DELAWARE STATE BAR ASSOCIATION
CONTINUING LEGAL EDUCATION

SECURE 2.0 ACT OF 2022

LIVE SEMINAR AT DSBA WITH ZOOM OPTION

SPONSORED BY THE TAXATION LAW SECTION
OF THE DELAWARE STATE BAR ASSOCIATION

THURSDAY, MAY 25, 2023 | 11:00 A.M. – 12:00 P.M.

1.0 Hour CLE credit for Delaware and Pennsylvania Attorneys

ABOUT THE PROGRAM

Unless you never plan to retire, here is a seminar you shouldn't miss! The IRS is modifying the way you manage, contribute to, and pay taxes on distributions from your retirement accounts. The Secure 2.0 Act will affect required minimum distributions (RMDs), automatic enrollment, penalties for early withdrawal, and conversions from other plans. Get the scoop from our expert speaker, Paul M. Mitchell of Precision Wealth Partners.

SPEAKER

Paul M. Mitchell, CFP, RICP, CFBS
Precision Wealth Partners

Visit https://www.dsba.org/event/secure-2-0-act-of-2022/ for all the DSBA CLE seminar policies.

Please note that the attached materials are supplied by the speakers and presenters and are current as of the date of this posting.

Speaker

Paul M. Mitchell, CFP, RICP, CFBS
Precision Wealth Partners

DATE

SECURE 2.0 Act of 2022

MM202603-304684

Disclosures

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First a Quick Reminder About Secure 1.0

IRS SECURE "1.0"

Good Reminders

- Removed maximum age limits on IRA/retirement contributions
- **Raised required minimum distribution (RMD) age to 72**
- **Substantially revised rules on required distributions from inherited IRAs and qualified plans**
- Allows up to $10,000 of 529 Plan distributions toward student loan repayment
- Qualified Charitable Distributions still allowed beginning at age 70 ½
  - Really complex if any additional IRA contributions are made after 70 ½
- Kiddie Tax Change – Children's investment income now taxed at parents' tax rates (again), instead of trusts and estates rate

Recent IRS Proposed RMD Regulations

- Applies to RMDs beginning in 2022
- For 2021, apply existing rules using reasonable, good faith interpretation of SECURE Act
- **If employee died after RBD, all beneficiaries must start RMDs in the year after death (postponed until 2023 – Notice 2022-53)**
  - Eligible designated beneficiaries take at least RMD each year
  - All other beneficiaries take RMD each year, ***plus*** remaining interest by end of 10th year following employee's death
    - ***You cannot wait until 10th year to take distributions***
- Age of majority for minor children of employee is 21
- If a trust has more than one beneficiary, and any one is not an eligible designated beneficiary (EDB), trust will be treated as having no EDB

Retirement Plan and IRA Provisions Affecting Individuals

Required Minimum Distribution (RMD) changes

Increase in starting age.

Effective for individuals who attain age 72 after 2022, and for those who attain age 74 after 2032.

- Raises the RMD age to 73 effective January 1, 2023.
- Will be raised again in 2033 to age 75.
- First RMD can still be taken as late as April 1st of following year.
- Those who continue to work and do not own 5% or more of a business may continue to delay RMDs on that employer's retirement plan until year of retirement.

Reduced Penalties for Failure to Take RMDs

50% penalty dropped to 25% or 10%.

Effective starting in 2023.

- 50% excise tax for failure to take an RMD reduced to 25%.
- Further reduced to 10% where distribution is taken before the earlier of:
  - The mailing for an IRS notice of deficiency.
  - The date the 25% excise tax is assessed.
  - Before the end of the third calendar year of when the tax was imposed.

New Qualified Longevity Annuity Contract (QLAC) Contribution Limits

Higher QLAC premium limit.

Effective for contracts purchased on or after December 29, 2022.

- Repealed the 25% of prior-year end balance limitation.
- Maximum premium amount raised to $200,000.

SECURE 2.0 Act of 2022:

Maximum premium increased to

$200,000

New IRC Section 72(t) Exception for Terminally Ill

Terminally ill taxpayers can access funds from retirement accounts with no premature distribution tax.

Effective for distributions made after December 29, 2022.

- No early distribution tax imposed on distributions made to a qualified plan participant or IRA owner, on or after the date they are certified by a physician as having a terminal illness.
- "Terminally ill" – has been certified by a physician as having illness or physical condition reasonably expected to result in death in 84-months (7-years).
- Distribution can be repaid within 3-years.

New IRC § 72(t) Exception for Qualified Recovery Disaster Distributions

Victims of qualified disasters can access funds from IRAs or retirement plans with no premature distribution tax.

Effective for disasters occurring on or after January 26, 2021.

- Exception to early distribution penalty for qualified disaster recovery distribution from a qualified plan or an IRA.
  - Aggregate distribution with respect to any disaster is $22,000; employer qualified plan update required.
  - Unless the taxpayer elects immediate taxation, distribution will be **taxed** equally over 3 taxable years.
  - Taxpayers can pay back distribution to qualified plan or IRA within 3 years to reverse taxation.
- Qualified first-time homebuyer distribution not used to purchase or construct a principal residence on account of qualified disaster may be recontributed to a qualified retirement plan or an IRA.
- Applies to:
  - Individuals whose principal place of residence is in disaster area, and
  - Sustained an economic loss from disaster.

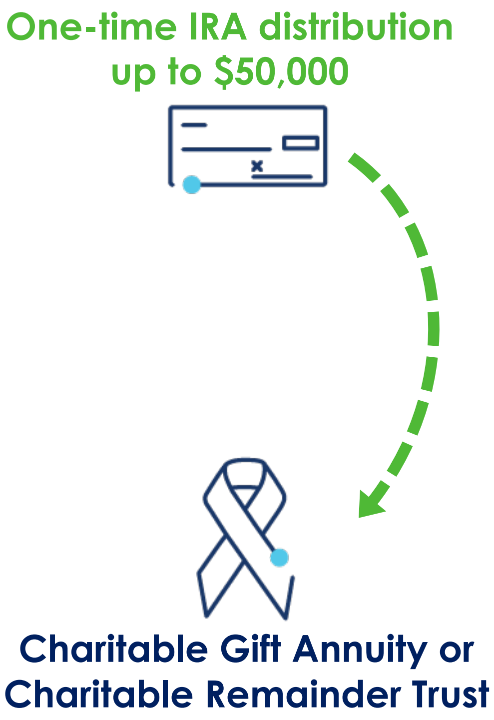
$22,000 Qualified Plan Distribution

Disaster occurred pre-January 26, 2021	Disaster occurred after January 25, 2021
10% penalty tax	~~10% penalty tax~~

New Qualified Charitable Distribution (QCD) Option

One-time distribution to charitable gift annuity (CGA) or to a charitable remainder trust (CRT) allowed.

Effective for 2023.



- QCDs are non-taxable distributions someone age 70 ½ or older can make directly from their IRA to a charitable organization up to $100,000 per year.
- For those of RMD age the distribution counts towards their RMD.
- Now a one-time distribution up to $50,000 can be made to a charitable gift annuity or to fund a charitable remainder trust where the income is payable to the IRA owner or their spouse.
- Must be funded exclusively by QCD distributions
- For CGAs, distributions shall not be treated as an investment in contract for purposes of exclusion ratio calculation.

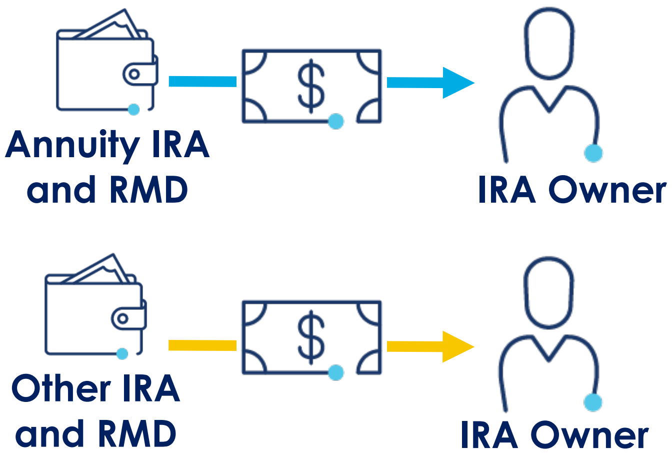
New RMD Calculation Method Option for Partial Annuitization

New RMD calculation method option for partial annuitization.

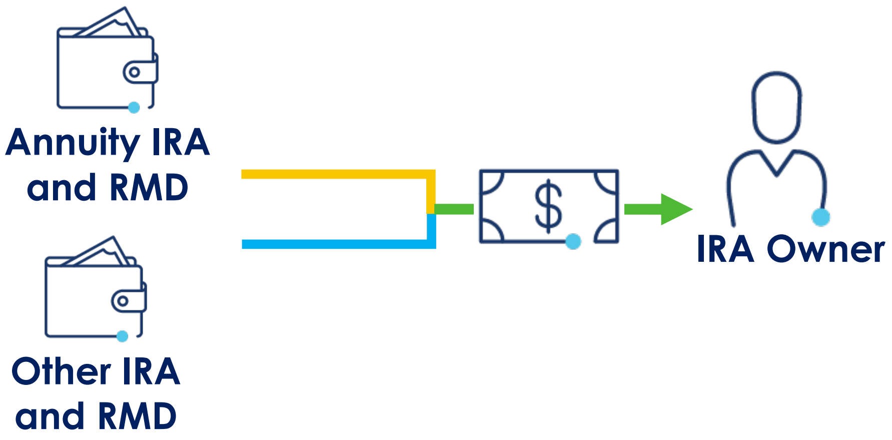
Effective as of December 29, 2022.

- Previously, income annuities subject to pension RMD rules – income stream is RMD for that IRA and that IRA only (except in year of purchase).
- New option to aggregate income annuity value with other IRA values to calculate total RMD and apply annuity income stream towards that aggregate RMD.
- Will generally reduce an IRA owner's total RMD, especially in cases where IRA owner subject to RMDs hold an income annuity under a Period Certain Only payout.

Prior Law:



SECURE 2.0:

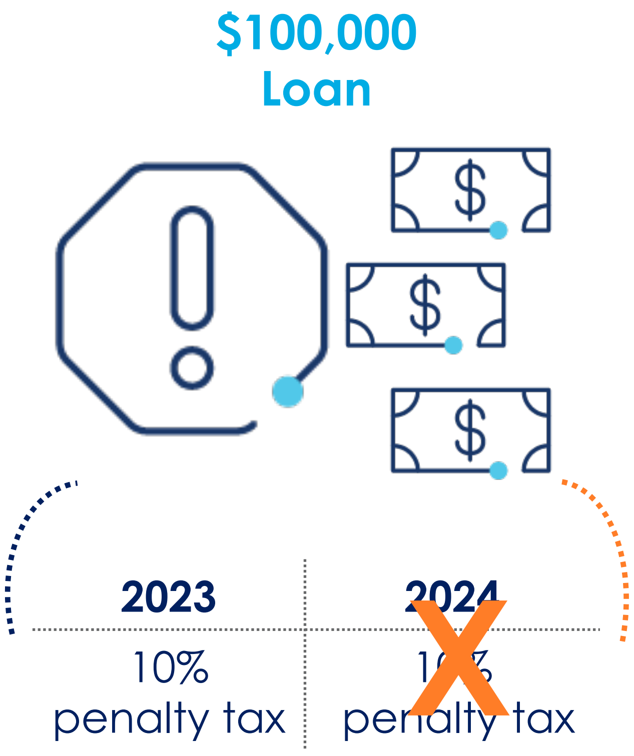


Special Rules for Plan Loans for Certain Persons Affected by Disaster

Victims of qualified disasters can borrow enhanced amount from qualified plan.

Effective for disasters occurring on or after January 26, 2021.

- Allows qualified individuals to take plan loans of up to lesser of $100,000 or account balance; qualified plan update required.
- Delays start of loan repayment and loan repayment period.
- Applies to:
  - an economic loss from disaster.



Repayment of Birth or Adoption Distributions Taken From IRA or Qualified Retirement Plan

Reduced time to repay distributions to coordinate with statute of limitations.

Effective for distributions after December 29, 2022; distributions taken prior to date of enactment may be repaid prior to January 1, 2026.

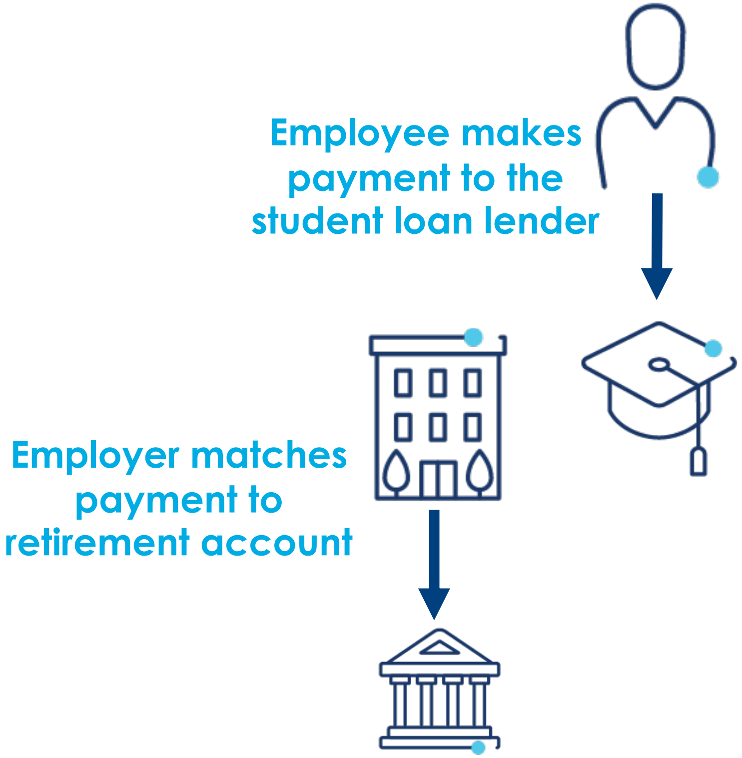
- Distributions up to $5,000 can be taken to help with expenses related to adoption or birth of a child without being subject to 10% early distribution tax.
- Prior law: Distributions are permitted to be repaid at any time to reverse taxation .
  - Obtaining a refund of prior taxes paid after statute of limitations passed created challenges.
- New law: Repayment can be made within 3 years of distribution date.
- Distributions taken prior to date of enactment may be repaid until December 31, 2025.

Student Loan Payments Treated as Plan Contributions for Matching Purposes

Indebted employees can get employer match while paying down student loan debt.

Effective for plan years beginning after December 31, 2023.

- Student loan payments may be treated as elective plan contributions for purposes of determining employer match.
- Voluntary employer qualified plan update required.
- Applies to 401(k), 403(b), governmental 457(b) plans and SIMPLE IRAs.

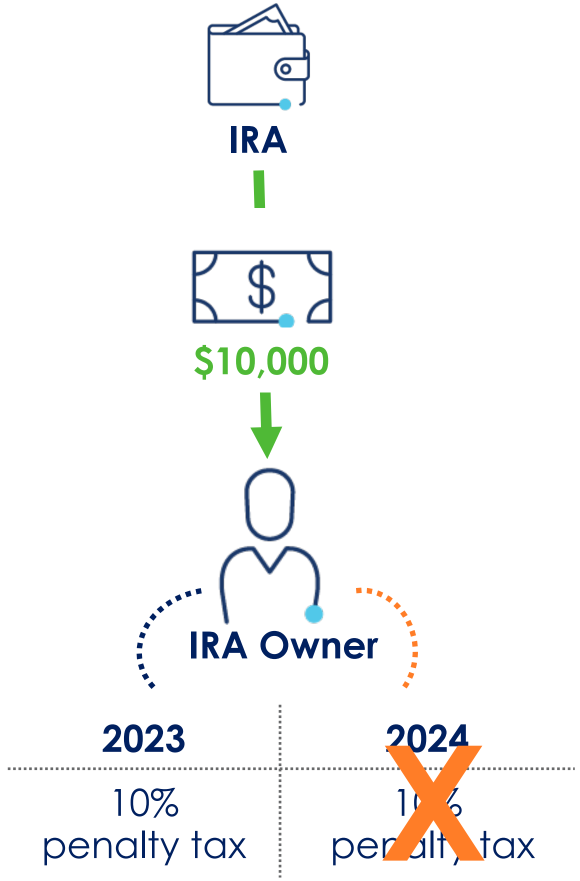


Early Distribution Exception for Domestic Abuse Victims

Victims of domestic abuse can access funds from retirement plans with no premature distribution tax.

Effective starting in 2024.

- Distribution must be made within 1 year of any date on which the individual is a victim of domestic abuse.
- The maximum amount that can be withdrawn without penalty is the lesser of:
  - $10,000 (inflation adjusted beginning in 2025), or
  - 50% of the vested account value.
- They may pay back some, or all, of the withdrawn amount, over a 3-year period.
- Income taxes paid on the amount paid back will be refunded.

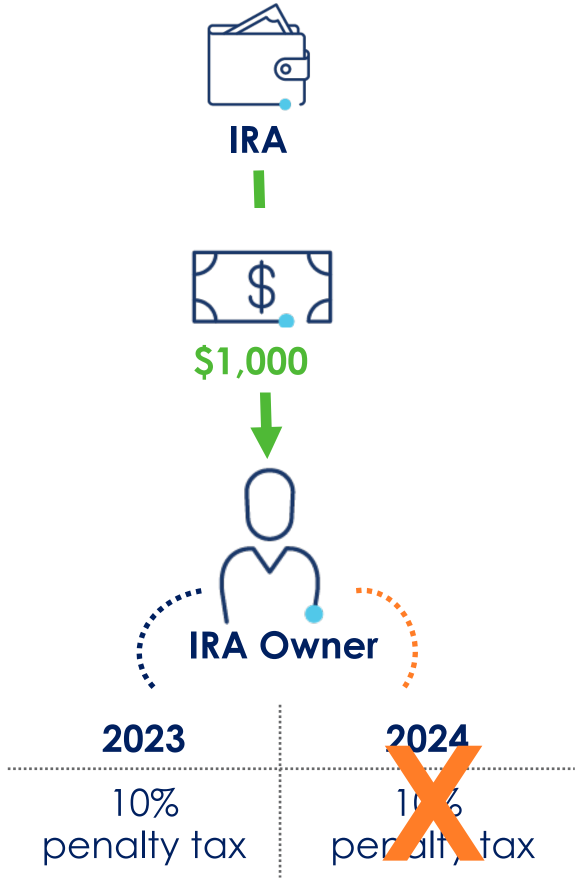


Early Distributions for Family Emergencies

Obtain funds from IRA or qualified plan with no premature distribution tax.

Effective for distributions made after December 31, 2023.

- IRA owners and qualified plan participants may have the ability to take up to $1,000 to meet unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses without incurring the additional 10% tax; qualified plan update required.
- The IRA custodian or plan administrator may generally rely on the taxpayer's self-certification in determining if the distribution qualifies as an emergency personal expense distribution.
- Limited to one distribution per calendar year.
- Unless prior distribution is repaid, another cannot be taken within subsequent 3 calendar years.
- Distributions may be repaid within 3 years to an IRA or taxpayer's retirement plan.



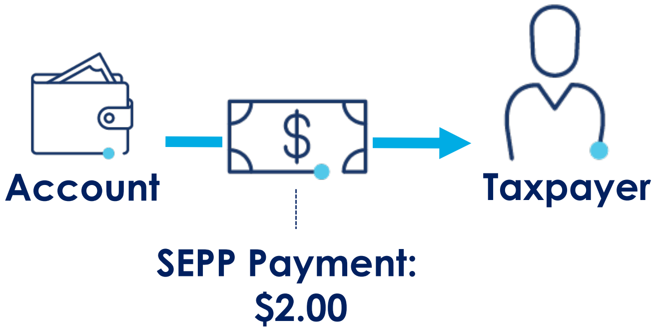
Clarification of Substantially Equal Periodic Payment (SEPP) Rule

Transactions that will qualify as Substantially Equal Periodic Payments.

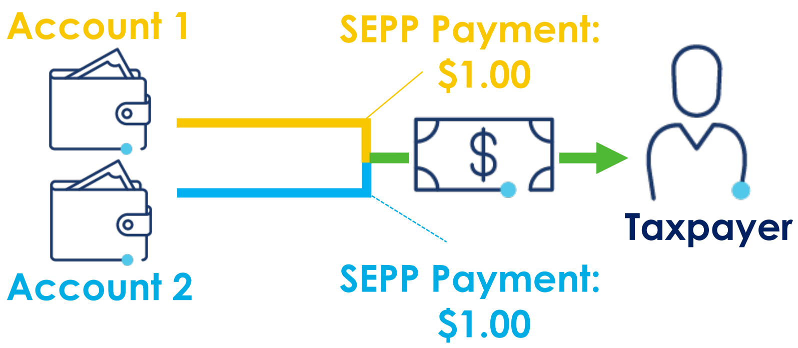
Effective for transfers or rollovers after December 31, 2023.

- Clarifies that partial rollovers or transfers from a retirement account where the SEPP exception applies are allowed.
  - Total distributions from two accounts after partial rollover or transfer must equal amount required to be distributed from original account.
- Clarifies that annuity payments can be SEPPs if made at least annually and for the life or life expectancy of taxpayer.
  - Adds a safe harbor providing that annuity payments that would satisfy qualified plan distribution rules are deemed to satisfy SEPP rules.

Prior Law:



SECURE 2.0 Act of 2022:

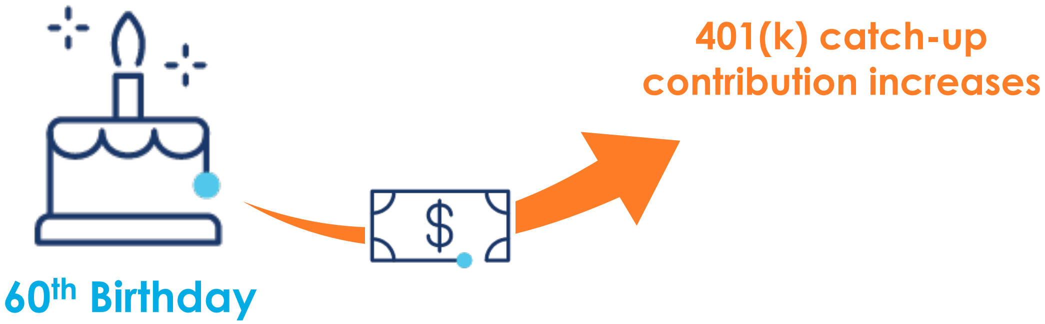


Higher Catch-Up Limits for Plan Participants Approaching Retirement

Increased limits for plan participants ages 60, 61, 62, or 63.

Effective for tax years beginning in 2025.

- Qualified plans other the SIMPLE 401(k)s: Greater of $10,000 or 150% of inflation adjusted regular catch-up amount.
- SIMPLE 401(k)s and SIMPLE IRAs: Greater of $5,000 or 150% of inflation adjusted regular catch-up amount.
- The $10,000 and $5,000 amounts indexed for inflation beginning in 2026.
- 2023 regular catch-up amounts are $7,500 and $3,500.
  - IF new rules were in effective this year higher limits would be $11,250 and $5,250.



New 72(t) Exception for Qualified Long Term Care Distributions from Qualified Plans

Penalty-free distributions to pay certain LTCi premiums.

Effective for distributions made after December 29, 2025.

If employer plan allows, additional tax on early distributions waived up to the lesser of:

- Amount paid for certified long-term care insurance for plan participant or spouse.
- 10% of the present value of the nonforfeitable accrued benefit, or
- $2,500 (adjusted for inflation after December 31, 2024).

Achieving a Better Life Experience (ABLE) Account Age Increased

ABLE account eligible age substantially increased.

Effective for plan years beginning after December 31, 2025.

- States may create qualified ABLE programs, which are tax-advantaged savings programs for those with certain disabilities.
- Distributions from an ABLE account are tax-free if used for qualified expenses of the account's designated beneficiary.
- To qualify, a beneficiary's blindness or disability had to occur before they attained age 46, up from prior law age 26.

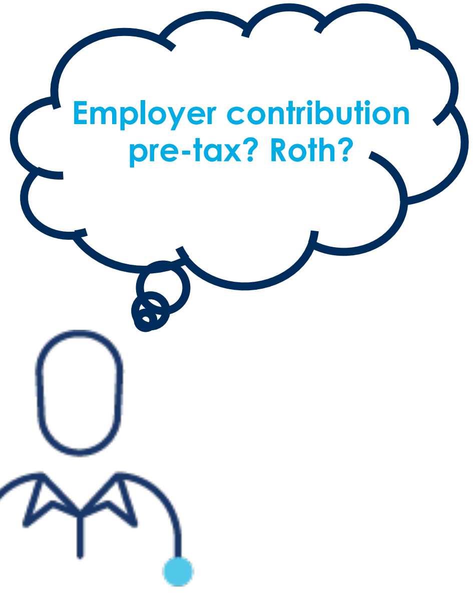
Provisions Affecting Employers and Qualified Plans

Option to Treat Employer Matching or Nonelective Contributions as Roth Contributions

Employer contributions no longer must be pre-tax.

Effective for contributions made after December 29, 2022.

- Pre-SECURE 2.0 Act of 2022 - all 401(k), 403(b), governmental 457(b) employer contributions had to be pre-tax.
- Plan participant can now direct that some, or all, of their **fully vested** employer matching and nonelective contributions be made as designated Roth contributions.
- Plan update required.



SIMPLE and SEP Roth IRAs

SIMPLE and SEP IRAs can now accept Roth contributions.

Effective for plan years beginning after December 29, 2022.

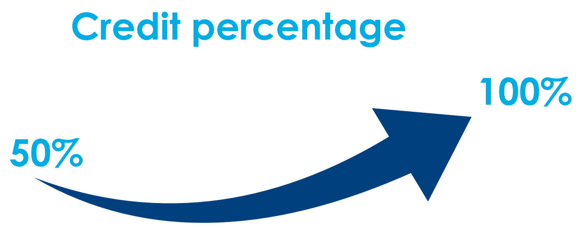
- Before SECURE 2.0 Act of 2022, all contributions to a participant's SIMPLE IRA or SEP IRA were pre-tax funds invested in a Traditional IRA.
- Now employers may offer SIMPLE and SEP IRA participants the ability to treat, some, or all, of the plan contributions as after-tax Roth contributions.

Modified Credit for Small Employer Retirement Plan Start-Up Costs

Fewer employers qualify but additional credit for early year employer contributions.

Effective for taxable years beginning after December 31, 2022.

- Modifies SECURE Act credit for start-up costs.
  - Maximum number of employees reduced from 100 to 50.
  - Increases credit percentage from 50% to 100%.
  - Deduction for start-up costs reduced by amount of credit.



Modified Credit for Small Employer Retirement Plan Start-Up Costs

Offsets cost of some employer contributions.

- Adds credit for employer contributions for DC plans (not pension) for year plan is established and next four years.
  - Applies to employer contributions for employees earning $100K or less.
  - Maximum credit per eligible employee is $1,000.
  - Credit reduced if more than 50 employees in preceding year/eliminated if more than 100.
  - Credit phased out over a 5-year period.

Retroactive First Year Elective Deferrals for Sole Proprietors

Sole proprietor can create and fund plan after year-end.

Effective for plan years beginning after December 29, 2022.

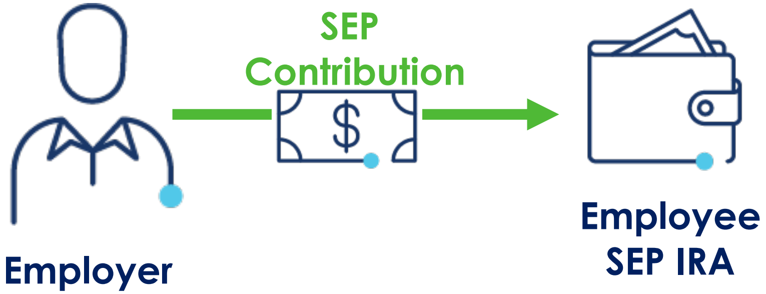
- Employer contributions allowed in 401(k) plan established after year-end but before tax filing deadline.
- Now elective deferrals allowed before individual's tax filing deadline (not including extensions) in the case of the sole owner of an unincorporated business where they are the sole employee.
- Applies to both sole proprietors and sole member LLCs and to both sole 401(k) plans and regular 401(k) plans.

SEP Contributions for Domestic Employees

SEP contributions for domestic employees.

Effective for taxable years beginning after December 29, 2022.

- Permits employers to make contributions to SEP IRAs for household employees without being subject to the 10% tax.



Starter 401(k) Plans and Safe Harbor 403(b) Plans

New type of 401(k) and 403(b) plans intended to make it easier for employers to offer retirement savings plans for their employees.

Effective for plan years beginning after December 31, 2023.

- Starter 401(k) and 403(b) deferral-only arrangements must treat all eligible employees as opting in at employer chosen uniform deferrals percentage between 3% and 15%.
- Employees may elect out of all contributions or choose a different contribution percentage.
- Employers cannot make either matching or non-elective contributions.
- Employee contribution limits:
  - $6,000 annually, indexed for inflation beginning in 2025.
  - $1,000 catch-up contribution for employees 50 or over, indexed.
- All employees must be able to participate unless they can be excluded under the normal 401(k) and 403(b) eligibility rules.

Starter 401(k) plans

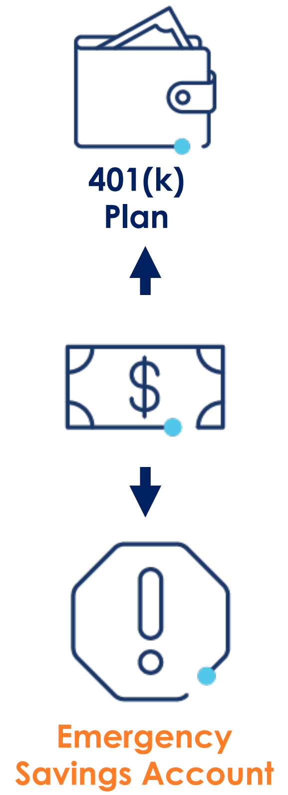
Safe Harbor 403(b) plans

Emergency Savings Accounts Linked to Retirement Plans

Plan option for employers with 401(k) and profit sharing plans.

Effective for plan years beginning after December 31, 2023.

- For participants who meet age, service, and other eligibility requirements, and are not highly compensated.
- Employers may automatically enroll eligible participant in automatic contributions of up to 3% to a pension linked emergency savings account (separate from employee's retirement account under plan).
  - Employees may opt out or choose a different contribution rate or amount.
- Participants can withdraw some or all of account balance at least once per calendar month, up to 4 times per year with no fees or charges.
- Funds held in cash, an interest-bearing or investment product offered by regulated financial institution.
- Contributions on after-tax (Roth basis); account balance limited to \$2,500 (indexed beg. 2025) or lower amount set by employer.
- Any employer match goes into regular pension account.



High Wage Earners Catch-Up Contributions Treated as Roth

Catch-up contributions for high wage earners must be after tax Roth contributions.

Effective for taxable years after December 31, 2023.

- Catch-up contributions made by plan participants age 50 and over must be made as designated Roth contributions if participant's compensation from the employer exceeded $145,000 in the prior calendar year.
- If plan does not offer a designated Roth option catch-up contributions will not be allowed for any eligible plan participants.
- Does not apply to SIMPLE IRA catch-up provisions.

2023

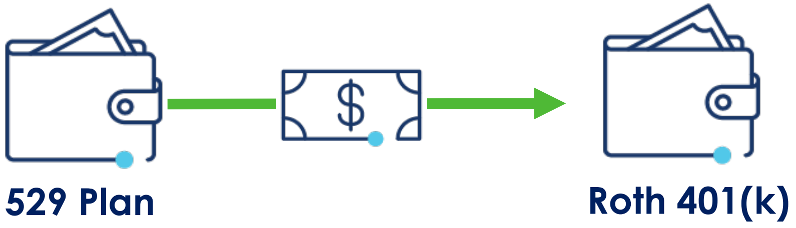
2024

529 Plan Rollover to Roth IRA

A new option for unused 529 plan funds.

Effective with respect to distributions after December 31, 2023.

- 529 plan funds can be rolled over to a Roth IRA subject to following limitations:
  - 529 plan must have been maintained for at least 15 years.
  - Can only rollover amounts (and related earnings) contributed more than 5 years prior to the rollover.
  - Rollovers limited to Roth IRA annual contribution amount (currently $6,500).
  - $35,000 cap on rollovers over the beneficiary's life.

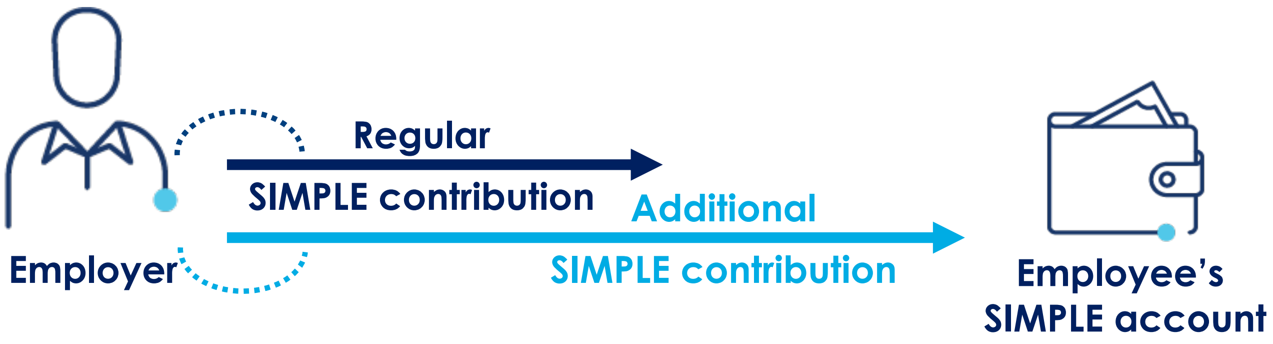


Employers Allowed Additional Nonelective Contributions to SIMPLE Plans

Enhanced employer contributions permitted in SIMPLE plans.

Effective for taxable years beginning after December 31, 2023.

- Current law permits employers to provide employee match up to 3% compensation, or make nonelective contribution of 2% for eligible employees.
- New law permits Employers to increase nonelective contribution up to 10% of compensation, not to exceed $5,000.

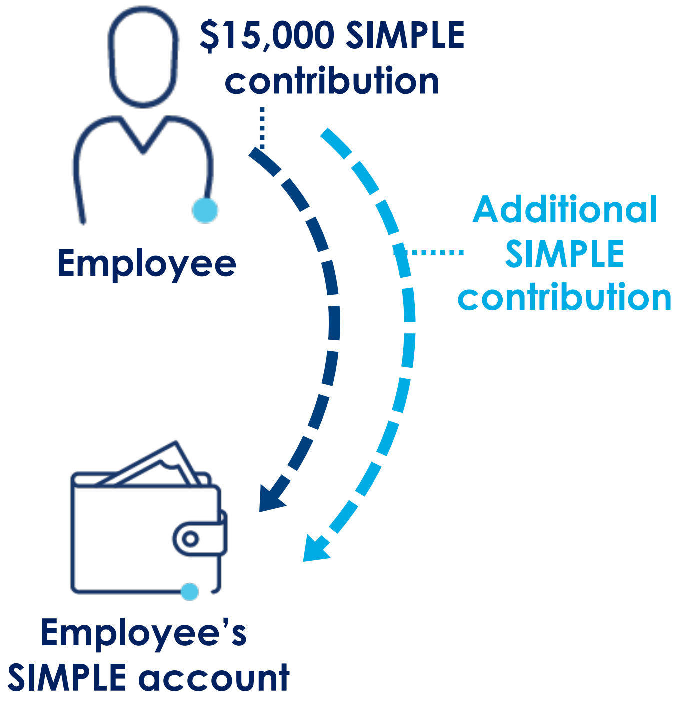


Increased SIMPLE Plan Contributions

Enhanced employee contributions permitted in SIMPLE plans.

Effective for taxable years beginning after December 31, 2023.

- Increases employee contribution limit by 10% above the amount otherwise allowed for 2024 in either of these situations:
  - Employer had no more than 25 employees, or
  - Employer had more than 25 employees and either:
    - Matches contributions up to 4% of compensation (may reduce in 2 of 5 years), or
    - Contributes 3% of compensation, regardless of employee's contribution.
- Increased amounts will be adjusted for inflation; plan update required.

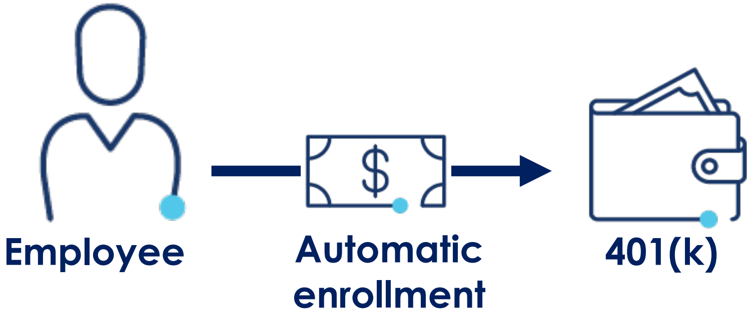


401(k) and 403(b) Automatic Enrollment

Most newer plans will have to automatically enroll eligible employees

Effective for plan years beginning after December 31, 2024.

- 401(k) and 403(b) plans must provide for auto enrollment that:
  - Permits withdrawals of elective deferrals within 90-days of first contribution.
  - Provides the auto deferral amount is at least 3% but not more than 10%.
  - Provides the deferral amount increases by 1% annually until it reaches 10%.
  - Provides auto contributions for employees who don't make an investment election will be invested in a default investment alternative.



401(k) and 403(b) Automatic Enrollment

Exceptions:

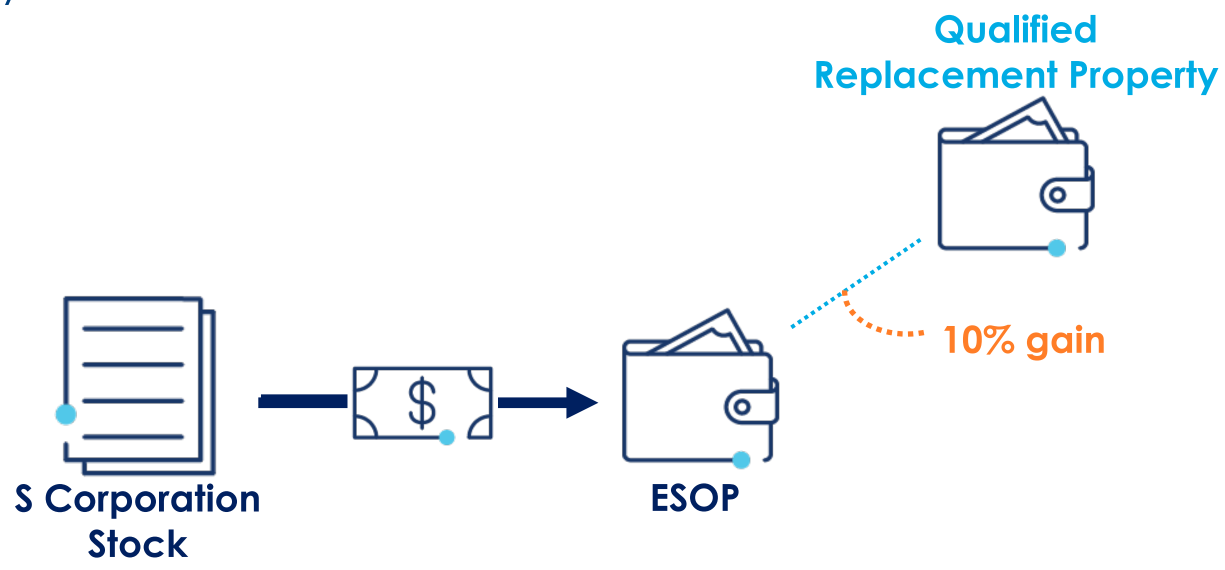
- SIMPLE 401(k) plans.
- 401(k) and 403(b) plans established before September 29, 2022.
- Businesses with less than 10 employees.
- Employers in business.
- ess for less than 3-years.

S Corporation Stock Sold to ESOP Can Qualify for Tax Deferral

Limited tax deferral from sale to ESOP now available to S Corporation shareholders.

Effective for sales made after December 31, 2027.

- Allows qualifying S corporation shareholders to defer gain on the sale of stock sold to an ESOP.
- No more than **10%** of the gain may be deferred by investing in qualified replacement property.



Effective Date Summary – Select Provisions Only

SECURE Act 2.0 Highlights
Effective Now

- **Raised required minimum distribution (RMD) age to 73 (age 75 in 2033)**
  - Really effective for those turning 73 in 2024 since RMD requirements applied to those who turned 72 in 2022
- QLAC maximum premium increased to $200,000 (indexed starting 2024)
- Qualified charitable distribution expanded – one time IRA distribution of up to $50,000 can go to CRT (not valuable) or charitable gift annuity
- Reduced excise taxes for failing to take RMD (25%; 10% if timely corrected)
- New 72(t) (early distribution tax) exceptions:
  - Terminally ill (death likely within 84 months)
  - Qualified disasters – up to $22,000
- Retroactive first year elective deferrals for sole proprietors establishing 401(k) by tax filing deadline

SECURE Act 2.0 Highlights
Effective January 1, 2024

- IRA catch-up contributions: Indexed for cost-of-living (currently $1,000)
- Student loan payments: May be treated as elective plan contributions for purposes of determining employer match
  - 401(k), 403(b), 457(b) gov., SIMPLE IRAs
- Emergency fund access: IRA owners and qualified plan participants may have the ability to take up to $1,000 without penalty
- 529 plan rollover to a Roth IRA: Rollover limits: 15-year-old plans; older contributions; annual equal to current Roth contribution limit; overall limit of $35,000
- IRC § 72(t) exception for domestic abuse victims: Access lesser of $10,000 (inflation adjusted beginning 2025) or 50% of IRA, 401(k), 403(b) or 457(b)

SECURE Act 2.0 Highlights
Effective January 1, 2024

- Employers may offer emergency savings accounts linked to retirement plans:
  - Employees make after-tax contributions to account of up to $2,500 (inflation adjusted)
  - Any employer matching contributions into regular retirement plan
- Catch-up contributions (over age 50) by high wage earners treated as Roth contributions
  - Applies to 401(k), 403(b), and governmental 457(b) plans
  - Applies to participants with prior year earned income exceeding $145,000 (indexed after 2024)

SECURE Act 2.0 Highlights
Effective January 1, 2025

- Qualified plan enhanced catch-up rules: Apply for taxpayers who are 60, 61, 62 or 63 during tax-year
  - Catch-up contribution will be the greater of $10,000 or 150% of the inflation adjusted regular catch-up amount
  - Catch-up for SIMPLE 401(k)s and SIMPLE IRAs is one-half above amount
- Automatic enrollment: 401(k) and 403(b) plans sponsored by employer with 10 or more employees must provide for automatic enrollment.
- Expanded ability of part-time employees to contribute to 401(k) and 403(b) plans:
  - Eligible employees who have worked at least 500 hours over two years
  - no employer match required.

SECURE Act 2.0 Highlights
Effective Later Years

Effective December 29, 2025

- IRC § 72(t) exception for qualified long term care insurance distributions:
  - Retirement plan distributions up to $2,500 used to pay long-term care premiums not subject to early distribution tax

Effective January 1, 2026

- Achieving a Better Life Experience (ABLE) account participation:
  - Age by which qualifying disability must have occurred increased to age 46

Effective January 1, 2028

- S Corp stock sold to ESOP can qualify for tax deferral:
  - By reinvesting in qualified replacement property - limited to 10% of gain

Questions?

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