

Employee Benefit Plan Audit Update

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Agenda

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Recent Changes Retirement Plans

Immediate SECURE 2.0
Changes and Options

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What's Coming Next

SECURE 2.0 Changes for
2025 and Beyond

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That's It, Right?!

Well... maybe not



Recent Changes

SECURE 2.0 Changes Currently Effective

Qualified Birth or Adoption Distribution (QBAD)



- Changed rules re: Repayment of QBAD
 - Repayment limited to 3 years after distribution
 - Runs from day after distribution—not based on plan years.
 - No more tracking distributions forever and ever and ever!
- Effective December 29, 2022
 - For distributions after 12.29.2022 – 3-year rule
 - For distributions before 12.30.2022 – repayment deadline is December 31, 2025
 - Participant communications may be in order...

Implications

- Repayments
 - Plans permitting QBADs are required to permit repayment
 - So... procedures need to be updated
 - Prior distributions
 - New deadline should be communicated
 - 2023 and beyond
 - 3-year repayment should be communicated

Plan Corrections

Expansion of Self-Correction

- Can self-correct any inadvertent error
- IRS can waive excise tax for RMD if self-corrected within 180 days.

Safe Harbor for Deferral Corrections

- No QNEC required for certain auto-enroll errors corrected within 9.5 months of year in which error occurs
- Makes EPCRS correction permanent



Handling Overpayments – New Procedures



Not Required to Recover Overpayments

From Participant

From Employer as long as other benefits aren't impacted

From Non-breaching Fiduciary

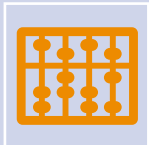


Cannot Seek Recovery of Certain Overpayments

No recovery if first overpayment occurred more than 3 years before participant is notified

Cannot recover from beneficiary for overpayments to participant

Unless (in either case) individual is culpable



Limits on Recovery

Limits on Recovering Overpayments



No interest

Not even post-notice (unlike EPCRS guidance)



For correcting periodic payments

Not faster than 10 years

Not more than 10% of regular payment

Reduction ends when amount is collected



Limits on Method

No threats of litigation unless likely success and recovery > cost

No collection agency until unsuccessful effort to recover after court order or settlement



Participant or Beneficiary may contest via the claims procedure

Implications

Potentially New Correction Options

- For errors you find
- May have more flexibility than in prior years

Overpayments

- May have no financial impact
- Past practices for collection may no longer be permitted
 - Be careful when implementing corrective actions
 - Need to update procedures (e.g., notify re: claims procedures)

Long-term Part-time Employees

SECURE 1.0

- Service condition cannot exclude individuals with 3 consecutive years at 500+ hours of service
- First Entry 1.1.2024

SECURE 2.0

- 2 consecutive years at 500+ hours
- First Entry 1.1.2025
- Applies to ERISA 403(b) plans as well

Vesting

- LTPTEs vest @500 hours
- For entire career with the employer

Implications

- Operations
 - Eligibility
 - If plan has a service condition... new testing to ensure LTPTEs are in timely
 - The 2025 change will make this even more complex
 - If plan has class exclusion, but no service condition—no change needed
 - Once-in; Always-in means you will have to know past plan design to calculate vesting correctly
 - Testing
 - Excluded from ADP and ACP
 - Top Heavy
 - Allowing LTPTEs who don't get safe harbor does not eliminate top heavy exemption
 - LTPTEs don't get top heavy contribution in any event

What is Optional?

- Those are Required...
- The following are optional

Employer Roth Contributions

Participant can elect to have ER contributions as Roth contributions

- Like the Roth in-plan transfer
- But Roth election occurs before \$ sent to the plan
- Still reported on 1099-R

Only Vested Contributions

Effective December 29, 2022

- Not many plans have offered this yet

Natural Disasters

Plans May Permit Qualified Disaster Recovery Distributions

- \$22,000 per distribution
- Participant may repay all or part of the distribution during the 3-year period beginning on the day after the distribution is taken

May Offer Participant Loan Relief

- Increased participant loan limit: 100% or \$100,000
- Delay of repayments



Implications

- Plan Documentation
 - Plan amendment may not be due until 2025
 - But loan policy and communication is likely still required
- Operational Issues
 - Obtaining/retaining proof individual is impacted
 - Coordinating across plans w/in controlled group
 - Restarting loan repayments timely
 - Correct characterization hardship v. disaster distribution

Terminal Illness

Not a New Distribution Option

Distributions to a Terminally Ill Employee May Receive Favorable Treatment

- Terminally Ill
 - Certified by a physician as having an illness or physical condition which can reasonably be expected to result in death in 84 months or less after the date of the certification.
 - Employee is not be considered to be a terminally ill unless such employee furnishes sufficient evidence to the plan administrator in such form and manner as the Secretary may require.

Implications

- NOT a Distribution Option
 - Participant must be otherwise eligible
 - Having a terminal illness is not a distributable event
- Only Impact
 - Reporting
 - Participant's treatment on 1040

Hardship Distributions

Employee Certification Permitted

- Plan administrator may rely on a written certification by the employee re:
 - Distribution is on account of an immediate and heavy financial need
 - The amount is not in excess of that required to satisfy such need
 - The employee has no alternative means reasonably available to satisfy the need
- Treasury may provide rules re: cases where the plan administrator has actual knowledge
- Made available in 2023 for 401(k), 403(b), and 457(b) plans

Implications

- No Required Changes
 - Plan administrator may still require proof if it desires
- Documentation
 - Clear that no longer need to obtain proof from participant
 - IRS had issued similar guidance a few years ago, but with caveats
 - Unclear whether those caveats still apply...
 - If proof is required
 - Still must review it and determine sufficiency
 - Probably not ok to get certification after receiving insufficient evidence...

Mandatory Cashouts



- Cashout Limit
 - Beginning in 2024 cashout limit increases to \$7k
- Autoportability
 - New service to help assets “follow” participants
 - SECURE 2.0 added a prohibited transaction exemption to facilitate this service
 - 2024

New Auto Enroll Safe Harbor

“Starter 401(k)”

- Employers with no retirement plan
 - No size limitation
- Must generally cover all employees
- Auto enroll at 3% to 15%
- No ADP testing or top-heavy test
- Limit on annual deferrals - \$6,000 (indexed)
 - Legislative priority – Make same as the IRA contribution limits

Available beginning in 2024

- Auto escalation after 2025

Implications

- Documentation
 - Just a new safe harbor option
 - Regular documentation with amendments
 - Preapproved plans won't have it built in...
 - Expect that an amendment will be developed to utilize preapproved documentation
- Operations
 - Coordination to ensure no other plan in CG/ASG
 - Required Eligibility

Student Loan Matching

If Plan Meets Requirements:

- Match of “Qualified Student Loan Payment” is treated as an employer matching contribution
- May be included in safe harbor match design
- ADP may be performed separately for those making QSLPs

Design

- Matching on deferrals and QSLPs are made at the same rate
- Only employees eligible for regular match can receive QSLP match
- All employees eligible for regular match may receive QSLP match
- Match on QSLP must vest in the same manner as regular match



Implications/Questions

- Documentation
 - May rely on participant certification
 - But what is necessary in the certification?
- Eligibility
 - Is the plan only matching QSLPs?
 - Not all repayments are QSLPs...



Emergency Savings Accounts

Side Car - Segregated Roth Account

- \$2,500 account limit

Not subject to distribution restrictions on timing

- Cannot restrict other than 1 per month

Must apply match to ESA contributions

- Subject to anti-abuse provision

No fees on first 4 distributions Beginning in 2024

Implications/Questions

- Operational Issues
 - Is plan stopping contributions correctly?
 - Cannot exceed \$2500 in ESA
 - What was communicated about election when limit is reached?
 - All contributions stop?
 - Converts to regular pre-tax/Roth?
 - Distributions permitted per rules?
 - Must permit monthly distributions
 - Cannot charge for first 4 each year
 - Abuse...
 - IRS issued guidance on what was NOT permitted anti-abuse measures
 - Didn't provide examples of anything that WAS permitted
 - Other restrictions may violate ERISA 410 and/or create qualification problems

Emergency Personal Expense Distributions

New hardship-ish distribution

- For purposes of meeting unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses
- Available 2024

Limits

- 1 distribution per year up to \$1,000

May be repaid in following 3-years

Not eligible another emergency personal expense distribution until earlier of:

- After next 3 calendar years
- After current calendar year and distribution amount is recontributed to a plan (either via repayment or new salary deferrals)



Implications

- Operational Issues
 - Application of the \$1,000 limit
 - Appears to be one distribution up to \$1,000
 - No more the rest of the year, even if repaid during the year
 - Coordinating Limit Across Plans within Group
 - Repayment
 - Can administrator track repayment for eligibility over next three years?
- Documentation
 - What is required on certification?

Domestic Abuse Distribution



Plan May permit eligible domestic abuse victim to take a withdrawal

- May rely on certification re: eligibility
- Amount
 - Lesser of \$10,000 (indexed), or 50 percent account
- May be repaid in 3-year period

Eligible Plans

- Not DB; Not subject to spousal consent
- 2024

Implications

- Operations
 - Appears it may be a lifetime limit—plan tracks all distributions to that individual (no time limit)
 - Must coordinate among plan within controlled group
 - Repayment
 - Likely to be required (based on how QBAD was interpreted)
 - Need to properly communicate and track distributions
 - Appears it cannot be offered in a plan with money purchase money
 - Even if the participant isn't taking a MPP withdrawal?
- Documentation
 - Certification is permitted but not required
 - If plan is making an exception to its consent req (because it isn't required by the Code), may need amendment prior to general 2025 deadline

Qualified Long-term Care Distribution

Eligibility

- Lesser of \$2,500 (indexed) or 10% of vested account
- May be used to pay for certified long-term care insurance for the employee or spouse (or other family member under IRS regs)
- December 29, 2025

Long-term care contract

- Must meet certain requirements
- Including the benefits are indexed for inflation

Taxation

- Exemption to 10% penalty



Implications

- Operations
 - New distribution option
 - Permissible
- Documentation
 - Is correct evidence of the contract obtained?
 - Must meet certain Code requirements

Required Minimum Distribution Changes

New RMD Age

- Age 73: DOB is 1/1/1951 to 12/31/1959
 - Attain 72 after 2022 and age 73 before 2033
- Age 75: DOB is on or after 1/1/**1959**
 - Attain age 74 after 2032
 - Likely a typo and should be attain age 73 after 2032 (so DOB is 1/1/1960)

Designated Roth Accounts

- No RMD Required from Designated Roth
 - No RMDs required from designated Roth accounts in 401(a), 403(b), or 457(b) plans
 - Beginning in 2024



Required Minimum Distribution Changes

Surviving Spouse Election Permitted

- Plan may allow a surviving spouse to be treated as the employee for RMD
- Attractive when participant is younger than spouse
- Optional
 - May offer beginning 2024

More Flexibility to Use Annuities



Required Minimum Distribution Implications

- Optional
 - These are not required
 - Result is to permit smaller RMDs
- Operations
 - Watch for mis-match between plan provisions... recordkeeping system will default one way
 - Spousal election—is it offered when required and retained?



2025+ Retirement Changes

Roth Catch-Up Contributions

Catch-up Contributions Roth for Certain Participants

- Required to be Roth for Ps >\$145,000 in prior year
 - Based on FICA wages
- Plan must offer Roth to others as well
 - Can the plan require all catch-ups be Roth?
- 2026PY
 - Delayed from 2024 by IRS Notice

SECURE 2.0 – Auto Enroll



- DC plans, including 403(b)s, established after enactment required to have auto enroll
 - Must be an EACA
 - Enroll at 3% - 10%
 - Increase 1% per year to at least 10%, but no more than 15 percent
- Certain exceptions
 - Businesses with < 10 EEs,
 - Businesses less than 3 years old
 - Churches and governments
- Beginning 2025 PY

Higher Catch-up Limit

Beginning with 2025 PY

- For Years the Participant Attains Ages 60-63
- May Allow Catch-up Contributions equal to 150% of 2024 catch up limit (indexed)

In 2024 limits that would be \$11,250



Amendments Increasing Benefits



- Retro Discretionary Amendments
 - Deadline to adopt increase in benefits is tax return due date
 - Cannot increase match
 - Beginning with 2024 plan year
- Complement to SECURE 1.0 Retro Plans

Amendments For All This...

Statutory Deadline

- 12.31.2026 for most plans
 - 12.31.2029 for governmental plans
- Also extended SECURE 1.0 and CARES

Discretionary

- Some amendments may be required s





That's All Right??

We're done for a while....?



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answers to your
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