NTSA

SECURE 2.0 Best Practices Guide

Overview

On December 29, 2022, President Biden signed the Consolidated Appropriations Act of 2023. Included in this comprehensive bill were new retirement policy provisions, known as SECURE Act 2.0.

When important new retirement legislation is passed, such as SECURE 2.0, the National Tax Savings Association (NTSA) collaborates closely with its industry partners to establish best practices for plan sponsors to utilize when administering their plans.

SECURE 2.0 contains over 90 different provisions impacting retirement plans. This SECURE 2.0 Best Practice Guide focuses on the key provisions affecting public education 403(b) plans, governmental 457(b) deferred compensation plans and governmental 401(a) plans.

While there are some provisions that are mandatory (i.e., changes to Required Minimum Age requirements), the majority of the new SECURE 2.0 provisions are optional, giving the plan sponsors the ability to choose which provisions are most beneficial for their organization. This guide is intended to help Plan Sponsors understand these provisions and to utilize the best practices when implementing them in their plans.

We begin with several important issues Plans Sponsors must consider regardless of the SECURE 2.0 provisions adopted.

About the NTSA

The National Tax-Deferred Savings Association (NTSA) is the nation's only independent, non-profit association dedicated to the 403(b) and 457(b) marketplace. The NTSA was formed in 1989 and has grown to include practitioners, agencies, corporate and employer members. NTSA's mission is to provide high-quality professional education, technical support, and networking forums for all professionals in the 403(b) and 457(b) marketplace. NTSA is part of the American Retirement Association.

IRS Guidance

As with most legislation, including SECURE 2.0, Congress does not delve into the administrative or operational details needed to implement the law. The industry relies on the Internal Revenue Service (IRS), and to a lesser extent, the Department of Labor (DOL), to issue guidance for the details. To date, the IRS has issued some guidance but many questions remain for plan sponsors to navigate when implementing SECURE 20. This Best Practices Guide will highlight the provisions that still need guidance and what should be considered when determining whether to implement the various SECURE 2.0 provisions.

Plan Document Restatements and Amendments

Plan Restatements

All but one of the SECURE 2.0 provisions addressed in the Best Practice Guide are optional provisions. As the Plan Sponsor, you determine which provisions you wish to adopt.

We recommend that Plan Sponsors formally restate their plan document to reflect any SECURE 2.0 provisions adopted. If you retain a third-party administrator (TPA), they should have a SECURE 2.0 document addendum that can be used for this purpose. For Sponsors that self-administer, we recommend contacting your plan document provider for a SECURE 2.0 addendum.

Plan Amendments

Initially, all governmental plans were required to amend their plan documents to reflect any mandatory or optional SECURE 2.0 provision by the last day of the first plan year beginning on or after January 1, 2027. However, on December 20, 2023, the IRS issued Notice 2024-02 to extend this deadline (as well as the plan amendment deadlines relating to the CARES Act and Miners Act) to the last date of the first plan year beginning on or after January 1, 2029. Keep in mind that plan sponsors must operate their plans in accordance with such amendments prior to the plan amendment deadline.

As noted earlier, if you retain a third-party administrator, they should provide the necessary plan amendments, and if you self-administer, contact your plan document provider for the necessary amendments.

Coordination with Plan Investment Providers

SECURE 2.0 is a complex piece of legislation, and implementing these provisions requires significant technology investments. For Plan Sponsors with multi-provider 403(b) plans, it is important to recognize that not all investment providers can support all SECURE 2.0 provisions in the same manner - or in the same time frame. Consequently, plan sponsors should coordinate the adoption of SECURE 2.0 with the plan's investment provider(s). If you retain a TPA, they can assist with the coordination and communication of any SECURE 2.0 Act changes. If you self-administer, you will likely receive communications directly from your investment provider(s) on their capabilities to accommodate the various provisions.

If you sponsor a 457(b) and/or 401(a) governmental plan, it is likely that you utilize a single investment provider, so your investment provider will communicate what provisions are supported and when the provisions will be available on their record keeping system.

Coordination with Your Payroll Service Provider

There are various SECURE 2.0 provisions that impact retirement plan contributions that will require payroll service providers to make changes to their systems. As such you should consult your third-party payroll service or payroll software provider to discuss their system capabilities and implementation timeline before making any changes that will impact participant contributions.

NTSA

Savers Match

Provision Summary

Section 103 of SECURE 2.0 introduces the Saver's Match, a reworked and expanded version of the Saver's Credit. The Saver's Match provides a federal government matching contribution to eligible workers' retirement savings.[1] Employees can receive up to $1,000 in matching funds for contributions up to $2,000 per year for an individual ($4,000 for a couple), at a rate of $0.50 for every $1.00 contributed. Unlike the Saver's Credit, the Saver's Match is a refundable tax credit, meaning the match is directly deposited into a qualified retirement account, such as an IRA, a 403(b), or a 457(b) governmental plan. This program is effective January 1, 2027. It is an optional provision.

History

Prior to SECURE 2.0, the Saver's Credit was a non-refundable tax credit designed to encourage retirement savings among low-income earners, but it only offset taxes owed and was limited to those who owed federal taxes. The new Saver's Match expands this eligibility and adds a refundable credit, making it more accessible. It also increases the maximum match and extends eligibility to a broader income group, including individuals who may not owe taxes.

Plan Sponsor Considerations

1. The Saver's Match is available to individuals earning below certain thresholds as noted in footnote 1, but contributions must be made to qualified retirement accounts, such as IRAs, a 401(k), 403(b) or 457(b) governmental plan. [Employment-based plans are not required to accept the Saver's Match. If a plan does not accept the match, individuals will need to set up an IRA to receive it].

2. Implementation Challenges: The match will require significant logistical coordination between the US Treasury and retirement investment providers, including the tracking of contributions and ensuring the government matching contribution is deposited into the correct account. It is unclear at this time whether the Saver's Match program will require an employer to amend their plan. Similarly, it is also unclear whether Plan Sponsors will have any administrative responsibilities for this program. The IRS is currently working with the retirement industry to address these issues.

3. This program has the potential to increase savings for low-income workers, enhancing their long-term financial security. You understand the demographics of your workforce and whether there are groups of employees who may benefit from the inclusion of this provision in your retirement plan.

Plan Sponsor Recommendations

The program does not begin until 2027. We recommend that Plan Sponsors await further guidance from the IRS on how the program will work, and the coordination needed among your plan service providers before opting into the program.

Participant Education

The success of the Saver's Match will depend on effective outreach and education. Surveys have shown that many eligible workers are unaware of the Saver's Credit, and the same could apply to the new match unless the U.S. Department of the Treasury actively promotes it.

1. Develop strategies with your plan's investment providers and financial advisors to educate eligible participants about the Saver's Match and encourage participation, especially since many individuals may be unaware of the new benefit.

1 The income thresholds outlined in SECURE 2.0 is based on a person's modified adjusted gross income. For single filers, the phaseout period begins at $20,500, and individuals who earn more than $35,500 will not be eligible for the saver's match. For head-of-household filers, the phaseout range is $30,750 to $53,250. The phaseout range for married couples begins after $41,000, and couples who earn more than $71,000 will not be eligible.

2. There are a number of intricacies associated with the program that will require additional employee education. For example:
   - The saver's match applies to individuals who make Roth contributions to an IRA or employer sponsored plan, but the government's match cannot be deposited into a Roth IRA or Roth contribution source in an employer plan. Instead, the match will be considered like a traditional employer contribution and will be taxed as ordinary income upon withdrawal.
   - If participants take early distributions from their retirement accounts that exceed the amount of the Saver's Match, they may face additional taxes. This may particularly affect lower-income workers who are more likely to take early withdrawals.

3. Currently, the Saver's Credit is facilitated through individual tax return filings by completing Form 8888. The taxpayer designates where the refund should be deposited (i.e., IRA, HSA, or Coverdell Education Account). The IRS is considering the same form/process for the Saver's Match that would include employer sponsored retirement plans. From an education perspective, the IRS may use its SSA/IRS Newsletter to help promote the program.

"Super" Age 60-63 Catch up Contribution

Provision Summary

Section 109 offers a new, "super" catch-up contribution for participants ages 60, 61, 62 or 63. This new catch-up limit is the greater of $10,000 or 50% more than the Age 50 catch-up contribution limit (which is indexed).[2] Contributions may begin January 1 of the year individuals turn 60 and end on December 31 of the year they turn 63. This feature is available in 403(b) and 457(b) governmental plans. It is not available in a 401(a) governmental plan design since elective deferral contributions are not permitted unless the Plan is a grandfathered 401(k) plan. This is an optional provision available January 1, 2025

Here is the Age 60-63 catch-up limit for 2025.[3]

Age 50 Catch-up	**Catch-up at 60, 61, 62, 63: Greater of $10k or 150% of Regular Catch-up**	
$7,500	$10,000	$11,250

Background/History

"Catch-up" contributions for individuals aged 50 first became available under the Economic Growth and Tax Relief Reconciliation Act (EGTRRA) of 2001 when it introduced this for 401(k) plans, 403(b) plans, and IRAs. The Age 50 catch up provision has become a staple feature in most retirement plans.

Plan Sponsor Considerations

1. Age eligibility can be a bit confusing for the final year of eligibility. As noted earlier, contributions may begin January 1 of the year a participant turns age 60, and contributions end on December 31 of the year a participant turns age 63. For example, a participant who is age 63 January 1, 2025 but turns age 64 on March 15, 2025 is not eligible for this catch-up option in 2025 (i.e., they turned age 64 during the calendar year).

2 The $10,000 limitation is not applicable since the 150% Age-50 ....

3 Some retirement companies are treating this option as a mandatory feature if your plan permitted Age-50 catch-up contributions.

For 2025, here is a catch-up contribution eligibility chart by birth year:

If you were born in…	Catch-up Eligibility	Your Catch-up Age-based Contribution amount …
1961 or earlier	Age 50	$7,500
1962-1965	Age 50 and Age 60-63	$7,500.00 plus $11,250
1966-1975	Age 50	$7,500

2. Your payroll provider/system should be updated to reflect the new catch-up contribution limit.

3. Beginning in 2026, the super Age 60-63 catch-up contribution is subject to the same ROTH elective deferral rules for participants that earn FICA wages of $145,000 or greater (indexed for inflation) in the prior year. Consequently, sponsors will need to verify participants' W-2 wages for the prior year to determine if Roth catch-up contributions are required.

Important note: For Sponsors that offer a 457(b) governmental plan, the Age 60-63 catch-up contribution cannot be combined with a final 3-year catch-up contribution. For 403(b) plans that permit the 15-year service catch up contributions, this is not subject to the ROTH higher earner rules.

Student Loan Match

Provision Summary

Section 110 of SECURE 2.0 permits employers to provide a matching contribution based on employees' qualified student loan payments (often referred to as "QSLPS") in lieu of an employee making an elective deferral contribution. "Technically speaking, the loan payments are treated as 'deemed' elective deferrals."[4] The option is available in 403(b) plans, 401(a) governmental plans (paired with a governmental 457(b) for matching contributions), and 457(b) governmental plans.[5] This is an optional provision. This feature is effective beginning on or after January 1, 2024.

Background/History

In 2018 a private letter ruling ("PLR") issued to Abbott Laboratories approved an employer contribution formula designed to mirror a match on student loan repayments. This was the foundation for the student loan employer matching program introduced in SECURE 2.0.

4 Mark Heisler, The Student Loan Payment Matching Contribution Up Close, National Tax-Deferred Savings Association (Sept. 21, 2023).

5 It is common to see a 401(a) governmental plan "paired" with a 457(b) plan for employer matching contributions. In other words, participants make an elective deferral contribution in the 457(b) plan and receive an employer matching contribution in the 401(a) plan. The Association does not recommend employer contributions be made in 457(b) governmental plans since elective deferral contributions and employer contributions are aggregated for contribution limit purposes. Additionally, use of an employer contributions with a vesting schedule is difficult to administer since an employer contribution impacts the contribution limit in the year it vests.

Plan Sponsor Considerations

1. What qualifies as a QSLP?

Payments on student loans that are incurred on behalf of an employee, the employee's spouse, or a dependent of the employee. In its interim guidance, the IRS clarified that "to be treated as incurred by an employee, the employee who makes a payment on the qualified education loan must have a legal obligation to make the payment under the terms of the loan."[6] The IRS noted that student loan payments by an employee on a cosigned loan for a spouse or dependent would generally qualify as QSLPs, but student loan payments by an employee on a guaranteed loan for a spouse or dependent would generally not qualify (unless the primary borrower defaulted and the employee became obligated on the loan).

A qualifying student loan must have been incurred to pay the cost of attendance at an eligible educational institution, which includes accredited postsecondary schools as well as certain internship and residency programs. Eligible costs include tuition, fees, required equipment, books, supplies, transportation, miscellaneous personal expenses, and room and board. (The definition used for purposes of the student loan interest deduction applies.) Payments on a private student loan to a family member do not qualify for the student loan match. Student loan payments are only eligible for the student loan match to the extent that they do not, when added to the employee's elective deferrals for the year, exceed the lesser of the annual elective deferral limit or the employee's compensation.

2. A retirement plan offering a student loan match is generally prohibited from:

   (a) making the student loan match available to a different set of employees than those who are eligible to receive matching contributions on account of elective deferrals (subject to the collective bargaining exception noted below),
   (b) providing for a different matching percentage for student loan payments than for elective deferrals, and
   (c) providing for a different vesting schedule with respect to student loan matching contributions and elective deferral

In summary, a plan must treat employer contributions based on QSLPs and elective deferrals the same with respect to eligibility, matching rate, and vesting.

3. In its interim guidance, the IRS explained that "employees may not be excluded from QSLP matches on an individual employer, business unit, division, location or other similar basis" but that "a plan may include a QSLP match feature that applies only to non-collectively bargained employees."[7]

4. The biggest question facing an employer regarding the design and administration of the student loan match is related to the validation of employees' QSLPs and the timing of the matching contributions. [Plan Sponsors are permitted to make student loan matching contributions at a different frequency than elective deferral matching contributions].

5. The provision does not require that employees provide documentation substantiating their QSLPs in order to be eligible for the student loan match; rather, it requires the employee to certify that the loan payments have been made and clarifies that the employer may rely on the employee's certification. In its interim guidance, the IRS identified five "items of information [that] must be received by a plan" (or "a third-party service provider acting on behalf of the plan"):

   (a) the amount of the loan payment,
   (b) the date of the loan payment,
   (c) that the payment was made by the employee,
   (d) that the loan being repaid is a qualified education loan and was used to pay for qualified higher education expenses of the employee, the employee's spouse, or the employee's dependent; and

6 Internal Revenue Service, Guidance Under Section 110 of the SECURE 2.0 Act with Respect to Matching Contributions Made on Account of Qualified Student Loan Payments, Notice 2024-63 (Aug. 19, 2024) ("Notice 2024-63") § III.A-1.

7 *Id*. § III.A-5.

(e) that the loan was incurred by the employee.[8]

6. The IRS's interim guidance recognizes three models for certifying QSLPs–affirmative certification, payroll deduction, and payment verification–and an employer considering a student loan match program should determine which model (or combination of models) is most appropriate for its situation.[9]

   (a) Under the affirmative certification model, the employer obtains a certification from an employee (likely following the end of the year for the prior year's student loan payments) and then processes a one-time matching contribution. Items 1, 2, and 3 above must be certified by the employee at least annually (after the QSLPs being certified have been made), and items 4 and 5 above must be certified by the employee at least annually or as part of a loan registration process before the first QSLP is made for which a match is claimed.
   (b) Under the payroll deduction model, the employee registers the loan with the employer (certifying items 4 and 5 above and providing the employer loan details) and completes a salary reduction agreement authorizing the employer to withhold the loan payments from the employee's pay and make the loan payments on the employee's behalf. The employer then withholds the loan payments, remits them directly to the student loan servicer (satisfying the certification requirement with respect to items 1, 2, and 3 above), and provides an ongoing retirement plan match for each payment. For a streamlined process, the employer or third-party administrator should automate the process of remitting payments to the various student loan servicers.
   (c) Under the payment verification model, the employee registers the loan (certifying items 4 and 5 above and providing the employer loan details), a third-party service provider verifies the date and amount of each QSLP (satisfying the certification requirement with respect to items 1 and 2 above), and the employee is provided a notice stating that the employer assumes that the loan payment was made by the employee but that the employee must notify the employer if that is not correct. If the employer does not receive a correction from the employee, the employer is permitted to assume that the employee made the loan payment (satisfying the certification requirement with respect to item 3 above). Note: As of the date of this publication, this model is not an available option because the U.S. Department of Education's Federal Student Aid office has stopped allowing third parties to access student loan payment data (thereby preventing third-party service providers from verifying the date and amount of QSLPs).

Confirm that the investment provider(s) can support the student loan match. There is no requirement, nor a necessity to distinguish a QSLP employer match contribution from a deferral based matching contribution on your contribution data file. Also confirm that the employee has completed necessary enrollment and election forms.

7. If the Sponsor is considering this option for union employees, what communication, and agreements (e.g., memorandum of understanding, amendment to collective bargaining agreement, etc.) are needed. In this instance we recommend you consult with labor counsel as appropriate.

8. QSLP Match Timing. As noted earlier, the QSLP Match can be on a different frequency than elective deferral matching contributions. Our recommendation to look at match frequency based on the certification method used, the administrative obligations involved in calculating the QSLP matching contribution. Note that the industry has requested additional guidance from the IRS to confirm issues related to the timing and calculation of QSLP matching contributions.

Participant Education

1. Employees who are making elective deferral contributions today (and have student loans), should continue to do so since they are accumulating more retirement savings. In addition, switching to a QSLP match for some employees may not be advisable since student loan payments can be based on the employees' income, consequently, some financial advisors recommend employees make pre-tax contributions to reduce taxable income, thereby reducing the loan payment amount.

8 *Id*. § III.B-2.

9 The following summaries of the available models are largely derived from Trent Pepper, SECURE 2.0 Student Loan Match: Helping Employees Increase Their Retirement Savings While They Pay Their Student Loans, Aviben (2024).

2. If employees have questions about student loans they can seek assistance from a Certified Student Loan Professional. They can search for a certified professional here: https://cslainstitute.org/advisor-directory/

3. Having a trusted financial professional provide education on the benefits of saving for retirement (as early as possible) is important.

Emergency Expense Distribution

Provision Summary

Section 115 of the SECURE 2.0 Act permits individuals in 403(b), 457(b) and 401(a) governmental plans to take the lesser of: (1) $1,000, or (2) the participant's vested balance minus $1,000 for an "emergency personal expense". An "emergency personal expense" as an unforeseeable or immediate financial need relating to necessary personal or family emergency expenses.

Participants are restricted to one (1) emergency personal expense distribution each calendar year **if** (1) the first withdrawal has been repaid to the Plan; or total employee elective contributions[10] equals the distribution amount that has not been repaid directly by the participant. If these conditions have not been met, the individual may only take one emergency withdrawal per 3-year period. Plan Sponsors can rely on a participant's self-certification. This is an optional provision available after December 31, 2023.

Background/History

Over the years surveys have been conducted on the state of household emergency savings. The results are dramatic. Many Americans are living paycheck to paycheck without the ability to handle unexpected financial emergencies. Consider a few findings: When faced with an unexpected $1,000 expense, more than one-third of Americans would borrow the money, according to a Bankrate survey.[11] The median emergency savings for Americans is $600, with men having double the amount of women. 21% of people have no emergency savings at all.[12]

Plan Sponsor Considerations

1. Should your retirement plan be used as a means to access funds in the event of an emergency personal expense?

On one hand, emergency withdrawals can help people avoid debt or high-interest loans. Some industry professionals believe permitting emergency withdrawals could actually improve plan participation, since some participants are concerned about the limited access to retirement plan fund savings. There are also several drawbacks to consider. Emergency distributions can reduce the amount of money available for retirement. This can be especially problematic for people who are already behind on their retirement savings goals. Taking an emergency distribution can set a precedent for future withdrawals, making it easier to justify taking additional distributions.

2. Some investment providers are not offering emergency distributions, so Plan Sponsors will need to determine availability through their TPAs, or if self-administering, with investment providers and their financial representatives.

3. While there is nothing in the legislation or IRS guidance which restricts access to vested employer

10 Elective contributions include pre-tax and ROTH elective deferral contributions, and after-tax contributions. After tax contributions are more prevalent in 401(a) governmental plans.

11 July 2024.

12 Survey of Economic Decision-making, July 2020.

contributions for emergency distributions, making those sources available can reduce the amount of money available for retirement. Also note, that employer contributions do not count toward the repayment of emergency distributions. If you adopt this provision, making only employee elective sources for emergency distributions may be advisable.

4. Emergency distributions may not be suitable for Employers that sponsor 401(a) governmental plans. 401(a) plans are normally utilized to make employer non-elective contributions, and, by design, do not permit elective deferral contributions.[13] While 401(a) plans do permit employee after-tax contributions, many plans do not permit this contribution type. Consequently, there is not a way for a participant to repay the emergency distribution through elective contributions; they can only do so by a direct payment into the Plan. We recommend that sponsors consult with their TPAs, or sponsors that self-administer, consult with legal counsel to determine the best approach to address this issue.

5. As noted above, participants have the option to repay an emergency distribution within 3 years after the date of distribution. The repayment is made by the participant directly to the investment provider. Today, the industry does not have the ability to easily track participant repayments.[14] Participants can also "repay" the emergency distribution by making elective contributions to the Plan. For Plan Sponsors remitting contributions to a TPA, this can be easily tracked. Sponsors that self-administer will need to create internal processes to monitor repayments to determine future eligibility for this distribution.

6. Finally, employers know their workforce best to determine whether employees will benefit from this provision.

Participant Education

1. Emergency distributions are included in income in the year they are made. but they are not subject to the 10% early distribution tax for distributions.

2. If adopted, employers should communicate both the benefit (i.e., the relief it can provide during times of financial hardship), but also counsel that it be used cautiously and with their long-term impact on retirement savings in mind. We also strongly recommend that participants consult with their financial or tax advisor before taking an emergency distribution to determine the best options available.

Long-Term Part-time Employees

Provision Summary

Section 125 of SECURE 2.0 institutes a new rule for Long-Term Part-Time (LTPT) employees for 403(b) Plans subject to ERISA.[15] IRS Notice 2024-73 indicates that the LTPT provision does not apply to public education 403(b) plans, nor to 457(b) and 401(a) governmental plans since these plan types are not subject to Title I of ERISA. However, the Notice also states that "Universal Availability" rules still apply to public education 403(b) Plans.[16] Here is a brief summary of the rules associated with Universal Availability.

13 Unless the employer is operating a grandfathered 401(k) Plan.

14 The industry utilizes a standard participant data sharing file to keep plans in compliance. The file layout does not currently track distribution repayments. The NTSA, its third-party administrator and investment provider members are working with the SPARK Institute to add the repayment information to streamline the repayment monitoring process.

15 See IRS Notice 2024-73 stating that the Long-Term Part-time rules applies only to ERISA plans.

16 Universal Availability rules do not apply to governmental 457(b) and 401(a) Plans.

Background/History

A 403(b) plan must meet the requirements of IRC Section 403(b)(12)(A)(ii), also known as the 'universal availability' rule. Under this rule, any W-2 employee of the employer must be given the opportunity to participate in the Plan (i.e., the right to designate elective deferral contributions). SECURE 2.0 does not make any changes to the Universal Availability rules that were introduced in 1989. Under Universal Availability, only certain employees may be excluded:

- Employees who normally work less than 20 hours per week **
- Students performing services described in IRC Section 3121(b)(10)
- Non-resident aliens described in IRC Section 410(b)(3)(C)
- Employees who are eligible to make elective deferrals under another 401(k), 403(b) or 457(b) plan sponsored by the same employer

** A 403(b) plan *may not* exclude employees based on a generic classification such as: part-time, temporary, seasonal, substitute teacher, or Adjunct Professor. However, if these employees fall under the "normally work less than 20 hours per week" criterion, then they may be excluded on that basis.

Plan Sponsor Considerations

1. Under Universal Availability, your plan document must be compliant - meaning that the document does not exclude any employees except those permitted as noted in the bullets above.

2. In addition, employees who are eligible to make elective deferrals must be given an "effective opportunity" to participate in the Plan. At least once during a plan year the plan sponsor must provide employees notice that they have the opportunity to make or change an elective deferral election.

3. For some public education employers, it may be easier administratively to allow all W-2 employees to make elective deferral contributions. For example, if you have a Plan that excludes employees who normally work less than 20 hours per week, the employer must conduct a regular review to determine if employees who were excluded under the 20- hour rule became eligible to participate because their status changed to normally work more than 20 hours per week.

4. There is an associated rule that Plan Sponsors should be aware of. Once the employee is eligible to make elective deferral contributions under the plan, they are always eligible to make deferral contributions - or "once in, always in." So, if you have a Plan that excludes employees who normally work less than 20 hours per week, and an employee's status changed to normally work more than 20 hours per week, that individual is aways eligible to make elective deferral contributions.

ROTH Elective Deferral Catch-Up Provision

Provision Summary

Section 309 of SECURE 2.0 places an income threshold on making pre-tax elective deferral contributions for participants who earned $145,000 or more (FICA wages, indexed for inflation) in the previous calendar year and take advantage of the Age 50 (and Age 60-63) catch-up contribution. This is a mandatory requirement for 403(b) and 457(b) governmental plans. [It is not applicable to 401(a) governmental plans[17] since elective deferral contributions are not permitted]. This rule is effective January 1, 2026.[18]

17 Unless the employer maintains a grandfathered 401(k) plan.

18 This provision was originally effective January 1, 2024, but the IRS granted a 2-year administrative transition period, which allows all participants, regardless of income, to make catch-up contribution on a pre-tax basis until January 1, 2026.

Background/History

"Catch-up" contributions for individuals aged 50 first became available under the Economic Growth and Tax Relief Reconciliation Act (EGTRRA) of 2001 when it introduced this for 401(k) plans, 403(b) plans, and IRAs. The Age 50 catch up provision has become a staple feature in most retirement plans.

This provision was intended by Congress to be a revenue raiser for the legislation by reducing the income that is deducted through contributions to a pre-tax account.

Plan Sponsor Considerations

1. Employees that do not have FICA wages[19] in the preceding year are not subject to Roth requirement for catch-up contributions. This includes:
   - Partners or other self-employed individuals receiving self-employment taxes.
   - Participants who are state/local government employees whose services are excluded under 3121(b)(7) for FICA purposes (covered participants in a FICA alternative plan).
   - Self-employed ministers are subject to SECA taxes only

2. The Roth catch-up requirement does not apply to the Special 15-year catch up in 403(b) plans or the Final 3-year catch up in 457(b) governmental plans. It does apply to the new Age 60-63 super catch-up starting in 2026.

3. Plans that do not currently offer Roth elective deferral contributions and wish to allow all employees to make Age 50 and potentially Age 60-63 catch up contributions will need to restate their plan to allow for the ROTH elective deferral contribution source.

4. Plans are not required to offer a Roth elective deferral option (and do not need to allow for the option to make catch-up contributions); however, only employees earning less than $145,000 would be eligible to make them. Higher income employees would be excluded from the Age-based catch-up options.

5. The IRS has taken the position that employees must have a choice to make their catch-up contributions on a Roth or traditional basis if they earn less than $145,000. Consequently, plan sponsors cannot require all participants to make catch-up contributions on a Roth basis just to make plan administration simpler.

6. Employees with wages from unrelated employers will not be aggregated for purposes of determining whether the catch-up is required to be Roth.

7. If ROTH elective deferrals are new to the plan, a new ROTH deduction code must be added to the payroll system. In addition, a ROTH contribution source "bucket" is needed for the contribution data file sent to the third-party administrators or investment provider(s). Third-party administrator systems and investment provider systems will need updating to mirror the changes.

8. The capabilities of the payroll system or application will also dictate other changes needed. Some payroll systems will need to be updated to properly calculate FICA wages and limit pre-tax deductions. With other systems, deductions may not automatically switch from a pre-tax to a Roth source once an employee reaches the base contribution limit. The capabilities of the payroll system will also dictate changes to internal what administrative procedures may be needed. FICA wages must be reviewed for the previous year to determine which employees would be impacted by this rule; which will need to be communicated to the affected employees. If the payroll system cannot automatically switch from pre-tax to ROTH, a manual process will need to be created to change the deferral deduction once the income threshold is met.

19 See IRS Notice 2023-62

Participant Education

1. Employee communication and education will be needed based on the decisions made about this provision. For example, if ROTH elective deferrals are not available in the plan today, that change should be communicated to all employees, not just those higher earners who are impacted by this change.

2. Use a trusted financial professional to provide employee education about the differences between pre-tax and/or ROTH elective deferrals which contribution type is the right option for their retirement savings.

Financial Hardship Self-Certification

Provision Summary

Section 312 of the SECURE Act 2.0 permits Plan Sponsors to allow participants to self-certify financial hardship distributions in 403(b) and 401(a) governmental plans, or in the case of 457(b) governmental plans, unforeseen emergencies.[20] Under the self-certification method, plan sponsors can rely on a participant's self-certification unless they have actual knowledge to the contrary. This is an optional provision and was effective beginning plan years after December 29, 2022.

Background/History

Prior to SECURE 2.0, participants seeking a financial hardship distribution were required to provide written documentation that the participant/spouse/dependent/beneficiary experienced an "immediate and heavy financial need" that met certain financial hardship events set by the IRS.

In order for a participant to meet the "immediate and heavy financial need" standard, the amount requested could not exceed the amount required to meet the need and the participants had no other way to meet the need.

The "safe harbor" financial hardship events[21] set by the IRS include: (1) medical expenses for the employee, the employee's spouse, dependents or beneficiary; (2) costs relating to the purchase of a principal residence excluding mortgage payments; (3) tuition and related educational fees and expenses for the next 12 months of postsecondary education for the employee, employee's spouse, children, dependents or beneficiary; (4) payments necessary to prevent eviction from, or foreclosure on, a principal residence; (5) burial or funeral expenses for the employee, the employee's spouse, children, dependents, or beneficiary; (6) certain expenses for the repair of damage to the employee's principal residence even if that repair would not otherwise qualify for the casualty deduction; and (7) expenses and losses (including loss of income) incurred by an employee on account of a Federal disaster declaration within the employee's principal residence or work.

In 2017, a second method called *summary substantiation*, was permitted but not widely used by the industry, whereby a participant would provide a summary of hardship details and agree to retain applicable documentation.

457(b) plans have a similar option called an unforeseen emergency distribution. However, the requirements to receive an unforeseen emergency distribution are more restrictive. Here are examples provided by the IRS: (1) expenses related to an illness or accident of the participant, the participant's beneficiary, or the participant's or beneficiary's spouse or dependents; (2) property loss caused by casualty (for example, damage from a natural disaster not covered by homeowner's insurance) of the participant or beneficiary; (3) funeral expenses of the participant's spouse or dependent; and (4) *other similar extraordinary and unforeseeable circumstances resulting from events beyond the control of the participant or his or her beneficiary*. The IRS has noted that "costs relating to the purchase of a principal residence and tuition and related educational fees and expenses" are not considered unforeseeable.

20 Assuming financial hardships and/or unforeseen emergencies are permitted under the terms of your written plan documents.

21 While uncommon, there are some plan documents that rely on a facts and circumstances test to determine what is considered a hardship. Consult with your TPA or legal counsel should you have questions about the determination language.

While the requirements to receive a financial hardship and unforeseen emergency distribution are different, pre-SECURE 2.0, these options required plan sponsors to require and retain written documentation of hardships/ unforeseen emergencies.

Plan Sponsor Considerations

Section 312 of SECURE 2.0 gives plan sponsors the option to utilize participant self-certification and put the onus on the participant to retain the applicable documentation. The financial hardship and unforeseen emergency reasons permitted have not changed, only how the financial hardship/unforeseen emergency is substantiated.

Most investment providers surveyed are prepared to accept self-certification or substantiating the hardship request, so this should not be a factor in the processing of participant requests.

In considering whether to adopt the self-certification provision, we recommend considering the risk/reward associated with maintaining documentation or not when substantiating hardship or unforeseen emergency distributions.

1. Does providing a more straightforward and participant-friendly approach to accessing hardship and unforeseen emergency distributions outweigh the burden associated with gathering documentation to substantiate the request?

2. The self-certification method could reduce audit risks such as approving a request where the documentation is insufficient or incorrect, and risks against security breaches of participant confidential data. On the other hand, the IRS has yet to update its internal audit guidance to reflect the self-certification method.[22]

3. The written documentation method mitigates against utilization abuse and depletion of participant savings.

4. Regardless of the option you choose, set a clear policy, and educate your employees on what is required of them when making a request.

If you choose to self-certify, ensure:

1. All financial hardship forms require the participant to certify in writing they qualify for one of seven hardships reasons, that they have an immediate and heavy financial need, they are not taking more than necessary to satisfy the need, and that they have no reasonable alternative means of paying the expense and administrative burden.

2. Similarly, the unforeseen emergency forms require that the participant certify that they experienced an extraordinary and unforeseeable circumstance resulting from events beyond the participant's control. The forms should also indicate that the participant seeking the distribution certifies that the emergency expenses could not otherwise be covered by insurance, liquidation of the participant's assets or cessation of deferrals under the plan.

Important note: *a Plan Sponsor can rely on a participant's self-certification unless they have actual knowledge to the contrary.*

The IRS has not provided additional guidance on the new hardship self-certification rules. Consequently, we recommend that sponsors consult with their TPAs, or sponsors that self-administer, consult with legal counsel to determine the best approach in dealing with hardship distribution and unforeseen emergency requests.

22 stayexempt.irs.gov/system/files/2017-08/guidelines_for_substantiating_safe_harbor_hardship_distributions.mp3; Its Up to Plan Sponsors to Track Loans Hardship Distributions | Internal Revenue Service

Domestic Violence Distribution

Provision Summary

Section 314 of SECURE Act 2.0 permits Participants who are victims of domestic violence to take a distribution up to the lessor of: (1) $10,000 (as indexed for inflation) or (2) 50% of their vested account balance if made within one year period beginning on any date on which the individual is a victim of domestic abuse. This provision is available under 403(b), 457(b) and 401(a) governmental plans. While the provision was available after January 1, 2024, the industry was awaiting guidance from the Internal Revenue Service (IRS) before implementation. The IRS guidance was published in June 2024, Notice 2024-55. This is an optional provision.

Background/History

An August 2023 article published by NTSA sister organization the National Association of Plan Advisors (NAPA)[23] highlighted a Webcast sponsored by Women in Retirement and the American Retirement Association. The article described the relationship between the new domestic violence distribution and *The Savings Access for Escaping and Rebuilding (SAFER)* Act. The article cited a number of sources regarding the scope of domestic violence. Consider:

"According to the Department of Health and Human Services, there are 1.3 million victims yearly. In 2022, the National Domestic Violence Hotline received 770,000 calls/contacts, a 25% increase and the highest in nearly 30 years.

One in four women is homeless because of violence committed against her, and 92% of homeless mothers experienced severe physical and/or sexual abuse during their lifetime.

Nearly three in four survivors (74%) report staying with an abusive partner because they did not have the financial means to leave, and a study of survivors of domestic violence found that nearly half (45.9%) returned to their abusive partner within a year of leaving because they lacked the money to support themselves and their children.[24]

A full 99% of survivors experience economic sabotage, economic control/coercion, and economic exploitation, which results in debt, poor credit, and a lack of savings."[25]

According to the webcast's presenters, "Individuals of all ages, income levels, racial and ethnic communities, sexual orientations, and religious affiliations experience violence in the form of sexual assault, domestic violence, dating violence, trafficking, and stalking."

Plan Sponsor Considerations

1. For the purposes of the legislation, domestic abuse is defined as physical, psychological, sexual, emotional, or economic abuse, including efforts to control, isolate, humiliate, or intimidate the victim or undermine the victim's ability to reason independently, including abuse of the victim's child or another family member living in the household.

2. The distribution must be taken within any 12 month period of the domestic abuse incident.

3. Plan Sponsors that retain a Third-Party Administrator, the TPA will have participants self-certify domestic violence distribution requests. For Sponsors self-administering their plans, Investment Provider will also have

23 NAPA Net Staff. "Why the SAFER Act and its Retirement Plan Component, Is So Important". August 17, 2023.

24 Hess, C., & Del Rosario, A. (2018). Dreams Deferred: A Survey on the Impact of Intimate Partner Violence on Survivors' Education, Careers, and Economic Security (p. 53). Institute for Women's Policy Research.; Mary Kay Foundation. (2012). Truth About Abuse Survey Report. Mary Kay Foundation.; Anderson, M. A., Gillig, P. M., Sitaker, M., McCloskey, K., Malloy, K., & Grigsby, N. (2003). "Why Doesn't She Just Leave?": A Descriptive Study of Victim Reported Impediments to Her Safety.

25 https://www.freefrom.org/wp-content/uploads/2021/06/Survivors-Know-Best.pdf

participants self-certify domestic violence distribution requests.

4. Even with self-certification, there could be an issue with some plans because of a spousal consent requirement when taking a plan distribution. In Notice 2024-55, the IRS addressed Plans subject to Internal Revenue Code Sections 401(a)(11) and 417, such as defined benefit plans and certain defined contribution plans, that require *spousal consent* for certain distributions and forms of benefit payments and require the plan to provide for Qualified Joint and Survivor Annuity (QJSA) and Qualified Pre-Retirement Survivor Annuities (QPSAs).

    a. In lay terms, 401(a) Governmental Money Purchase Plans are most likely to contain a QJSA provision. 401(a) governmental profit sharing designs that hold old Money Purchase funds will also likely to contain a QJSA distribution option. In this situation, only the profit sharing funds would be available without spousal consent if the plan allows.
    b. It is not common for other non-ERISA defined contribution plans to require spousal consent for distributions, but if a plan does have this requirement, the plan should either be amended to remove the spousal consent requirement before adopting the domestic abuse victim distribution option or the provisions should not be adopted.
    c. Plan Sponsors domiciled in community property states[26] must also be cautious before adopting this provision because of the state spousal consent requirement. We recommend the Plan Sponsor consult with legal counsel before adopting this provision - including any potential mandatory reporting requirements

5. The Domestic Abuse distribution is not subject to early withdrawal penalty of 10% that is normally applied to distributions taken before retirement age,

6. The participant has the option to repay the amount taken for the following 3- year period.

Terminal Illness Distribution

Provision Summary

Section 326 provides an important waiver of the 10% early withdrawal penalty for individuals diagnosed with a terminal illness. This provision is designed to offer financial relief by allowing eligible individuals to access their retirement funds without facing the typical penalties associated with early distributions. The is an optional provision.

This provision is available under 403(b) and 401(a) governmental plans but is not an option under a 457(b) deferred compensation governmental plan. While this provision was technically available for distributions made after December 29, 2022, the industry is awaiting a technical correction by Congress, and additional guidance from the Internal Revenue Service (IRS).

Background/History

It is important to understand that this provision does not create a new "distributable event" under the Internal Revenue Code (IRC). Consequently, a participant must qualify for another type of distribution that is permitted under the terms of your plan document (i.e., an Age 59 ½ in-service withdrawal, a financial hardship, or disability distribution). What this provision does do is create a new exception to the 10% early withdrawal penalty if applicable. [If a Plan Sponsor does not adopt this provision, participants can still claim the penalty exception when filing their tax returns].

26 Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, and Wisconsin are community property states.

Plan Sponsor Considerations

1. A distribution under this provision must be made on or after the date of the physician's certification.
2. Participants and beneficiaries are eligible for this benefit.
3. Individuals must be diagnosed with a terminal illness, defined as a condition reasonably expected to result in death within 84 months (7 years).
4. A physician's certification is required that includes the participant's illness or physical condition, a narrative specifying details/evidence of the diagnosis (copies of the supporting evidence or other documentation is not required), the date of examination and the physician's contact information and signature/attestation. *Note: As noted earlier, the terminal illness distribution is not a distributable event, nor is a participant permitted to self-certify a terminal illness. Congress is currently considering a draft SECURE 2.0 technical corrections bill that would allow participants to self-certify.*

Participant Education

1. The entire account balance is eligible for the special tax treatment; however, standard tax withholding for this distribution type applies. A participant who takes a terminally ill distribution and is subject to the early penalty can claim a waiver on their individual tax return by filing Form 5329.[27]
2. Some investment providers are taking the position that the 10% early withdrawal waiver applies only to single-sum distributions.[28] A participant should consult with their provider to determine whether any restrictions exist.
3. Participants may repay the distribution within three years, if rollover contributions are permitted into the Plan under the terms of the plan document.

Special Rules in Connection with Qualified Federally Declared Disasters

Provision Summary

Section 331 provides specific relief measures for participants of 403(b), 457(b) and 401(a) governmental plans affected by federally declared disasters. Section 331 allows for a new plan distribution provision related to all federally declared disasters (Qualified Disaster Recovery Distributions). It also permits an enhanced loan provision which is increased to the lesser of $100,000 or 100% of the participant's vested account balance. A participant whose principal residence is in a qualified disaster area during the incident period and experiences an economic loss because of the qualified disaster is qualified. An FAQ issued by the IRS in May 2024 defines "economic loss" broadly to include real or personal property damage, displacement from home, or temporary or permanent layoffs. Both the Qualified Disaster Recovery Distribution and enhanced loan provisions are optional.

Background/History

There are two relief options available under this provision: a qualified disaster distribution and a qualified disaster loan. Prior to SECURE 2.0, a participant could qualify for a financial hardship distribution, if permitted under the plan, as a result of a federally declared disaster. However, a financial hardship distribution is subject to a 10% early withdrawal penalty. Under the new qualified distribution provision, the 10% penalty does not apply. Prior to

27 Form 5329, Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts.

28 It is possible that future IRS guidance would explicitly permit the waiver on installment payouts.

SECURE, participants could also take a plan loan at the normal loan limits: then lessor of $50,000 or 50% of vested account balance. Under the new disaster loan provision, the limits are increased to the lesser of $100,000 or 100% of the participant's vested account balance.

The Federal Emergency Management Agency (FEMA) maintains all disaster declarations, as well as the "incident period" for a qualified disaster and the disaster area, can be found on FEMA's website: www.fema.gov.

We will discuss these provisions separately.

Plan Sponsor Considerations - Qualified Disaster Distributions.

1. Participants can take a distribution up to an aggregate $22,000 per disaster across the 403(b) plan, other retirement plans and IRAs, without incurring the early withdrawal penalty.

2. The distribution can be taken before 180 days after the latest of the first day of the incident period with respect to the qualified disaster, or the date of the disaster declaration.

3. The $22,000 limit is aggregated across all tax years with respect to a single disaster. Plan sponsors are only responsible for ensuring that a participant's aggregate distributions from the plans they sponsor do not exceed the limit.

4. A plan sponsor, if self-administering, or the sponsor's TPA, may rely on a participant's reasonable representation of eligibility for a qualified disaster distribution unless the sponsor or "other responsible person" has actual knowledge to the contrary.

Important Note: There is no prohibition for a participant to request a qualified disaster distribution, and a financial hardship distribution, if permitted under the Plan. However, only funds taken as disaster distribution are exempt from the 10% early withdrawal penalty.

Plan Sponsor Considerations - Qualified Disaster Loan

1. As noted previously, the Qualified Disaster Loan limits are increased in the maximum loan amount to the lesser of $100,000 or 100% of the participant's vested account balance. Optional suspension of loan repayments up to one year may also be available.

2. The distribution can be taken within 180 days after the latest date of the incident period with respect to the qualified disaster, or the date of the disaster declaration.

3. While most investment providers are (or will be prepared) to accept qualified disaster distributions, not all investment providers will support the enhanced loan limits because of technology constraints.

4. We recommend sponsors utilizing a TPA, or if the plan sponsor is self-administering, closely with investment providers and financial representatives to ensure they are prepared to implement and manage the disaster relief provisions.

Participant Education

1. **Since NTSA members have been drafting best practices for the SECURE Act, there have been more than a dozen federal disaster declarations declared throughout the country. We strongly suggest that employers prepare early to support participants experiencing a disaster.**

    a. In the event of a qualified disaster that impacts the plan have a communication package available for delivery to participants.

    b. Identify financial advisors and investment provider personnel that can work directly with participants in the event of a disaster.

2. Participants may claim the qualified disaster distribution as related income pro-rata on their personal tax return over 3 years.
3. These distributions can be repaid, at the participant's option, to the retirement plan within three years.
4. **Relief to repay distributions taken for principal residence purchase/construction:**
    a. Participants who took hardship distributions to purchase or construct a principal residence in a qualified disaster area can repay these amounts if the funds were not used due to the disaster.

Additional Resources for Qualified Disaster Distributions & Loans

- FEMA Disaster Declaration Seach Tool: www.fema.gov/disaster/declarations
- Form 8915-F, Qualified Disaster Retirement Plan Distributions and Repayments https://www.irs.gov/pub/irs-pdf/f8915f.pdf
- IRS Website "Around the Nation" https://www.irs.gov/newsroom/around-the-nation

Hardship Contribution Source Expansion

Provision Summary

Section 602 of the SECURE Act 2.0 permits Plan Sponsors to make the following contribution sources available for 403(b) financial hardship distributions:[29] (1) elective deferral contributions (pre-tax and ROTH) along with earnings from mutual fund accounts and annuity contracts;[30] (2) Qualified Non-elective Employer Contributions (QNECs) and earnings; and (3) Qualified Matching Contributions (QMACs) and earnings. This is an optional provision available January 1, 2024.

History

Prior to 2018, 403(b) hardship distributions could only be taken from elective deferral contributions (pre-tax and ROTH) exclusive of earnings. In 2018, the Bipartisan Budget Act expanded the available contribution sources in 401(k) Plans to include QNECs and QMACs as well as earnings on both sources made to an annuity contract.[31] However, earnings on elective deferral contributions[32] and QNECs and QMACs made to mutual fund accounts[33] continued to be ineligible contribution sources for a financial hardship.

SECURE 2.0 continued to expand the contributions sources available for participants in 403(b) plans by adding earnings on elective deferral contributions made to mutual fund accounts, as well as QNECs and QMACs (and earnings) made to mutual fund accounts.[34] However, earnings on elective deferrals to annuity contracts continue

29 Assuming financial hardship distributions are permitted under the terms of your written plan documents.

30 There are differences of opinion within industry whether elective deferral earnings from annuity contracts are permitted in the financial hardship calculation.

31 This is codified in 26 CFR § 1.403(b)-6(d).

32 26 CFR 1.403(b)-6(d); IRC 403(b)(11).

33 Section 403(b)(7)(A)(ii) provides distribution limitations on amounts contributed to a mutual fund account.

34 SECURE Act 2.0 Final Text_122022.PDF (See Section 602(b)(1)).

to be ineligible.

In order for non-elective and matching contributions to be "qualified," the contributions must be 100% vested when allocated to the participant and subject to the same distribution restrictions as elective contributions.[35]

Plan Sponsor Considerations

1. Many school district 403(b) plans only permit pre-tax and/or Roth elective contributions, so the only source expansion is to allow earnings in mutual fund accounts to be available for hardship distributions. Earnings on elective deferrals to annuity contracts continue to be ineligible.

2. For Plan Sponsors that offer Employer Contributions, expanding contribution sources for financial hardship distributions may be helpful to participants, since it may increase access to more account assets to address specific life events. In order to add QNECs and QMACs and earnings to the available sources, a good faith plan amendment is needed to define any Employer Contributions as either QNECs or QMACs, and if applicable any hardship policies should contain these revisions as well. Contact your TPA or plan document provider for more information.

3. Some school districts offer Employer Contributions only to certain employee classes (i.e., teachers, senior leadership, etc.), so expanding sources could create a fairness issue between those eligible for Employer Contributions and those who are not eligible for the contribution.

4. Making additional contribution sources available for hardship distributions may deplete retirement savings among the participants in your plan.

5. Some mutual fund companies have already communicated to Plan Sponsors that they can make elective deferral earnings available as a source for hardship contributions. As for Employer Contribution source expansion, we have learned that some investment providers can, and others cannot accommodate this feature. We recommend that you consult with your TPA and/or the investment provider(s) regarding any potential restrictions.

6. If you choose to expand contribution sources available, staff education is paramount. For example, some participants may not know whether they invest in a mutual fund account directly, or indirectly through a variable annuity contract.

ROTH Employer Contributions

Provision Summary

Section 604 of SECURE 2.0 permits Plan Sponsors of defined contribution plans give participants the option to elect any fully vested employer contributions funded on a ROTH basis for tax purposes. The option is available for both matching and non-elective employer contributions and available in 403(b), governmental 401(a) and 457(b) governmental plans.[36] This allows participants to pay taxes on the contributions upfront but avoid taxes on qualified distributions of both the contributions and any earnings at the time of distribution. This is an optional provision that was technically available on the date of enactment.

35 26 CFR 401(m)(4)(C); IRC 401(k)(3)(D)(ii)(I)

36 The Association does not recommend employer contributions be made in 457(b) governmental plans since elective deferral contributions and employer contributions are aggregated for contribution limit purposes. Additionally, use of an employer contributions with a vesting schedule is difficult to administer since the employer contributions impact the contribution limits at the time they vest.

Background/History

The use of ROTH elective deferral contributions has become more prevalent over the years. SECURE 2.0 charts new territory by offering a ROTH Employer contribution option. Traditional vested employer contributions are taxable when a participant takes a distribution. Under the ROTH employer contribution option, a participant making such an election will owe income tax for the year the ROTH employer contribution is made.

Plan Sponsor Considerations

There are a number of administrative details to discuss - implementing a ROTH Employer Contribution may require coordination with your payroll provider/system, with the applicable investment providers, and your third-party administrator (if one is retained).

1. A- ROTH Employer Contribution is elected on a participant-by-participant basis.

2. Participants must be able to make an election at least annually. [Administratively, an election form will need to be created to account for a participant's preference].

3. A participant selecting a ROTH option must be 100% vested, if your plan has a vesting schedule, a vesting validation process will be needed.

Payroll System Considerations

1. If your payroll system calculates employer contributions, a new deduction source must be added to the system to attribute funds to an Employer ROTH source.

2. If employer contributions are not calculated through your payroll system, a new deduction source is still necessary because your contribution remittance data file must segregate traditional employer contributions from ROTH employer contributions. [Whether you are sending contributions to a third-party administrator or uploading contribution files directly to an investment provider(s), they too must have the capability to capture the new Employer contribution source].

Investment Provider Considerations

1. Does the participant's investment provider offer a ROTH employer contribution?

2. Additionally, has the participant completed the necessary enrollment materials to add a ROTH employer contribution to their investment account or contract?

3. Like matching and nonelective contributions made on a pretax basis, designated Roth matching and nonelective contributions under qualified and 403(b) plans are not considered wages for FICA or FUTA purposes. Designated Roth matching and nonelective contributions made to an eligible governmental plan are not wages for FUTA purposes but sometimes may be FICA wages. Please consult your tax professional for guidance attributable to your state.

Participant Education

1. Participants should work with their financial or tax professional to determine if a ROTH Employer Contribution makes sense for them.

2. As noted earlier, a participant selecting a ROTH Employer Contribution owes income tax for the year the ROTH employer contribution is made. IRS Notice 2024-2 indicates the tax reporting is to be reported on Form 1099-R including the amount in Boxes 1 and 2a and then a Code "G" in Box 7; includable in an employee's income in the year the contributions are allocated to the employee's plan account.

3. Participants should review their tax withholding election to ensure they account for the additional taxable income.