.50%

ADP Test Example 1



- Example 1: Plan has 5 regular NHCEs and 3 NHCE LTPTs
 - NHCE LTPTs don't defer
 - If ADP Test excludes LTPTs:

Participant	Group	Deferral %
John	NHCE	5%
Jane	NHCE	0%
Joseph	NHCE	2%
Janine	NHCE	3%
Josephine	NHCE	10%
Laura	LTPT NHCE	0%
Lenny	LTPT NHCE	0%
Larry	LTPT NHCE	0%



NHCE ADP %
4.00%

ADP Test Example 2



- Example 2: Plan has 5 regular NHCEs and 3 NHCE LTPTs
 - 1 LTPT defers 25%
 - If ADP Test *includes* LTPTs:

Participant	Group	Deferral %
John	NHCE	5%
Jane	NHCE	0%
Joseph	NHCE	2%
Janine	NHCE	3%
Josephine	NHCE	10%
Laura	LTPT NHCE	25%
Lenny	LTPT NHCE	0%
Larry	LTPT NHCE	0%

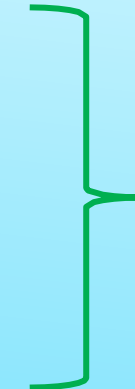
NHCE ADP %
5.63%

ADP Test Example 2



- Example 2: Plan has 5 regular NHCEs and 3 NHCE LTPTs
 - 1 LTPT defers 25%
 - If ADP Test excludes LTPTs:

Participant	Group	Deferral %
John	NHCE	5%
Jane	NHCE	0%
Joseph	NHCE	2%
Janine	NHCE	3%
Josephine	NHCE	10%
Laura	LTPT NHCE	25%
Lenny	LTPT NHCE	0%
Larry	LTPT NHCE	0%



NHCE ADP %
4.00%

ADP Test Example 3



- Example 3: Plan has 2 HCEs + 1 LTPT HCE (boss's kid)
 - HCE LTPT doesn't defer
 - If ADP Test *excludes* LTPTs:

Participant	Group	Deferral %	HCE ADP %
Bob	HCE	10%	10.5%
Barb	HCE	11%	
Bob Jr	LTPT HCE	0%	

- If ADP Test *includes* LTPTs:

Participant	Group	Deferral %	HCE ADP %
Bob	HCE	10%	7%
Barb	HCE	11%	
Bob Jr	LTPT HCE	0%	

ADP Test Results – Examples 2-3



LTPT defers 25%

Excluding LTPTs

NHCE ADP %
4%

HCE ADP %
10.5%

Fails

NHCE ADP	Max HCE ADP
0-2%	2 times NHCE
2-8%	NHCE + 2%
>8%	1.25x NHCE

Including LTPTs

NHCE ADP %
5.63%

HCE ADP %
7%

Passes

Coverage Testing with LTPTs



- ▶ Deferrals, match, nonelective (PS) are three plans for coverage testing
 - ▶ Plan provides ADP-tested deferrals, match, and PS
 - ▶ Plan requires 1 YOS for match and PS
- ▶ If LTPTs only benefit from deferrals
 - ▶ Depending on plan testing election, they may be counted in deferral coverage test
- ▶ LTPTs are excluded from match and PS coverage testing because they don't meet minimum age and service
- ▶ If plan makes them eligible for match
 - ▶ Depending on plan testing election, they may be counted in match coverage test

Just Providing Gateway Doesn't Mean You Pass



	Age	Comp.	Allocation	Alloc. Rate	PV Factor	Equivalent Benefit Rate
A	50	\$155,000	\$51,666	33.33%	2.338	14.26%
B	40	\$60,000	\$3,000	5.00%	1.03	4.84%
C	35	\$55,000	\$2,750	5.00%	0.69	7.27%
D	34	\$45,000	\$2,250	5.00%	0.63	7.89%
Total		\$315,000	\$59,666			

		HCE	NHCE	Ratio
Rate 1	14.26%	100.00%	0%	0%
	AB%T	14.26%	6.66%	46.73%

Concentration % = 3/4 = 75%
Midpoint % = 33.75%

Fails nondiscriminatory classification test and AB%T

Just Providing Gateway Doesn't Mean You Pass



	Age	Comp.	Allocation	Alloc. Rate	PV Factor	Equivalent Benefit Rate
A	50	\$155,000	\$51,666	33.33%	2.338	14.26%
B	40	\$60,000	\$3,000	5.00%	1.034	4.84%
C	35	\$55,000	\$5,395	9.81%	0.688	14.26%
D	34	\$45,000	\$4,068	9.04%	0.634	14.26%
Total		\$315,000	\$64,129			

		HCE	NHCE	Ratio
Rate 1	14.26%	100.00%	66.66%	66.66%
	AB%T	14.26%	11.12%	77.98%

Concentration % = $3/4 = 75\%$
Midpoint % = 33.75%

Increased C/D allocation to put them into Rate Group 1 – Now we pass!

Let's Add An LTPT



	Age	Comp.	Allocation	Alloc. Rate	PV Factor	Equivalent Benefit Rate
A	50	\$155,000	\$51,666	33.33%	2.338	14.26%
B	40	\$60,000	\$3,000	5.00%	1.034	4.84%
C	35	\$55,000	\$2,750	5.00%	0.688	7.27%
D	34	\$45,000	\$4,068	9.04%	0.634	14.26%
L	23	\$15,000	\$750	5.00%	0.258	19.38%
Total		\$330,000	\$62,234			

		HCE	NHCE	Ratio
Rate 1	14.26%	100.00%	66.66%	50.00%
	AB%T	14.26%	11.44%	80.22%

Concentration % = 4/5 = 80%
Midpoint % = 30%

Added L with a gateway allocation – he is also in Rate Group 1 – Now we pass for almost \$2000 less

So, what should we be doing about LTPT?



▶ Decide:

- ▶ Eligibility computation period
 - ▶ HOS equivalencies for LTPTs
 - ▶ LTPT entry dates
 - ▶ Redesign eligibility?
 - ▶ LTPT employer contributions?
- ▶ Keep track of decisions in preparation for interim amendment

Plan operations



- ▶ Gather data
- ▶ Determine if employees are LTPT employees
 - ▶ Determine when they should have entered plan
- ▶ If they haven't been properly admitted
 - ▶ Let them in
 - ▶ Contribute QNECs if required

Thank you!



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