"Unlocking" SECURE Act 2.0

04.12.2023 | Clark Capital

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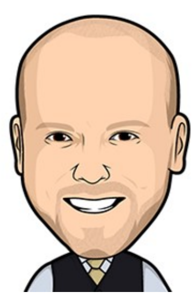
RMD Starting Age Pushed Back (Again!)



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RMD Starting Age Pushed Back (Again!)

- RMD starting age is pushed back to age 73 for those turning 73 between 2023 and 2032
- RMD starting age is pushed back to age 75 for those turning 73 in 2033 and future years*

Birth Year	Impact of SECURE Act 2.0
<1951	N/A
1951-1959*	RMD age pushed back to 73
1960+	RMD age pushed back to 75

*Based on expected technical correction

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RMD Starting Age Pushed Back (Again!)

- No retirement account owners will start RMDs in 2023 or 2033 (b/c of their age)!
- No impact to age at which QCDs can be made
- Meaningless change for the majority of IRA owners who will use their accounts to live on by that time anyway!
- Gives those who can afford to 'wait on the income' extra 'semi-gap' years to utilize for planning purposes
  - Further need for proactive planning
  - Be careful of the "Big Tax Crunch"

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RMD Starting Age Pushed Back (Again!)

- 'Side Effects' of pushing back the age at which RMDs begin
  - Spouses who remain the beneficiary of deceased spouse's account
    - Starting age for RMDs (as a beneficiary) decedent's age 73/75
    - Surviving spouse beneficiaries treated as inheriting from an owner before decedent's age 73/75
  - 5-Year Rule for Non-Designated Beneficiaries
    - Applies when an owner dies prior to April 1st of the year following the year that they reach age 75/75 (their Required Beginning Date)
  - Still working exception 5% ownership test shifted to plan year ending in year participant reaches age 73/75

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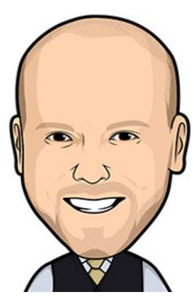
Roth-Related Changes



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No RMDs for designated Roth accounts (DRAs)

- Effective 2024
- Eliminated the single most obvious reason to make a DRA-to-Roth IRA rollover
  - Rollover decisions now *more closely* resembles Traditional 401(k)-to-Traditional IRA decision
- Remaining Roth-specific advantages of Roth IRA vs. DRAs
  - Ordering rules vs. pro-rata rules
  - Single Qualified Distribution Roth clock
  - Likely post-death destination for DRA benefits

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Roth SIMPLE and Roth SEP Accounts

- Effective now (2023)!
- Applicable amounts included in gross income
- Speed at which actual benefit is made available to participants may be impacted by:
  - Custodial adoption and updates to paperwork/processes
  - IRS guidance on formal "election"
  - Employer adoption and guidance
- Primarily benefits SIMPLE participants during first two years of participation

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Additional ER Contributions Eligible For Roth

- Effective immediately (upon enactment)!
- Applicable amounts included in gross income
- Applies only to matching and nonelective contributions
  - NOT if subject to vesting schedule
- ER contributions must be nonforfeitable
  - May limit actual availability
  - How will IRS/DOL view this when ER has a vesting schedule?
    - Roth option only after vesting?

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High Wage Earners Required To Use Roth Option For Catch-up Contributions

- Effective 2024
- Required "Rothification" of catch-up contributions for (non-SIMPLE IRA) plan if wages from plan sponsor in prior year are > $145,000
- Avoiding the Rothification requirement
  - Total wages < $145,000
  - Change employers to keep employer-specific wages <$145k
  - Generate earnings via self-employment income
- No catch-up allowed for anyone in the plan if an age-eligible, high-wage-earner cannot make a catch-up b/c the plan does not have a Roth option

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High Wage Earners Required To Use Roth Option For Catch-up Contributions

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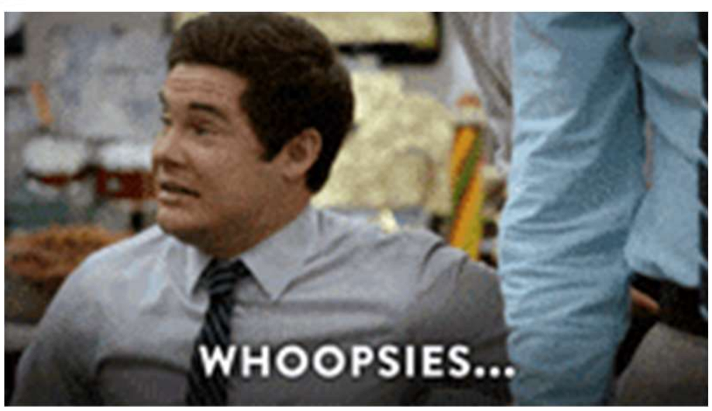
High Wage Earners Required To Use Roth Option For Catch-up Contributions



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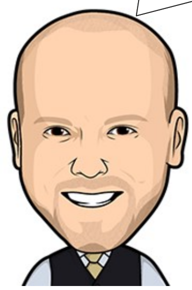
Some thoughts about Roth accounts…



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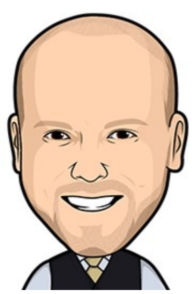
529-to-Roth IRA Transfers



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529-to-Roth IRA Transfers

- Effective 2024
- Must be moved *directly* from 529 plan to Roth IRA
- The Roth IRA receiving the funds must be in the name of the beneficiary of the 529 plan
- 529 contributions and earnings go into Roth IRA in like-kind

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529-to-Roth IRA Transfers

- Beneficiary must have "compensation"
- The 529 plan must have been maintained for 15 years or longer
  - Unclear exactly how a change in the beneficiary will be treated
  - Establish/maintain 529s with small balances (akin to the "$1 Roth IRA")?
- Any contributions to the 529 plan within the last 5 years (and the earnings on those contributions) are ineligible to be moved to a Roth IRA
- Subject to IRA contribution limit, less any 'regular' traditional IRA or Roth IRA contributions, annually
  - Roth IRA income limits do NOT apply!
- Maximum lifetime transfer to beneficiary is $35,000.

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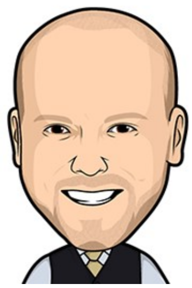
New Post-Death Option For Surviving-Spouse Beneficiaries



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New Post-Death Option For Surviving-Spouse Beneficiaries

- Effective 2024
- Election to be treated as the decedent for RMD purposes
- Election should be treated as irrevocable until we know otherwise
- Does not appear to impact the penalty exception for beneficiaries
- Effects
  - RMDs delayed until deceased spouse would have reached RMD age
  - Sole Spouse beneficiaries will calculate RMDs using the Uniform Lifetime Table
  - If the surviving spouse dies before RMDs begin, the surviving spouse's beneficiaries will be treated as though they were the original beneficiaries

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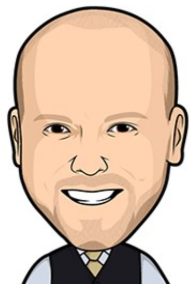
New Catch-Up Contribution Limits



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IRA Catch-Up Contribution Limit

- Effective 2024
- Amount indexed for inflation (in $100 increments!)
- Was previously the only retirement account contribution limit *not* automatically indexed for inflation

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401(k) (and Similar Plans) Catch-Up Contribution Limit

- Effective 2025
- Applicable only to participants turning 60, 61, 62 or 63 during the year
  - The "reverse donut hole"
- Catch-up contribution limited to:

"(I) $10,000, or

(II) an amount equal to 150 percent of the dollar amount which would be in effect under such clause for 2024 for eligible participants not described in the parenthetical in such clause"

- 150% of 2023 catch-up contribution is $11,250

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SIMPLE IRA Catch-Up Contribution Limit

- Effective 2025
- Applicable only to participants turning 60, 61, 62 or 63 during the year
  - The "reverse donut hole"
- Catch-up contribution limited to:

"(I) $5,000 or

(II) an amount equal to 150 percent of the dollar amount which would be in effect under such clause for 2025 for eligible participants not described in the parenthetical in such clause"

- 150% of 2023 catch-up contribution is $5,250

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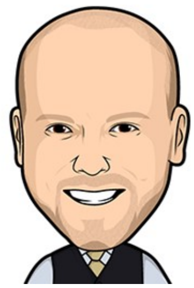
Qualified Charitable Distributions (QCDs)



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Changes to QCDs

- One-time ability to fund split-interest entity
  - Effective 2023
  - Charitable Remainder UniTrust (CRUT), Charitable Remainder Annuity Trust (CRAT), or Charitable Gift Annuity (CGA)
  - Limited to maximum of $50,000
  - Split-interest entity may be funded *only* by QCDs
  - Income beneficiaries limited to owner and spouse
  - CRUT/CRAT distributions will all be ordinary income
  - CGA distributions must begin within one year of funding and be ≥ 5%
- Maximum QCD amount indexed for inflation
  - Effective 2024

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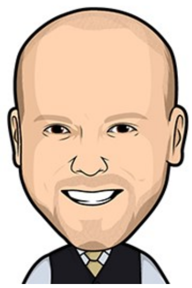
Enhanced Access to Retirement Funds During Times of Need



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Age 50 Exception for Public Safety Workers

- Expanded to include:
  - Private-sector firefighters
  - State and local corrections officers
  - Plan participants who separate from service after 25+ years of service for sponsoring employer
    - SECURE Act 2.0 refers to "the" plan
- Effective immediately (upon enactment)!

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Qualified Disaster Recovery Distributions

- Effective retroactive for disasters occurring on or after January 26, 2021
- Provision made "permanent"
- Applies to IRAs and employer plans
- Distribution must generally occur within 180 days of disaster

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Qualified Disaster Recovery Distributions

- Maximum lifetime distribution limited to $22,000
- Primary residence must be located within Federal Disaster area
- Distribution income spread over 3 years (beginning w/ distribution year) by default
  - Taxpayer may elect to include all income in year of distribution
- Repayable for up to 3 years

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New Terminal Illness Distributions

- Effective immediately (upon enactment)
- Applies to IRAs and employer plans
- Definition of "Terminal Illness" is extremely broad
  - "Normal" 24-month rule expanded to 84 months (7 years)
- Distributions repayable for up to 3 years

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New Exception for Victims of Domestic Abuse

- Effective in 2024
- Applies to IRAs and employer plans
- Maximum distribution limited to the lesser of:
  - $10,000, or
  - 50% of vested balance
- Must be taken within the 1-year period following the incident of abuse
- Distributions repayable for up to 3 years
- Abuse defined broadly to include:

"physical, psychological, sexual, emotional, or economic abuse, including efforts to control, isolate, humiliate, or intimidate the victim, or to undermine the victim's ability to reason independently, including by means of abuse of the victim's child or another family member living in the household"

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New Emergency Withdrawal Exception

- Effective in 2024
- *Finally,* what is effectively a hardship exception to the 10% penalty, but…
- Limited to a maximum of $1,000 per calendar year, but only if one or more of the following apply:
  - The prior Emergency Withdrawal distribution has been fully repaid
  - Contributions/Deferrals to the IRA/plan since the previous Emergency Withdrawal exceed that amount
  - 3 or more years have passed since the previous Emergency Withdrawal
- Distributions repayable for up to 3 years
- Emergency defined broadly to include:

"unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses."

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New Qualified Long-Term Care Distribution Exception

- Effective 3 years after enactment (December 29, 2025)
- Limited to a maximum of $ the lesser of:
  - $2,500, or
  - 10% of vested balance,
  - Amounts paid or assessed during the year for qualified long-term care insurance
- Distributions only eligible for spousal coverage if a joint return is filed
- IRS *may* allow such distributions to be used for other family members' coverage via Regulations

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Elimination of Penalty On Distributions of Earnings on Excess Contributions

- Effective immediately (enactment)
- Timely fixing an excess contribution requires that both the excess contribution, and the earnings attributable to that amount be distributed by October 15th of the year after the year for which the contribution is made.
- The earnings will no longer be subject to the 10% penalty (but they will still be taxable)

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Relaxation of 72(t) Rules

- Annuity distributions used for 72(t) distributions
  - Effective immediately (enactment)
  - Annuity payments can be used to satisfy 72(t) distribution requirements
    - Appears to be some ambiguity surrounding this rule
- Partial rollovers/transferred allowed
  - Effective 2024
  - Partial rollovers/transfers from an account from which 72(t) distributions are being made will *not* create a "modification" as long as total payments (from "old" and "new" accounts) equal correct 72(t) amount
  - Does not appear to be any requirement for proportional distributions

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Expanded Plan Loans For Participants In Disaster Areas

- Effective retroactive for disasters occurring on or after January 26, 2021
- Primary residence must be located within Federal Disaster area
- Maximum plan loan amount increased to $100,000
  - Generally limited to $50,000
- Participants eligible to use entire vested amount towards loan
  - Generally limited to greater of $10,000 or ½ vested balance
- Certain loan payments may be delayed for up to 1 years

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Creation of Linked Emergency Savings Accounts

- Effective 2024
- Emergency Savings Accounts (ESAs) must be "attached" to an employer-plan account
- Highly-compensated individuals ineligible to participate
- Employees may be auto-enrolled at up to 3% of compensation
- Account balance may not exceed $2,500 attributable to contributions
  - Plans may establish lower minimums
  - Unclear how distributions will be apportioned to contributions vs earnings
  - Plan can auto-direct participants contributions to stop or to plan Roth accounts

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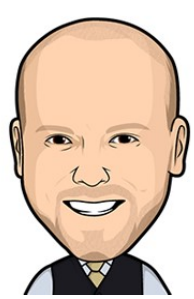
Creation of Linked Emergency Savings Accounts

- Employers must match contributions as if they were deferrals made to the employer plan (employer match goes into retirement plan)
- Assets must be held in cash or similar investments
- Participants must have monthly access to funds (minimum)
- First 4 distributions must be at no cost to participant annually (minimum)
- Distributions will be treated as Qualified Distributions

Relief for Retirement Plan Mistakes



Penalty for Missed RMD Reduced

- Effective 2023
- Penalty reduced to 25% (was 50%)
- Penalty further reduced to 10% if fixed during the "Correction Window"
- Correction Window begins on the date the tax is imposed, and ends at the earliest of:
  - When the Notice of Deficiency is mailed to the taxpayer;
  - When the tax is assessed by the IRS; or
  - The last day of the second tax year after the tax is imposed.

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EXPANSION OF EPCRS

- Employee Plans Compliance Resolution System (EPCRS) will be expanded to address certain IRA issues
  - Historically limited to employer plan issues
- Gives IRS a 2-year window to issue new guidelines
- Issues Congress specifically tasked IRS to address with EPCRS:
  - Missed RMDs
  - Errant distributions to non-spouse beneficiaries from inherited retirement accounts
  - Certain plan loan mistakes

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Statute of Limitations for Certain IRA Penalties

- Effective immediately
- Statute of limitations for missed RMD penalty to begin upon filing of Form 1040
- Statute of limitations for excess contribution penalty will generally begin upon filing of Form 1040
  - Exception in situations related to a Roth IRA's acquisition of property for less than fair market value
- Statute of limitations begins on due date for Form 1040 if such return is not required to be filed

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IRA Prohibited Transactions Only Disqualify Involved Account

- Effective 2023
- Codifies long-standing IRS practice of deeming only the account involved in the prohibited transactions as distributed
- Not entirely clear why such provision was necessary
- Reinforces benefits of separate IRA accounts for individuals who wish to engage in even remotely questionable transactions

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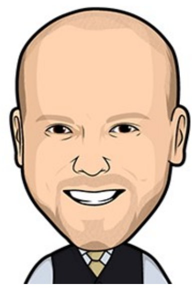
New 401(k) Retro-Deferral Rules for Sole Proprietors



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New 401(k) Retro-Deferral Rules for Sole Proprietors

- Effective for *plan years* beginning after the date of enactment
- Sole proprietors who establish new plans able to make retroactive salary deferrals for prior year
  - Includes business owners treated as sole proprietors
- Deferrals must be made by filing deadline (NOT including extensions)
- New need for advisors to evaluate benefit of new 401(k) for sole proprietors early in the year

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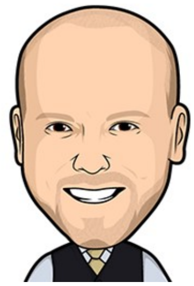
New Income Exclusion for Disabled First Responders



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New Income Exclusion for Disabled First Responders

- Effective for *amounts received* for 2027 and future years
- Eligible responders include:
  - Law enforcement officers
  - Firefighters
  - Paramedics
  - EMTs
- Excludable amount generally the amount excluded from income in year before "retirement"
  - Partial year disability payments annualized
- Does *not* appear to require disability after effective date
- *Does* appear to exclude first responders who become disabled after their "retirement date"

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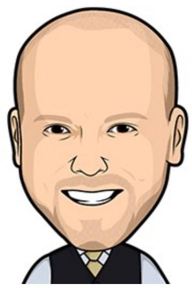
Annuity/Insurance-Related Changes



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Qualifying Longevity Annuity Contracts (QLACs)

- Effective retroactively to QLAC establishment (2014)
  - Free-look period of up to 90 days OK
  - QLACs purchased by married couples payable over their joint lifetimes may continue to pay over their joint lifetimes after a divorce
- Effective immediately (enactment) Elimination of the 25% limit
  - 25%-of-account-value limitation repealed
  - Maximum lifetime QLAC premium limited increased to $200,000

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"Bells and Whistles" OK for Retirement Account Annuities

- Effective retroactively for contracts purchased in 2022
  - *"calendar years ending after the date of the enactment of this Act"*
- The following benefits will not be deemed a violation of the minimum distribution rules:
  - Guaranteed increases of income payments of a flat percentage annually ≦ 5%
  - Lump sum payments, such as a commutation of the actuarial fair market
  - Acceleration of payments otherwise payable within the next 12 months;
  - Dividend-like payments to annuity owners
  - Return-Of-Premium (ROP) death benefits

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Insurance-Dedicated ETFs

- Effective seven years after enactment (December 29, 2029)
  - EFT-type investments will be able to be used as investment options within variable annuities and variable universal life insurance contracts
  - Treasury directed to modify regulations

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Aggregation of Annuitized Contracts for RMDs

- Effective immediately (enactment)
- IRS directed to update applicable Regulations
  - Can act like Regulations are already in effect using reasonable good faith interpretations
- Annuitized annuities purchased with a portion of an account can be aggregated together for RMD purposes with the rest of the account
- Appears to allow a taxpayer to make the election on an annual basis
  - Election would more likely make sense as an individual got older
- Unclear exactly how/whether IRS will apply the same rule(s) to IRAs

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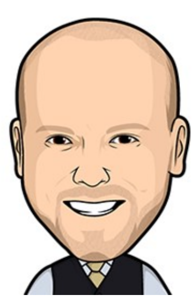
Expanded Eligibility for ABLE Accounts



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Expanded Eligibility for ABLE Accounts

- Effective 2026
- ABLE account eligibility expanded to include persons disabled prior to 46
  - Currently 26
- Does *not* appear to require disability to occur prior to 2026

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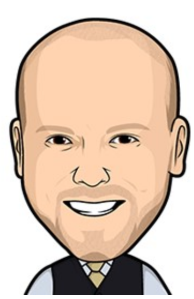
Congress Continues To Lean Into The "SIMPLE" IRA Misnomer



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Leaning Into the "SIMPLE" IRA Misnomer

- Effective 2024
  - Employers can make additional contributions (beyond required match/nonelective) of up to the lesser of:
    - 10% of compensation
    - $5,000
  - Contribution limits (including catch-up) for SIMPLE IRAs increased by 10% for employers with:
    - ≦25 employees
    - 25-50 employees who increase their match to 4% or their nonelective ER contribution to 3%, as applicable
- Effective for plan years beginning in 2024+
  - SIMPLE IRA can be replaced mid-year by 401(k) w/ mandatory ER contributions

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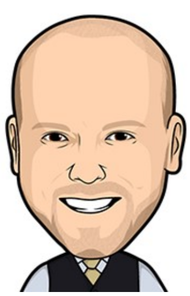
All The Other Sh…tuff



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Employers Matching of Student Loan Payments

- Effective 2024
- Employers can match payments plan participants make to their student loans
- Vesting and matching schedules must be the same as if the student loan payments were EE deferrals
- Employers may rely on employee certification of student loan payments
- Non-discrimination testing may be performed separately for participants receiving a match attributable to a student loan payment

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Changes to 403(b) Plans

- Effective immediately (enactment)
  - Able to participate in Collective Investment Trusts (CITs)
- Effective for plan years beginning in 2023+
  - 403(b)s will be allowed to participate in MEP and PEP plans
  - One Bad Apple Rule eliminated
- Effective for plan years beginning in 2024+
  - Hardship distribution rules will mirror 401(k) hardship distribution rules

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Saver's Match

- Tax credit contributed to a traditional retirement account for up to 50% of the first $2,000 of taxpayer contributions to a retirement plan
- Individuals are ineligible if they:
  - Are under age 18
  - A claimed as a dependent on another person's return, and
  - Are full-time student
  - Have income that exceeds relatively modest thresholds
- Distributions during a "Testing Period" will also reduce credit eligibility

Start-Up Credit Changes

- Retroactive to 2020
  - Employers without an existing plan who join a MEP qualify for the start-up credit
- Effective 2023
  - Start-up Credit enhanced from small employers
    - Applicable for employers w/ ≦ 50 employees
    - Up to 100% of start-up costs eligible for credit
  - Additional start-up credit
    - Full credit available to employers w/ ≦ 50 employees, phased out as headcount approaches 100
    - Determined by multiplying up to $1,000 of contributions per employee by an "applicable percentage"
      - Contributions for employees w/ wages > $100,000 are not eligible for the credit
    - Applicable percentage:
      - Year 1: 100%
      - Year 2: 75%
      - Year 3: 50%
      - Year 4 25%

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Military Spouse Eligibility Credit

- Effective 2023
- Available to employers w/ ≦ 100 employees
- New credit attributable to adopting provisions for NHC military spouses
  - Must be:
    - Eligible for participation w/in 2 months
    - Treated as though they have 2 years of service upon participation
    - Immediately vested in all ER contributions
  - Up to 3 years, per eligible spouse
  - Credit amount:
    - $200 per eligible spouse, plus
    - Dollar-for-dollar to $300 in ER contributions

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(Watered-Down) "Mandatory" Auto-Enrollment

- Effective for plan years beginning in 2025+
- Employer plans will be required to adopt auto-enrollment
  - Initial default rate must be at least 3% and no greater than 10%
  - Must auto-escalate by 1% annually until at least 10%, but no greater than 15%
- Exempt plans:
  - Plans in existence prior to enactment
  - Governmental plans
  - Church plans
  - Employers w/ ≦ 10 employees
  - Employers who have existed <3 years
  - SIMPLE plans

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"Make It Stop Already" Changes

- Starter 401(k) plan introduced, effective 2024
  - Auto-enrollment
  - Deferral limit equal to IRA contribution limit
  - No employer contributions
- Household employees eligible for SEP IRAs, effective 2023
- Dual-eligibility changes for long-term, part-time employees
  - SECURE Act's 3-year rule shortened to 2 years, effective for plan years beginning in 2025+
  - Pre-2021 service disregarded for vesting
  - Extended to apply to Qualified 403(b) plans

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"Make It Stop Already" Changes

- Plan sponsors able to entice plan participation with "de minimis financial incentives," effective 2023
- Public safety officers eligible to exclude up to $3,000 of distributions used for health and/or long-term care insurance, effective immediately
- Governmental 457(b) plan participants can update their deferral percentage anytime during the month, effective 2023
- S corporation owners will be able to defer up to 10% of gain on the sale of stock to an ESOP

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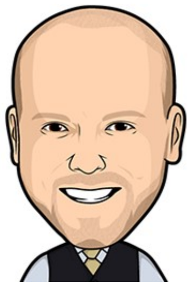
I Got 99 Retirement Changes, But This Switch Ain't One



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Things That Didn't Make It Into SECURE 2.0

- Limiting the use of the Back-Door Roth or Mega-Back-Door Roth contributions
- Placing new limits on who can make Roth conversions
- Creating non-age-based RMDs (e.g., require balances in excess of a specified amount to be distributed)
- Changing the age at which QCDs can be made (as it continues to be age 70 ½)
- Implementing new restrictions on Qualified Small Business Stock (QSBS)
- Eliminating new types of investments (e.g., privately held investments) from being eligible to be purchased with IRA money
- Correcting or clarify the manner in which the 10-Year Rule created by the original SECURE Act should be implemented for Non-Eligible Designated Beneficiaries.

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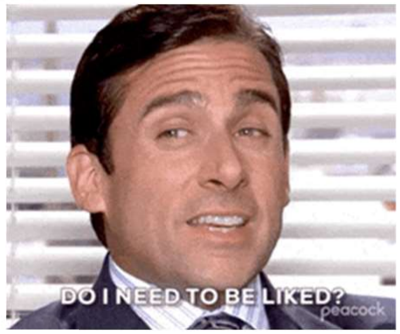

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Questions?

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