Notice 2024-02

A Grab bag of SECURE 2.0 Guidance

Presenter Information

Stephen W. Forbes J.D., LL.M.

Forbes Retirement Plan Consulting

(720) 799-7039

stephen.forbes32@gmail.com

What we'll cover

- Roth employer contributions
- SEP, SIMPLE IRA, SIMPLE 401(K)
- Mandatory Automatic Enrollment
- SIMPLE to Safe Harbor 401(k) plans
- Correction of Automatic Enrollment Failures
- Cash Balance Plans

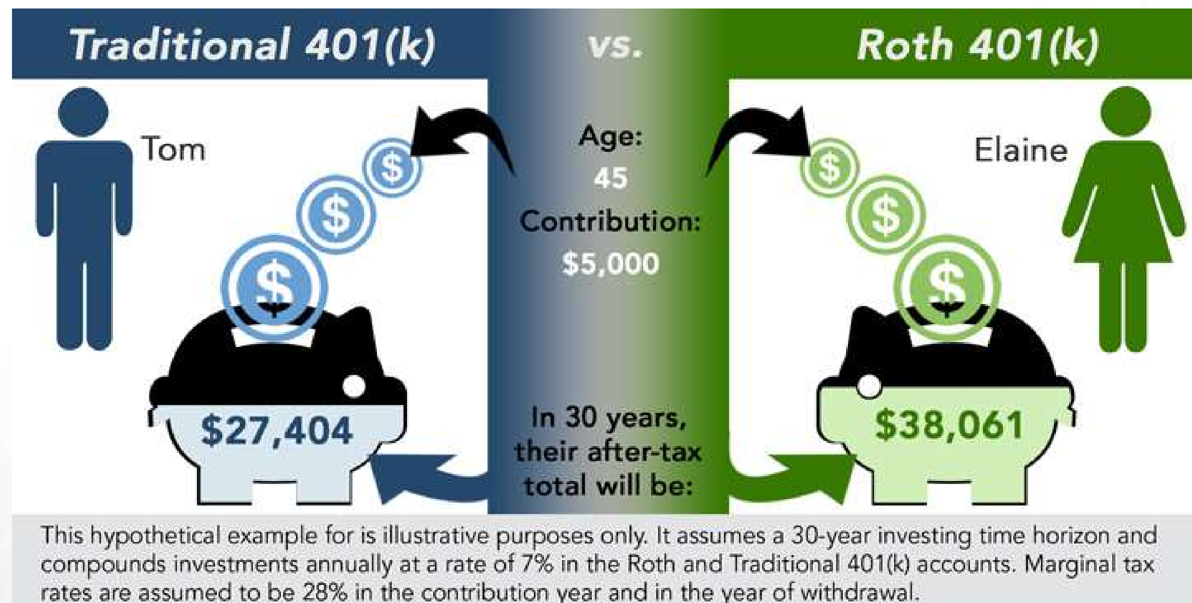
SECURE 2.0 Timeline

- December 29, 2022: President signed SECURE 2.0
- November 25, 2023: IRS issued proposed LTPT EE regulations
- December 20, 2023: IRS issued Notice 2024-02
  - Q&As on 12 issues in SECURE 2.0 (Grab Bag Guidance)
- December 20, 2023: IRS released Notice 2024-03
  - Cumulative List of Changes • Provisions in Cycle 4 DC documents

Grab Bag Guidance

- Extension for interim amendments
- 2025 automatic enrollment
- Automatic enrollment correction
- De minimis deferral incentives
- Small employer credits
- Terminally ill individual distributions
- Roth employer contributions
- Roth SEP/SIMPLE IRA
- Additional SIMPLE contributions
- SIMPLE conversion to safe harbor 401(k) plan
- Cash balance plans

ROTH EMPLOYER CONTRIBUTIONS



Roth Employer Contributions

- Approximately 90% of 401(k) plans permit participants to make Roth deferrals basis
  - A smaller percentage of those plans permit in-plan Roth conversions
- Roth IRA contributions are not directly available to high income employees
  - However, there is no income-based limit applicable to Roth deferrals or in-plan Roth conversions

SECURE 2.0 Extends Roth Options

- SECURE 2.0 §604 created a new option for participants in 401(k) and 403(b) plans to elect to receive employer matching and nonelective contributions on a Roth basis
  - Effective 12/29/22
  - However, with no guidance, virtually no employers implemented the option
- This option is particularly attractive because:
  - Beginning in 2024, 401(k) and other plan Roth accounts will no longer be subject to lifetime RMDs

Roth Employer Contribution Elections?

- The election rules are based on the current regulations for Roth deferral elections
- The election must be made no later than the date the contribution is allocated to the participant's account and must be irrevocable
  - Participants must be given the effective opportunity to make or change Roth employer contribution elections at least once a year
  - Recordkeepers likely will establish administrative rules regarding timing and frequency of elections.

Elections

- Presumably, participants may make one election that applies to all contributions if employer contributions are made each payroll period (e.g., payroll match)
- NO requirement to offer Roth for all money types
- Can separate Roth deferral election from match and nonelective Roth election

Can Partially Vested Participants Make the Election?

- Participants must be 100% vested in order to make the Roth election
- Limiting the Roth elections to fully vested employees will not be treated as a discriminatory benefit, right or feature (i.e., not a nondiscrimination issue)

Example

- Drs. Smith and Jones (HCEs) have a medical practice that sponsors a safe harbor 401(k) cross-tested plan
  - The profit sharing contributions are subject to a 6-year graded vesting schedule
  - 8 NHCEs
  - The HCEs are 100% vested; all of the NHCEs are partially vested
  - The plan added the Roth election for the profit sharing contributions
  - *Who is eligible to make the Roth election? Until the NHCEs become 100% vested, only the doctors are eligible to make the Roth election*
  - *Will the Roth election raise a nondiscrimination issue? No.*
  - *Must the plan offer the Roth election for deferrals? No.*

Does the Plan Have to Permit Roth Deferrals or In-Plan Roth Conversions?

- Prior guidance on in-plan Roth conversions (IRS Notices 2013-74 and 2010-84) required that in-plan Roth conversions could not be adopted unless a plan also permitted Roth contributions
  - However, a plan does NOT have to allow Roth deferrals or in-plan Roth conversions in order to have Roth employer contributions
  - A plan may permit <u>only</u> Roth employer contributions

Does the Plan Have to Permit Roth Deferrals or In-Plan Roth Conversions?

- A plan that offers Roth employer contributions satisfies the requirement that plans must permit Roth contributions before they can permit in-plan Roth conversions
- Notice 2024-02 cautions that the right to make Roth deferral contributions is a benefit, right or feature subject to nondiscrimination testing

Availability

- A plan can offer Roth employer contributions even if it doesn't offer Roth deferrals
  - Opens the option to profit-sharing and money purchase plans
  - Plan that offers Roth employer contributions can offer in-plan Roth rollovers and can accept Roth rollovers from other Roth plans

Example

- Company X maintains a 401(k) profit sharing plan with a payroll matching contribution
  - X decides to include the Roth option for profit sharing and matching contributions
  - X will make the 2023 profit sharing contribution on May 1, 2024
  - Ken would like to elect to treat his profit sharing contribution as a Roth contribution
    - *By what date must Ken make the election? May X identify an earlier date for the election? May Ken elect that only a portion of his contribution be treated as a Roth contribution?* ***Prior to May 1, 2024. The recordkeeper may impose additional requirements (e.g., employee must make an election 7 days in advance). Yes.***
    - *If Ken is not 100% vested in his employer contributions, may he make the election?* ***No.***
    - *May Ken elect to treat his 2023 match contribution as a Roth contribution? May Ken elect to treat his 2024 match contribution as a Roth contribution?* ***No, an employee cannot make a retroactive election. Yes, but only with respect to matching contributions that have not been contributed.***

Are Roth Employer Contributions Included in Plan Compensation?

- Roth employer contributions are not included in the safe harbor definitions of compensation in Treas. Reg. §1.415(c) -2(d)(3) and (4)
  - They are not wages

Example

- Mary participates in a 401(k) profit sharing plan
  - Plan allocates profit sharing contribution on net compensation
  - Compensation for 2024: $200,000
  - Mary makes a Roth deferral election of $20,000 and Roth election for her $30,000 profit sharing contribution
  - Her compensation is $180,000 ($200,000 - $20,000)

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?*

Example (cont.)

- *If the 2023 matching contribution was an annual match and it was not contributed until April 10, 2024, could Ann elect to have the match treated as a Roth contribution?*
- *For which tax year will the 2023 profit sharing contribution be included in income? On what form will the plan report the profit sharing contribution? How will it be reported?*

Reporting

- Designated Roth Employer Contributions will NOT be considered wages for purposes of FICA or FUTA

Does a separate five-year period apply to Roth employer contributions?

- Earnings on Roth contributions may be withdrawn from a plan tax free if the distribution is a “qualified” distribution
- To be qualified, a distribution must be made after the five taxable-year period of participation and on account of a triggering event (age 59 1/2)
- IRS rules provide that the five-taxable-year period is the period of five consecutive taxable years beginning with the first day of the first taxable year in which the employee makes a Roth contribution to any Roth account established for the employee under the same plan
    - And ends when five consecutive taxable years have been completed

Qualified distributions

- If a participant has been making Roth deferrals before he/she elects to make Roth employer contributions, does the five-year period applicable to his/her prior Roth deferral contributions apply to the Roth employer contributions?
  - Or, does a separate five-year period need to be satisfied for the earnings on the Roth employer contributions to be withdrawn tax-free?
- The IRS doesn't specifically address this question
  - Absent additional IRS guidance, it seems reasonable to conclude that the applicable five-taxable-year period commences as of the first day of the first taxable year in which the employee makes designated Roth contributions, whether such contributions are Roth deferrals OR designated Roth employer contributions
  - In other words, a separate or new five-year-taxable period would not apply if the participant has previously made Roth deferral contributions to the same plan

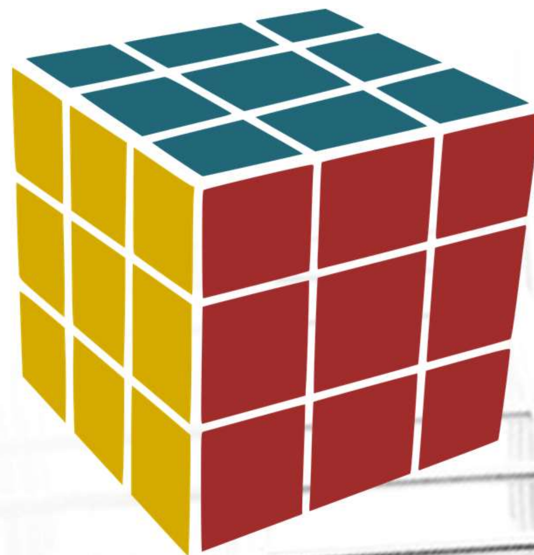
When Are Plan Amendments Required?

- As part of Notice 2024-02, which contains guidance on several other SECURE 2.0 provisions, the IRS extended the amendment deadline for recent statutory changes, including those enacted in SECURE 2.0, from the last day of the 2025 year to December 31, 2026
  - Collectively-bargained plans have until December 31, 2028 to adopt these amendments
  - This extension also applies to both required and discretionary amendments to pre-approved plans

Plan Sponsor responsibilities

- Plan sponsors implementing the Roth employer contribution option need to communicate the changes to participants on a timely basis
- Plan sponsors must have recordkeeping in place to satisfy the separate accounting requirement and track the holding period for favorable tax treatment of distributions

SEP, SIMPLE IRA, SIMPLE 401(K)



SIMPLE Plan Limits

- SECURE 2.0 §117
  - SIMPLE IRA and 401(k) deferrals have been limited:
    - – $16,000 deferral limit, $3,500 catch-up for 2024
- New law allows 10% higher deferral (e.g., $17,600/$3,850)
  - – Automatic if fewer than 26 eligible employees
  - – Employers with 26 – 100 employees can elect higher limit
    - But must increase employer contributions
    - – 3% nonelective (up from 2%)
    - – 4% match (up from 3%)

Employees

- No special rules for counting number of employees
  - Notice 98-4
- At least $5,000 of compensation in the preceding year
  - A 2-year grace period if the number goes over 25 employees
    - Unless the increase is due to acquisition, disposition, or similar transaction

Notice

- Both employers who get the automatic limit and the employers who elect the increased limit, are required to include the increase in the participant notice
  - Would have been nice to know this 2 months ago
  - Elected increase, which includes the increased match or nonelective, must also include the increased employer contribution in the notice
  - For SIMPLE IRA, should also notify financial institution and payroll provider

Effective Date

- Because it must be in annual notice, and annual notice for 2024 was due November 1, 2023
  - No SIMPLE plan can implement until 2025
    - Unless they were sufficiently clairvoyant to include it in the notice
  - Election remains in place until revoked by the employer (where elected)

SIMPLE to SAFE HARBOR 401(K) PLAN

Going SIMPLE to Safe Harbor 401(k) Plan

- SECURE 2.0 §332
- New law lets you convert a SIMPLE IRA to a SH 401(k) mid-year
  - Replacement plan may be a SIMPLE 401(k), SH nonelective 401(k), nonelective contribution QACA, or Starter 401(k)
- Deferral limit is prorated (by day) between SIMPLE and 402(g)

Terminating the SIMPLE IRA Plan

- Formal written action must be taken by the employer
- Once terminated, no contributions can be made after the termination date (except deferrals made prior to termination date or accrued employer contributions)
- 30-day advance notice must be given to employees
  - As opposed to normal November 1 notice of termination

Rollover Rules

- Normally, cannot rollover within the first two years of participation in the SIMPLE IRA
  - Notice permits rollover if it goes to a: (a) 401(k) plan, or (b) 403(b) plan
  - Regular rules state you can't have a qualified plan in the same year as a SIMPLE IRA
- Notice clarifies SIMPLE IRA can be replaced with a 401(k) safe harbor plan

Deferral Limits

- Pro-ration of limits by days
- Example
  - Convert SIMPLE IRA to 401(k) plan March 1, 2024
  - Dan (under age 50) deferred $2,000 to SIMPLE IRA
- 401(k) deferral limit is $19,912.33
  - Pro-rated SIMPLE Limit: $16,000 limit x 60 days/365 = $2,630.14
  - Plus: Pro-rated 402(g) Limit: $23,000 x 306 days/365 = $19,282.19
  - Minus: deferrals to date in SIMPLE: $2,000

Other Issues

- Participant notice must include the limit of contributions available under the safe harbor 401(k) plan
- There is NO mention in Notice 2024-2 of what happens with catch-up contributions
  - Careful reading of the statute suggests that the catch-up limit is also pro-rated ($3,500 SIMPLE vs $7,500 402(g))
  - Pro-rated SIMPLE limit could be adjusted for the 10% extra SIMPLE deferrals, if applicable

Mandatory Automatic Enrollment

Mandatory Automatic Enrollment

- SECURE §101
  - New 401(k) and deferral 403(b) plans required to have automatic enrollment EACA
  - Default deferral percentage
    - First year: 3% to 10%
    - Auto increase of 1%/year thereafter: capped at 10 – 15%
  - QDIA unless participant makes investment election
  - Must allow permissible withdrawals (up to 90 days after first auto deferral)

Exemptions

- SIMPLE 401(k)
- Plans established before 12/29/2022 (Grandfathered Plans)
- Governmental and church plans
- Plans sponsored by employer that normally employs fewer than 11 employees
  - Exemption expires 1 year after close of first tax year after employer exceeds the limit
- New business: exempt during first 3 years of existence of the business or a predecessor business

Example

- Company X establishes a 401(k) plan on January 1, 2023
  - X has 10 employees for 2023, 2024 and 2025
  - Although X plan is not grandfathered, it is not subject to mandatory automatic enrollment in 2025 because it qualified under the small plan exemption
  - On 2/15/26, X adds two employees
  - On 1/1/28, X's plan must apply automatic enrollment to its plan

Example

- Jim establishes a new company (X) with 20 employees on 2/1/25
  - On 3/1/25, X establishes a new 401(k) plan
  - The plan is not subject to mandatory automatic enrollment until 3/1/28

What is a Grandfathered Plan?

- A defined contribution plan with a 401(k) feature established before 12/29/2022 is considered a "pre-enactment qualified CODA" or "pre-enactment section 403(b) plan"

Example

- Example provided in Notice 2024-02
  - New Plan is effective January 1, 2023
  - Plan document is signed October 1, 2022
    - Before Enactment of SECURE 2.0
  - Considered as a Grandfathered Plan for mandatory auto enrollment provision
- For 401(k) plans, what counts is when deferral provisions are formally included in the plan document
  - Employer adopts profit sharing plan January 1, 2022
  - Amends plan to add 401(k) feature January 1, 2023
  - Not a Grandfathered Plan – mandatory automatic enrollment applies

Spin-off Plans

- Single Employer Plans
  - Original plan is a Grandfathered Plan
    - Then, the spin-off plan will be treated as Grandfathered Plan
  - Original plan is NOT a Grandfathered (signed after 12/29/22)
    - Then, the spin-off plan won't be a Grandfathered Plan
- Multiple Employer Plans
  - Participating employer's portion of plan is treated as Grandfathered and is spun off into a new separate plan
    - Then the new plan is a Grandfathered Plan

MEP/PEP: Spin-Off Plans

- The critical date is the date the Participating Employer originally adopted the PEP/MEP and elected a 401(k) feature and not the effective date of the PEP/MEP
  - Example:
    - Participating Employer adopted MEP 5/1/2023
    - MEP was originally effective 1/1/2019
    - The plan is not a Grandfathered Plan for the Participating Employer
      - Doesn't impact the other MEP/PEP employers
    - When the Participating Employer spins-off into another plan, the spun-off plan won't be a Grandfathered because of its adoption date

Plan Mergers

- Merger of two single employer Grandfathered Plans
  - Resulting plan is a Grandfathered Plan
- Merger of single employer Grandfathered Plan into Grandfathered Plan with more than one employer (e.g. MEP)
  - Resulting plan is a Grandfathered Plan for that employer

Plan Mergers

- Plan X is not a Grandfathered Plan
  - Merges into Plan Y that is a Grandfathered Plan
  - Resulting plan is NOT Grandfathered, unless:
    - Merger is in connection with merger/acquisition under coverage transition rule of Code §410(b)(6)(C)
    - Grandfathered Plan Y is the surviving plan, AND
    - Merger occurs by end of coverage transition rule period (i.e., Last day of following plan year)

Example

- Company X established a 401(k) plan in 2019 (grandfathered plan)
- Company Y established a 401(k) plan in 2023 (not a grandfathered plan)
- On June 15, 2024, X acquires Y (become part of controlled group)
  - Coverage transition rule triggered
  - As part of the transaction, X merges Y's plan into X's
  - The resulting plan is a grandfathered plan and is not subject to mandatory enrollment in 2025

Example

- Company X and Y are part of a controlled group since 2015
  - X established a 401(k) plan in 2016 (Y employees not included)
  - Y established a 401(k) plan in 2023 (X employees not included)
- XY decide to merge the plan on June 15, 2024 to save costs
  - The resulting plan is NOT a grandfathered plan and is subject to mandatory enrollment in 2025

MEP/PEP Mergers

- Note: the determination is based on the participating employer and not the MEP/PEP original effective date
  - Example: Company X's 401(k) plan was originally effective 1/1/2020
  - The plan merges into a MEP
  - The plan will be Grandfathered within the MEP
  - Example: Company Y's 401(k) plan was originally effective 1/1/2024
  - Even though the participating employers in the MEP are Grandfathered, Y's 401(k) plan won't be Grandfathered as a participating employer

403(b) and Starter 401(k) Plans

- 403(b) plans are subject to all the same rules discussed with respect to 401(k) plans
  - Except, it doesn't matter when the elective deferral feature was added
  - If the 403(b) plan was signed before 12/29/2022, it is a Grandfathered Plan, even if deferral feature is added later
- Starter 401(k) Plans (new in 2024) will be subject to the mandatory auto enrollment rules
  - Unless the plan sponsor qualifies for an exemption due to size or recent establishment of the employer

Eligible Automatic Contribution Arrangement (EACA)

- An EACA is a 401(k) arrangement which:
  - specifies that in the absence of the participant's affirmative election, a default election applies under which the plan treats a participant as having elected to have the employer make default deferrals on the participants behalf, which default election will cease to apply for periods for which the participant makes an affirmative election not to defer or to defer a different amount;
  - satisfies the uniformity requirement; and
  - satisfies the notice requirement

Uniformity Requirement

- An EACA must provide that the default elective contribution is a uniform percentage of compensation
- Exceptions to uniformity. The automatic deferral percentage does not fail to satisfy the uniformity requirement because:
  - the automatic deferral percentage varies based on the number of years (or portions of years) the employee has participated in the arrangement operated as a EACA;
  - the plan does not reduce the deferral percentage in effect immediately before the arrangement became a EACA (i.e., the plan may leave in effect an employee's deferral percentage in effect immediately before the effective date of the EACA which is higher than the automatic deferral percentage);
  - the plan limits the elective contribution percentage so as not to exceed the compensation limit, the 402(g) limit, or the 415 limit

Notice Requirement

- The plan satisfies the notice requirement only if it provides the EACA notice to each employee covered by the EACA
  - The notice must be in writing, but may be communicated electronically
  - The EACA notice must include and explain the following:
    - Automatic deferral percentage
    - Right to make alternative election
    - Investment options
    - Permissible withdrawal right

Notice requirement/timing

- The plan satisfies the notice timing requirement if it provides the EACA notice to each covered employee a reasonable time before the beginning of each plan year a reasonable time before the employee becomes a covered employee
- Identical to the safe harbor notice requirement, an EACA satisfies the "reasonable" notice requirement if it provides the notice to the covered employees at least 30 days and not more than 90 days before the beginning of each plan year

Permissible 90-day withdrawal

- An EACA may permit an employee to withdraw the employee's automatic deferrals, if the employee makes the election not later than 90 days after the date of the employee's first automatic deferrals
- The election applies to all of the employee's automatic deferrals made before the effective date of the election (and attributable earnings)
- For purposes of determining the latest election date, the date of the first default deferral is the date the employee otherwise would have included the compensation in gross income

Extended 6-month grace distribution period

- For an EACA that distributes excess contributions or excess aggregate contributions (with attributable income), the 10% excise under does not apply to the employer if the plan distributes the excess amounts within 6 months, rather than within 2½ months under the rule that normally applies
- However, the 6-month correction period is available only if all HCEs and NHCEs eligible to defer are covered under the EACA for the entire plan year (or the portion of the plan year that the employees are eligible employees)

Correction of Automatic Enrollment Failures

Safe Harbor Correction for a 401(k) plan with an Automatic Contribution Feature

- EPCRS provides a safe harbor correction method for a 401(k) plan that includes an automatic contribution arrangement
- Under the safe harbor, the employer does **not** have to make a corrective contribution for an elective deferral failure (failure to implement and improper exclusion) in a 401(k) plan with an automatic contribution arrangement provided the following conditions are satisfied:

1. **Correct elective deferrals** begin by the first payroll date on or after the earlier of:
   a) 9½ months after the end of the plan year in which the failure first occurred; or
   b) The last day of the month after the month the affected employee first notified the employer of the failure.
2. The employer provides a **notice** of the failure to the affected participants not later than 45 days after the date on which the correct deferrals begin. And
3. If the eligible employee would have been entitled to additional **matching contributions** on the missed deferrals, the employer makes a corrective allocation equal to the matching contributions that would have been allocated on the missed deferrals. These contributions must be made within the two year timeframe for correcting significant operational failures.

Safe Harbor Correction – Automatic Enrollment

- EPCRS (Rev. Proc. 2021-30, Appendix A)
  - Special correction for automatic enrollment/escalation is now incorporated into Code §414(cc)
    - Includes affirmative elections made by participant in lieu of automatic enrollment
  - Same basic correction principles apply
  - Correction window is the earlier of:
    - 9½ months following the end of the plan year in which the failure occurred; OR
    - The last day of the month following the date on which the participant brings the failure to the plan sponsor's attention (This would include the employer identifying the failure and bringing to the participant's attention)
  - Correction:
    - 0% QNEC
    - However, the employer must make corrective contribution for the missed match + earnings

Correction Method

- Corrective QNEC contribution:
  - 0% if corrected timely and a 45-day notice is provided to the affected participants
    - Now, 0% QNEC applies even for terminated employees (401k fix-it guide stated this correction didn't apply to terminated employees)
      - Language in 45 day notice would need to be modified to remove reference to correcting future deferrals
    - Corrective matching contributions (plus earnings) must still be funded for all affected participants
      - Deadline to fund corrective contribution is reasonable time after correct deferrals begin
      - 6 months is reasonable

Correction Method – Non Safe Harbor

- What if the employer fails to comply with the automatic enrollment safe harbor correction method?
  - Fails to effect correct deferrals w/i correction window
  - Fails to provide 45 day notice timely
  - Fails to make corrective contribution for the missed matching contributions
- Consequence: employer is subject to non-safe harbor correction method
  - 50% QNEC for missed deferrals (plus earnings)
  - Corrective contribution for matching contributions (plus earnings)

Correction Method – pre effective date

- The safe harbor correction method is the same except the employer may not use the correction method for terminated employees
  - See 401k fix-it guide

Example

- Company X maintains a QACA with the matching contribution formula (100% on the 1% of deferrals and 50% match on deferrals between 1% and 6%)
  - Ann becomes eligible for the plan on January 1, 2024
    - Ann makes neither an affirmative election nor a contrary election
    - Ann's compensation is $5,000/month
  - X fails to implement the 3% automatic elective deferral for Ann until January 1, 2025
  - X will <u>not</u> need to make a corrective contribution for the 2024 missed deferrals
  - However, X will need to make a corrective contribution of $1,200 for the matching contributions on the missed deferrals (2% [100% x 1% + 50% on the next 2% of deferrals] x $60,000)
  - X also will need to provide Ann with a notice within 45 days of January 1, 2024 (the date correct deferrals commence)

Example

- Assume the same facts as in the previous example except:
  - Ann becomes eligible for the plan on January 1, 2024
    - Ann makes an affirmative deferral election of 5%
    - Ann's compensation is $5,000/month
  - X fails to implement the 5% deferral election for Ann until January 1, 2025
  - X will <u>not</u> need to make a corrective contribution for the 2024 missed deferrals
  - However, X will need to make a corrective contribution of $1,800 for the matching contributions on the missed deferrals (3% [100% x 1% + 50% on the next 4% of deferrals] x $60,000)
  - X also will need to provide Ann with a notice within 45 days of January 1, 2025 (the date correct deferrals commence)

New rules may apply to earlier failures

- New rules apply to failures for which the correction window ends after December 31, 2023
  - Example:
    - Calendar year QACA plan
    - 3 employees became eligible on January 1, 2023 and did not make a deferral election
      - Plan failed to automatically enroll (3%) the new participants
    - Correction window ends October 15, 2024
      - New rules apply, even though failure was pre-2024
    - Employer identified the failure on January 20, 2024
      - 2 participants: employer automatically enrolled at 4% (included 1% escalation) on February 15, 2024
        - Employer made 0% QNEC contribution for elective deferral failure
        - Employer made corrective contribution for the match (subject to 2 year vesting schedule)
      - 1 participant terminated on January 10, 2024
        - Employer made 0% QNEC contribution for elective deferral failure (even though terminated)
        - Employer made corrective contribution for the match (subject to 2 year vesting schedule)

Calculation of Earnings for 401(k) plans with Automatic Contribution Features

- For 401(k) plans with automatic contribution features that correct elective deferral failures using the safe harbor method of correction
- The employer may calculate the earnings on the corrective contributions by using the plan's default investment alternative if the participant has not made an investment election under the plan
  - However, if the default investment alternative has a loss, the employer may not reduce the required corrective contribution

Notice Requirement for Corrections of 401(k) Plans With Automatic Contribution Arrangements

- To satisfy the notice requirement under the safe harbor for 401(k) plans with automatic contribution arrangements, the notice must include the following information:

1. General information regarding the failure, such as the percentage of eligible compensation that should have been deferred and the approximate date that the compensation should have begun to be deferred.
2. A statement that the appropriate amounts have begun to be deducted from compensation and contributed to the plan.
3. A statement that corrective allocations relating to missed matching contributions have been made (or will be made). Information relating to the date and the amount of corrective allocations need not be provided.
4. An explanation that the affected participant may increase his/her deferrals in order to make up for the missed deferral opportunity, subject to the 402(g) limits.
5. The name of the plan and plan contact information.

Cash Balance Plans

Cash balance plans

- SECURE Act 2.0 provides that cash-balance plans that use a variable interest crediting rate should use a reasonable projection of the variable interest crediting rate, not to exceed 6%
- This may allow plan formulas to provide higher annual contribution credits to longer-service employees and allows a plan sponsor to eliminate any minimum interest crediting rate provision in its cash balance plan

Cash Balance Accrual Requirements

- Notice provides the following confirmations and clarifications:
  - A cash-balance plan that provides for pay credits to participants that increase with age or service and provides for a variable interest crediting rate is not at risk of violating the accrual requirements if the interest crediting rate falls below a certain point

New Provisions

- A cash-balance plan can be amended to adopt the new provisions if:
  1. the plan currently provides for principal credits that increase with age or service and the amendment is revising the plan's interest crediting rate, or
  2. part of the plan's amendment is implementing such a pattern of principal credits

Anti-cutback Rule

- The exception to the anticutback rule under SECURE §501 doesn't apply to an amendment that reduces a participant's accumulated benefit determined as of the end of the interest crediting period that includes the applicable amendment date for the amendment
  - Accordingly, an amendment to a cash balance plan to adopt the new provisions can only be adopted with respect to interest credits for interest crediting periods beginning after the later of the amendment's effective date and the amendment's adoption date

Anti-cutback Rule

- The exception to the anticutback rule under Section 501 applies to a plan amendment affecting future interest crediting rates that is made pursuant to Section 348 only if:
  - The plan's interest crediting rate prior to the amendment is the greater of a fixed annual minimum rate or an interest rate described in Treas. Reg. 1.411(b)(5)-1(d)(3) or (4), the amendment either:
    - (a) reduces or eliminates the fixed minimum interest crediting rate while retaining the underlying interest described in Treas. Reg. 1.411(b)(5)-1(d)(3) or (4), or
    - (b) changes the interest credit rate to an investment based rate described in Treas. Reg. 1.411(b)(5)-1(d)(4)(v), and the amendment changes the interest credit rate to any permitted variable rate, subject to a limitation that the amount by which the new variable interest crediting rate is less than the maximum variable interest crediting rate of the same type must not exceed the amount by the pre-amendment fixed interest crediting rate was less than the maximum fixed interest crediting rate of 6%

Section 348

- The IRS that statutory hybrid plans which are not cash balance plans will have no reason to apply the anticutback rule under Section 348

THANK YOU