The SECURE 2.0 Act webinar follow-up: Q&A

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EXPANDING COVERAGE AND INCREASING SAVINGS

Section 101

Mandatory automatic enrollment: summary of provision

Effective for plan years beginning after 12/31/24

- Automatic enrollment becomes a requirement for new 401(k) and 403(b) plans (with certain exceptions).
- The feature must be in the form of an eligible automatic enrollment arrangement (EACA).
- Under the EACA, participants must be automatically enrolled:
  - at an initial rate of at least 3% (but not more than 10%) and
  - increased each year by 1% to at least 10% (but not more than 15%).
- Such contributions must be invested in a qualified default investment alternative (QDIA).

Section 101

Mandatory automatic enrollment: Q&A

Q1 Which plans are exempt from mandatory automatic enrollment?

- SIMPLE 401(k) plans
- Plans established before 12/29/22
- Governmental or church plans
- Plans sponsored by businesses in existence for less than 3 years
- Plans maintained by employers with 10 or fewer employees

Q2 When will automatic enrollment apply if the plan was established in 2023 and the employer had 10 or fewer employees through 2025, but then had more than 10 employees starting in 2026?

- 1/1/28, if a calendar plan year and tax year (assuming the plan is not otherwise exempt)
- Not earlier than "the date that is one year after the close of the first taxable year with respect to which the employer maintaining the plan normally employed more than 10 employees"

Q3 What does it mean for the plan to be established before 12/29/22?

It's unclear at this time.

We're hopeful that it means that the plan was adopted (i.e., plan document signed) before 12/29/22, regardless of whether the plan is effective before 12/29/22, but we need guidance to confirm.

Q4 Will an employer that merges its existing plan into a MEP after 12/29/22 be subject to automatic enrollment?

That depends on the following (unless future guidance states otherwise):

- If the existing single employer plan was established before 12/29/22, it appears it will not be subject to mandatory automatic enrollment (unless the MEP requires otherwise).
- If the existing single employer plan was established on or after 12/29/22, it appears it will be subject to mandatory automatic enrollment unless another exception applies (e.g., fewer than 10 employees).

The above applies regardless of whether the MEP was established before, on, or after 12/29/22.

Q5 If a plan is established after 12/29/22 but before 1/1/25, which employees will be subject to mandatory automatic enrollment?

It's unclear whether mandatory automatic enrollment will be required for all participants (new and existing) who have not made an affirmative election or just newly eligible participants.

We need guidance to confirm.

Q6 Are long-term/part-time employees subject to mandatory automatic enrollment?

Yes, unless the plan is exempt.

Section 121

Starter 401(k) plan: summary of provision

Effective for plan years beginning after 12/31/23

- Employers who do not maintain a retirement plan may establish a starter 401(k) plan or safe harbor 403(b) plan.
- Requirements:
  - Only elective deferrals are permitted
  - Must cover all employees except certain employees who can be excluded by statute
  - Automatic deferrals of 3% to 15%
  - Elective contribution limit = $6,000 (adjusted for inflation after 12/31/24)
  - Catch-up contribution limit = IRA catch-up limit ($1,000 for 2023 and adjusted for inflation under SECURE 2.0)
- Not subject to ADP and top-heavy testing
- For plan years after 12/31/24, unless an exception applies, starter plans will have to comply with the mandatory automatic enrollment provision under Section 101, which means an automatic increase provision will be required.

Section 121

Starter 401(k) plan: Q&A

Q1 What are the advantages/disadvantages of having a starter 401(k) plan vs. a SIMPLE IRA?

Starter 401(k) plan	SIMPLE IRA
No employer contributions	Employer contributions are required
Rollovers in from other plans are permitted	Rollovers in from other plans are permitted (only after 2 years of participation in the SIMPLE IRA)
Form 5500 required	Form 5500 is **not** required
Rollovers to other eligible retirement plans are not subject to an excise tax regardless of number of years of participation	Rollovers to other eligible retirement plans are subject to 2-year participation requirement; otherwise, a 25% additional tax may apply
Limited access to funds (i.e., must have a distributable event)	**Unlimited** access to funds (subject to 2-year participation; otherwise, a 25% additional tax may apply)
Loans are permitted	Loans are **not** permitted
Exempt from top-heavy rules and nondiscrimination testing	Exempt from top-heavy rules and nondiscrimination testing
Lower deferral limits/catch-up limits than SIMPLE IRA	Lower deferral limits/catch-up limits than regular 401(k) plan
IRS/DOL notices and disclosures required	**Exempt from certain** DOL disclosures
Mandatory automatic enrollment	**Optional** automatic enrollment

Section 109

Higher catch-up limit at ages 60 to 63: summary of provision

Effective for taxable years beginning after 12/31/24

- Catch-up contribution limit for 401(k), 403(b), and governmental 457(b) plans has been increased for employees who attain ages 60 to 63 to the greater of:
  1. $10,000 or
  2. 150% of the catch-up limit for 2024
- The annual limit is adjusted for inflation beginning in 2026

Section 109

Higher catch-up limit at ages 60 to 63: Q&A

Q1 When does a catch-up-eligible participant first become eligible for the increased catch-up limit?

A catch-up-eligible participant who turns age 60 by the end of the year is eligible to make a catch-up contribution up to the increased catch-up limit. The participant can also continue to make an increased catch-up contribution at ages 61 through 63.

Example: Participant is age 59 at the start of 2025 but turns age 60 on 12/31/25. The participant **would be eligible** to make an increased catch-up contribution in 2025 and continue increased catch-up contributions for the years they turn ages 61 through 63.

Q2 Is the higher catch-up limit at ages 60 to 63 available for everyone, or do income limitations apply?

It's available to all participants ages 60 to 63 (with no income limitations) provided the plan has a catch-up contribution provision.

However, if a participant has wages in excess of $145,000 for the prior year, **all catch-up contributions** must be designated as Roth contributions pursuant to Section 603 of SECURE 2.0.

Q3 How do the regular catch-up limits and increased catch-up limits work for employees who attain the applicable catch-up age by the end of the taxable year?

Age 50–59	Age 60–63	Age 64 and older
Regular catch-up limit in effect for applicable year	Greater of $10,000 or 150% of regular catch-up limit in effect for 2024, indexed	Regular catch-up limit in effect for applicable year

Q4 Is an employer required to offer the increased catch-up limit for employees ages 60 to 63?

- The increased catch-up limit for eligible participants (ages 60–63) is built into IRC Section 414(v) under SECURE 2.0, which most preapproved plan documents incorporated by reference.
- We don't know how document providers will handle the increased catch-up limits in the future (perhaps they will provide an "other" line, which could be used to exclude the use of the increased catch-up limit).

ROTH EXPANSION

Section 603

Catch-up contributions must be Roth: summary of provision

Effective for taxable years beginning after 12/31/23

- Catch-up contributions under an employer retirement plan (other than a SIMPLE IRA or SEP) must be Roth contributions for employees whose wages exceeded $145,000 in the prior calendar year. The wage limit will be indexed for inflation.
- Employees with wages less than the threshold must be permitted—but are not required—to elect to have catch-up contributions made as Roth contributions.

Section 603

Catch-up contributions must be Roth: Q&A

Q1 How were catch-up contributions accidentally removed under SECURE 2.0?

As lawmakers rushed to pass SECURE 2.0, they inadvertently deleted a paragraph that has the unintended effect of eliminating the ability of participants in 401(k) plans to make catch-up contributions.

The technical drafting error was identified by the American Retirement Association, which alerted the U.S. Treasury Department and the Joint Committee on Taxation.

Guidance has been requested that until a necessary technical correction can be made, the Treasury Department and the IRS will apply the law as though the technical correction has been made.

Q2 Will a plan have to add a Roth feature in order to have a catch-up contribution provision?

Yes, it appears a plan will have to add a Roth feature if it has participants who receive wages that are greater than $145,000 (indexed).

Q3 How is the $145,000 income threshold determined?

The threshold is based on wages under IRC Section 3121(a) earned during the prior calendar year from the employer sponsoring the plan.

There is current uncertainty about what this means for partners and sole proprietors who don't receive wages under IRC Section 3121(a). Guidance has been requested.

The $145,000 threshold will be indexed for inflation.

Q4 Will plans have to be amended to add the Roth component for the catch-up provision?

Most likely yes, and most likely will be included in your document provider's SECURE 2.0 amendment.

Q5 Can plans limit the availability for participants to elect Roth or pretax only for catch-up contributions (with the exception for participants with wages over the $145,000 wage threshold) and limit all other salary deferrals to pretax?

ⓘ *It's unclear, but it appears this would be permissible.*

Q6 Can a plan require that all catch-up contributions be made as Roth contributions?

ⓘ *It's unclear, but it appears that this would **not** be permissible.*

Section 604

Treatment of employer matching or nonelective contributions as Roth: summary of provision

Effective for contributions made after 12/29/22

- Plan sponsors of 401(k), 403(b), and governmental 457(b) plans may permit participants to designate vested employer matching and nonelective contributions as Roth contributions. This includes a match on qualified student loan payments.
- Matching contributions and nonelective contributions designated as Roth contributions are not excludable from income.
- Future earnings would not be taxable if distributed as a qualified Roth distribution.

Section 604

Treatment of employer matching or nonelective contributions as Roth: Q&A

Q1 Does the 100% vested requirement for employer matching and/or nonelective contributions apply on a money source level or on a participant level?

ⓘ *It's not clear based on the statute, but it appears that an employer could restrict the provision to apply to vested money sources or vesting on a participant level.*

Using fully vested money sources would obviously simplify administration of this complicated provision.

Q2 Are the Roth matching and/or nonelective contributions deductible for the employer?

Absent guidance, it appears that they would be deductible to the employer (up to the IRC Section 404(a) limit) in the same manner as other employer contributions.

Q3 What are the tax implications for participants if they elect to have their matching and/or nonelective contributions designated as Roth?

ⓘ *It's unclear based on the statute. The American Benefits Council and others have requested guidance to determine if the designated amounts are:*

- *Includable in income and subject to income-tax withholding*
- *Excluded from FICA*
- *Taxable in the year the contributions are made (even if they are with respect to the prior plan year)*
- *Treated as non-cash taxable income*

Q4 What are the differences between Section 604 and in-plan Roth conversions of employer contribution accounts?

In-plan Roth conversion	Match and/or nonelective made as Roth
Participant election is a percent or dollar amount of non-Roth accounts when one-time election is made	Participant election is ongoing
Participant is subject to plan limitations (e.g., one per year); requires separate election for each conversion	Election may stay in effect until changed by participant
Reported on Form 1099-R	ⓘ *Reported on W-2?? (need guidance)*
Converted amounts are not subject to FICA	ⓘ *Not subject to FICA?? (need guidance)*
Principal and earnings are taxable as of the date of conversion	Appears only principal is taxable for year in which contribution is made
Application of 5-year clock for recapture of 10% penalty tax	ⓘ *Not applicable?? (need guidance)*

Q5 Does the provision also apply to profit sharing only and money purchase plans?

ⓘ *Absent guidance, it appears the provision applies to these types of plans.*

However, since these plans are not set up to track Roth accounts or comply with Roth rules, application may create administrative challenges.

FINANCIAL INCENTIVES

Section 102 and Section 111

Small employer plan start-up tax credit: summary of provisions

Section 102 effective for tax years beginning after 12/31/22

Section 111 effective for tax years beginning after 12/31/19 (effective retroactively)

- Start-up credit increased from 50% to 100% of qualified start-up costs (subject to the annual dollar limit) for employers with up to 50 employees
- Additional credit for 5 years for eligible employer contributions:
  - "Applicable percentage" of the amount contributed, up to $1,000 per employee—but excluding employees with wages that exceed $100,000 (indexed for inflation)
  - Employers with 50 or fewer employees are eligible for the full credit, but the credit is phased out for employers with between 51 and 100 employees
- Small employer that joins an existing MEP is eligible for the full start-up credit

Section 102 and Section 111

Small employer plan start-up tax credit: Q&A

Q1 What type of plans are eligible for the start-up tax credit?

For purposes of the tax credit for qualified start-up costs (100% or 50%, as limited):

- Qualified plans (DB and DC plans), SEPs, and SIMPLE IRAs **that cover at least one NHCE**

For purposes of the tax credit for employer contributions:

- Qualified plans (excluding DB plans), SEPs, and SIMPLE IRAs

Q2 Is the increased credit for 100% of qualified start-up costs permitted for 3 years (subject to the annual dollar limit)?

Yes (beginning with the "first credit year").

Q3 What's the annual dollar limit for purposes of the credit for 100% of qualified start-up costs?

It's the same as the 50% credit, which is the greater of:

- $500 or
- $250 multiplied by the number of non-highly compensated employees eligible to participate in the new plan capped at $5,000

Q4 Are there any new tax credits under SECURE 2.0 relating to automatic enrollment?

No; however, the small employer 3-year tax credit of $500 per year (as added by the SECURE Act of 2019) for plans that add an EACA still exists.

Q5 What percentage of employer contributions applies for the additional 5-year tax credit for employers with 50 or fewer employees?

Tax years beginning the year the plan is "established"	Applicable percentage of employer contributions (limited to $1,000 per participant)
1st	100%
2nd	100%
3rd	75%
4th	50%
5th	25%
Any tax year thereafter	0%

The above is phased out for employers with 51 to 100 employees.

Q6 If a plan converts from a SIMPLE IRA to a 401(k) plan, will it qualify for the tax credit?

Generally, no, unless there are still remaining credit years for the SIMPLE IRA. Otherwise, to qualify for the tax credit, the employer (or any member of its controlled group) could not have maintained another plan (qualified plan, SEP, or SIMPLE plan) covering substantially the same employees during the 3 prior tax years.

Q7 If employers with no more than 50 employees started a plan in 2022, can they take a tax credit for up to 100% of qualified start-up costs (or the annual dollar limit, if less) for 2023 and 2024?

It appears so (assuming the first credit year was 2022).

Sections 113

De minimis financial incentives: summary of provision

Effective for plan years beginning after 12/29/22

- Amends the current law to allow a 401(k) or 403(b) plan sponsor to offer "de minimis financial incentives" to employees to encourage plan participation
- Provides an exemption from the contingent benefit rule and provides relief from the prohibited transaction rules

Sections 113

De minimis financial incentives: Q&A

Q1 What is the definition of de minimis?

- Section 113 does not provide a dollar threshold.
- However, de minimis financial incentives might include things such as low-dollar gift cards.

Q2 Can the incentive be paid for with plan assets?

- No, the incentive cannot be paid for with plan assets.
- This prohibition includes funds in a PERA or ERISA budget.

Q3 What are some other compliance considerations?

- The incentive cannot be deposited into the recipient's retirement account.
- Depending on the plan, the incentive may be treated as plan compensation for purposes of contribution allocation.
- The incentive may result in taxable income to the recipient.

PLAN DESIGN INNOVATION

Sections 110

Student loan payments for purposes of matching contributions: summary of provision

Effective for plan years beginning after 12/31/23

- Employers will be permitted—although not required—to make matching contributions under a 401(k) plan, 403(b) plan, or SIMPLE IRA with respect to "qualified student loan payments."
- A qualified student loan payment is generally defined as any indebtedness incurred by the employee solely to pay qualified higher education expenses of the employee.
- The employer may rely on employee certification of qualified student loan repayments.
- For certain nondiscrimination testing, the provision permits a plan to test separately the employees who receive matching contributions on student loan repayments.

Sections 110

Student loan payments for purposes of matching contributions: Q&A

Q1 Can employers have different matching rules for student loan matching contributions?

No, the following requirements will apply:

- The rate of matching contributions on salary deferrals must be the same as qualified student loan payments.
- The participant must be otherwise eligible to receive matching contributions on salary deferrals in order to get the match on qualified student loan payments.
- Matching contributions on qualified student loan payments must vest in the same manner as matching contributions on salary deferrals.

Q2 Will providing student loan matching contributions negatively affect ADP or ACP tests?

- Conversely, since the provision allows participants that receive a match on their student loan payment to be tested separately for purposes of the ADP test, results may improve.
- Although results will differ from plan to plan, additional matching contributions made on behalf of participants who will most likely be non-highly compensated employees should have a positive impact on ACP test results.

Q3 If a parent is legally obligated to make qualified student loan payments on behalf of a child, can the parent qualify for the matching contributions on the payments?

It appears that a parent can take advantage of the student loan match provision under Section 110 unless guidance provides otherwise.

INCREASED PLAN ACCOUNT ACCESS

Section 115

Withdrawal for emergency personal expenses: summary of provision

Effective for distributions made after 12/31/23

- Permits withdrawals to pay for "unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses"
- The key characteristics are:
  - There's no 10% penalty tax for early withdrawal
  - Amount is limited to $1,000 (or if the account is less than $2,000, the amount that exceeds $1,000) per calendar year
  - Withdrawal amount can be repaid to the plan within 3 years—follows the rules for the qualified birth or adoption distributions (QBADs)
  - No subsequent emergency withdrawal from the same plan (or IRA) within the 3-year period unless:
    - emergency withdrawal has been repaid to the plan (or IRA), or
    - participant has made contributions that equal or exceed the amount of the prior emergency withdrawal to the plan (or IRA)

Section 115

Withdrawal for emergency personal expenses: Q&A

Q1 Is the withdrawal for an emergency personal expense a new safe harbor hardship expense?

No. Emergency personal expense withdrawals are exempt from the 10% penalty, and they can be repaid back to the plan. In contrast, hardship withdrawals are not exempt from the 10% penalty and cannot be repaid.

Q2 What are examples of an emergency personal expense?

It appears that any of the IRS safe harbor hardship reasons would qualify, and it appears that other expenses outside of those reasons could also qualify; for example, expenses related to car repair could be considered an emergency personal expense.

Q3 Can participants self-certify an emergency personal expense withdrawal?

Yes.

Section 311

Three-year repayment of qualified birth or adoption distribution: summary of provision

For distributions made after 12/29/22 (with special rules for earlier distributions)

- QBAD was provided under the SECURE Act of 2019.
- QBAD may be repaid and qualify as a rollover distribution.
- SECURE Act of 2019 and subsequent guidance did not specify the timeframe for repayment.
- This provision amends the QBAD provision to restrict the recontribution period to 3 years beginning on the day after the date on which the QBAD was distributed.

Section 314

Withdrawal for domestic abuse victims: summary of provision

For distributions made after 12/31/23

- Permits withdrawals for victims of domestic abuse
- The key characteristics are:
  - Aggregate amount of such withdrawals for any individual cannot exceed the lesser of $10,000 (indexed for inflation), or 50% of the participant's vested account balance
  - Participant may self-certify eligibility
  - No 10% early withdrawal penalty tax
  - Withdrawal amount can be repaid to the plan within 3 years—follows the rules for QBADs

Section 314

Withdrawal for domestic abuse victims: Q&A

Q1 Is spousal consent required for a domestic abuse withdrawal?

No. It appears that Congress considered that issue and excluded all contribution sources subject to joint and survivor annuity rules, so spousal consent would not be required.

Section 334

Qualified long-term care distribution: summary of provision

For distributions made after 12/29/25

- Permits withdrawals for certain payments relating to long-term care insurance costs
- For any tax year, cannot exceed the lesser of:
  1 the amount paid to or assessed by the insurance provider,
  2 10% of the employee's vested account balance, or
  3 $2,500 (indexed)
- No 10% early withdrawal penalty tax

Section 326

Exception to penalty for individuals with a terminal illness: summary of provision

For distributions made after 12/29/22

- Expands the circumstances in which penalty-free withdrawals could apply to an individual whose physician certifies that the individual has a terminal illness or condition that can reasonably result in death in 84 months or less
- Participant must be otherwise eligible for a distribution
- Withdrawal amount can be repaid to the plan within 3 years—follows the rules for QBADs

Section 331

Withdrawal for federally declared disasters: summary of provision

For disasters occurring on or after 1/26/21

- Provides permanent disaster withdrawal rules for plans
- The key characteristics are:
  - Withdrawal request must be made within 180 days of the later of (1) the enactment date, (2) the first day of the incident period, or (3) the date of the disaster declaration
  - Maximum withdrawal amount of $22,000 per disaster
  - Tax on withdrawal may be spread over 3 years
  - No 10% early withdrawal penalty tax
  - Withdrawal amount may be recontributed within 3 years
  - Loan terms can be modified to:
    - Increase the maximum loan amount (up to $100,000)
    - Use participant's fully vested account as loan collateral
    - Suspend loan repayments for up to 1 year

Section 331

Withdrawal for federally declared disasters: Q&A

Q1 What are the main differences between an in-service withdrawal for a federally declared disaster and a hardship withdrawal for a federally declared disaster?

The hardship withdrawal:

- **Cannot** be repaid to the plan, so it permanently reduces the participant's account balance
- Is taxed in the year of distribution (i.e., cannot be spread over 3 years)
- May provide a greater source of funds, depending on the amount requested to satisfy the "immediate and heavy" financial need and the available hardship sources under the plan
- May result in an additional 10% early distribution tax
- Is not a protected benefit (i.e., the hardship feature can be removed from the plan)

Q2 What are the special rules for unused home buyer withdrawals?

Section 331 allows certain home purchase withdrawals to be recontributed to the participant's account under the plan if those funds were to be used to purchase a home in a disaster area and were not so used because of the disaster.

Q3 Must a plan sponsor adopt both the in-service withdrawal component and the loan component associated with Section 331?

The plan sponsor has discretion as to whether it adopts both or just one of the components.

Section 127

Pension-linked emergency savings account (PLESA): summary of provision

Effective for plan years beginning after 12/31/23

Plan sponsors may now add a "pension-linked emergency savings account" to their retirement plan. Key characteristics of the account are:

- Automatic enrollment allowed—contribution rate up to 3%
- Eligible employee can't be a highly compensated employee
- Account balance is limited to $2,500 (indexed annually)
- Funded with post-tax Roth contributions (which are treated as Roth contributions for limits and nondiscrimination testing)
- Invested in an interest-bearing cash account or investment that preserves principal and provides liquidity
- Withdrawals are allowed:
  - At least once per month, with no fees on the first four withdrawals each plan year
  - By way of self-certification and penalty free
- Deferrals eligible for any matching contributions
- Requires annual disclosure

Section 127

Pension-linked emergency savings account (PLESA): Q&A

Q1 What are the main differences between the emergency savings account and the in-service emergency withdrawal feature under Section 115?

The in-service emergency withdrawal:

- Is not a self-funded account within the plan
- Is only allowed for "unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses"
- Has greater withdrawal restrictions than the emergency savings account (e.g., withdrawal amount is limited to $1,000 per year)
- May comprise pretax money sources, which means the participant may have to pay both federal and state withholding taxes on the withdrawal amount
- Is a protected benefit

Q2 What happens when a participant reaches the limit established for the emergency savings account?

Once the limit is reached, additional contributions may be directed to the employee's Roth contribution account or stopped until the emergency savings account balance falls below the limit.

Q3 What happens if a participant terminates employment and still has a balance in an emergency savings account?

On termination of employment, any emergency savings account balance can be converted to the Roth account within the plan, distributed to the participant, or rolled over to a Roth IRA or another plan that accepts Roth rollovers.

Increased plan account access: cheat sheet

Withdrawal type[1]	Dollar limit	Three-year repayment permitted	Self-certify	Exempt from early penalty tax	Special rules
Emergency personal expense (Section 115)	Lesser of $1,000, or the amount of vested balance that exceeds $1,000	Yes	Yes	Yes	One per 3-year period unless repaid (or contributions made at least equal to prior withdrawal) but no more than one per calendar year; distributable event except from pension assets; excludes DB plans
Qualified birth or adoption (QBAD) (Section 311)	$5,000 per individual per child	Yes	Yes	Yes	Within 1 year of the birth or adoption; repayment period ends on 12/31/25 for QBADs taken prior to 12/29/22; distributable event except from pension assets; excludes DB plans
Domestic abuse (Section 314)	Lesser of $10,000 (indexed) or 50% of vested balance	Yes	Yes	Yes	Within the 1-year period during which the participant was a victim of domestic abuse; distributable event; excludes pension assets (i.e., excludes money purchase and DB plans)
Terminal illness (Section 326)	No limit	Yes	?	Yes	Does not create a new distributable event
Qualified disaster (Section 331)	$22,000 per qualified disaster	Yes	?	Yes	Distributable event, including money purchase plan assets; excludes DB plans
Qualified long-term care distributions (Section 334)	Lesser of insurance cost, 10% of vested balance, or $2,500 (indexed), per calendar year	No	No	Yes	Insurance must satisfy certain long-term care coverage requirements; distributable event except from pension assets; excludes DB plans
Hardship (Section 312)	Amount of need	No	Yes, if safe harbor reason	No	Must first obtain all other currently available distributions; distributable event except from pension assets; excludes DB plans
Pension-linked emergency savings account (PLESA) (Section 127)	Amount not to exceed the PLESA (limited to $2,500 plus earnings)	No	N/A	N/A	Distributions permitted (at least one per month) at the discretion of the participant; treated as a qualified Roth distribution; no fees permitted for the first four withdrawals each plan year

1 Not treated as an eligible rollover distribution (i.e., subject to optional withholding, 10% if no election is made), except terminal illness distributions or in the case of a PLESA where the participant terminates employment, or the employer terminates the feature, in which case, distributions are treated as eligible rollover distributions

Increased plan account access—new in-service withdrawals: Q&A

Q1 Are these new in-service withdrawals subject to mandatory 20% withholding or are they subject to optional withholding?

The distributions in the table are generally not treated as eligible rollover distributions, so they're subject to optional withholding (10% if no election is made), except as follows:

- It appears that terminal illness distributions are treated as eligible rollover distributions and would be subject to the mandatory 20% withholding.
- Distributions from a PLESA to terminated participants or distributions to participants due to the employer removing the PLESA feature are also treated as eligible rollover distributions.

Note: Since distributions from a PLESA are treated as a qualified Roth distribution, there would be no taxable income subject to tax withholding.

Q2 Are these withdrawal provisions automatically allowed or do they need to be provided in the plan document?

- If elected by the plan sponsor, these withdrawals must be in the plan document as part of the SECURE 2.0 amendment.
- All new withdrawal types are optional provisions.

Q3 Is there an overall maximum dollar limit for these new in-service withdrawals?

It appears that the new in-service withdrawals have their own limits and rules and generally do **not** interact with each other. **However**, a participant would have to exhaust any new withdrawals prior to taking a hardship withdrawal.

Example: If participants have medical expenses, it appears they will have to first take an emergency personal expense withdrawal (if it's available under their plan) and exhaust the PLESA (if they have one) before requesting a hardship withdrawal.

PLAN ADMINISTRATION CHANGES

Section 315

Modification to family attribution rules: summary of provision

Effective for plan years beginning after 12/31/23

- Attribution from parents to their minor child will not by itself result in related employers. This often occurred when parents owned separate businesses (even when parents were divorced).
- Community property laws will be disregarded when determining ownership.

Section 315

Modification to family attribution rules: Q&A

Q1 Will all plans that were a controlled group solely due to attribution from a minor child or the community property rules now need to be considered MEPs?

Yes. This change may be treated as a business transaction for purposes of the transition rules, which means that the unrelated employers may automatically satisfy coverage requirements until the end of the transition period (generally, 12/31/25 for calendar year plans).

Section 312

Reliance on hardship withdrawal certification: summary of provision

Effective for plan years beginning after 12/29/22

- 401(k) and 403(b) plans can rely on employee certification that hardship is:
  - for one of the **seven safe harbor reasons**,
  - the withdrawal request does not exceed the amount needed to alleviate the hardship, and
  - the employee does not have any other reasonably available resources to satisfy the hardship (this was previously permitted).
- A similar rule applies with respect to unforeseeable emergency withdrawals from a governmental 457(b) plan.

Section 312

Reliance on hardship withdrawal certification: Q&A

Q1 Is hardship self-certification an optional provision?

Yes, this is an optional provision, but it's only available for plans that follow the IRS safe harbor reasons.

The plan document will dictate whether this optional provision will be part of the SECURE 2.0 amendment or whether it is just considered administrative procedures.

The plan sponsor can choose whether to implement the self-certification process or continue to require copies of documents showing hardship or have participants follow hardship substantiation guidelines.

Q2 Can a plan administrator rely on a participant's self-certification in all cases and not require documentation?

Currently yes, but the Treasury is authorized to issue regulations that would override a participant's self-certification if the plan administrator has knowledge to the contrary.

Q3 Will the plan administrator be held accountable for hardship distributions in the event of a plan audit if participants do not retain their source documentation (i.e., proof)?

Unlike the hardship substantiation guideline method, there is no requirement for plan participants to retain hardship documentation in the event of a plan audit and the plan administrator will not be penalized if documentation cannot be produced.

Q4 If a participant takes multiple hardship withdrawals, can the plan administrator adopt a procedure to restrict such participant from making future salary deferrals?

No. Suspensions of salary deferrals are not permitted on account of hardship distributions taken on or after 1/1/20.

Q5 If the plan permits loans, is that considered funds reasonably available?

No, provided the plan does not require otherwise.

Section 304

Increased dollar limit for mandatory distributions: summary of provision

Effective for distributions beginning after 12/31/23

Increases current mandatory distribution dollar limit from $5,000 to $7,000 (not adjusted for inflation). Applies to automatic rollovers and consent rules.

Section 304

Increased dollar limit for mandatory distributions: Q&A

Q1 Is the mandatory distribution limit changing to $7,000 mandatory?

- No, the increase is **not** mandatory.
- A plan could require consent for all distributions or use a limit that's less than $7,000, subject to plan document and/or recordkeeping system limitations.

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