FIDUCIARY UPDATE

Retirement plan fiduciaries should be mindful of recent compliance issues that may be relevant to their plans.

SECURE ACT 2.0 CORRECTION

On May 23, congressional leaders wrote an open letter to the Treasury and IRS expressing their intent to correct the following technical errors involving SECURE 2.0:

- The provision regarding the increase to age 75 for required minimum distributions (effective in 2033) could be interpreted to apply to people who turn 74 after December 31, 2032. It is meant to apply to those turning 73 after that date.
- The provision mandating that catch-up contributions in retirement plans be designated as Roth starting in 2024 for those with more than $145,000 in prior-year earnings could be read as a ban on catch-up contributions entirely, which is not the intent.

403(b) DETERMINATION LETTER

On May 24, the IRS issued a newsletter on its new 403(b) determination letter program.

- This program is available for individually designed plans only, not preapproved plans that use prototype or volume-submitter documents.
- The program is open to submissions beginning on different dates, based on the last digit of the sponsor's EIN.
- It opened on June 1, 2023, for sponsors whose EINs end in the number 1, 2, or 3.

IRS GUIDANCE ON EPCRS

On May 25, the IRS issued guidance on its formal procedure for correcting plan defects, known as the Employee Plans Compliance Resolution System (EPCRS), as updated by SECURE 2.0.

- Even though EPCRS has yet to be amended, the SECURE 2.0 provisions are effective immediately, which means many defects can now be self-corrected, regardless of time frame.
- The correction process can also be used to correct defects that occurred before SECURE 2.0 was enacted.

THE INPUTS AND OUTPUTS OF ANNUALIZED PERFORMANCE

Investment performance can be illustrated several ways, but one of the most common metrics used is annualized returns. These calculations represent a geometric average that accounts for compounding, indicating an investment's annual performance as if it were earned consistently over that time. Annualized returns provide a standardized method to compare investments relative to their peers and benchmarks, but they do not give good insight into fund volatility. Understanding what these numbers indicate, and what they do not, can inform investment decisions.

Benefits of Annualized Returns

Simplification translates a performance track record into a representation of an annual return experience; it is not cumulative.

Extended time horizon gives a broad view of investment performance over different market cycles.

Standardization allows for apples-to-apples investment comparisons over time.

Considerations of Annualized Returns

Short-term volatility may smooth out short-term bumps in market performance and misrepresent risk.

Point-in-time comparisons provide insight into a specific time frame but may not reflect intra-period experience.

Swing factor shows that due to the rolling-off of time periods, annualized returns can change significantly quarter over quarter.

XYZ Sample Fund

2020				2021				2022				2023	12.31.2022	3.31.2023
Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1		
-13.12%	27.84%	12.25%	8.21%	0.48%	12.08%	0.45%	4.17%	-12.38%	-24.98%	-4.69%	-1.85%	16.45%	Annualized Return* -0.75%	Annualized Return* 9.42%
34%	45%	36%	94%	69%	22%	47%	80%	68%	83%	62%	89%	18%	Peer Rank** 91%	Peer Rank** 87%

Rolled off from 3.31.2023 Three-Year Annualized Return

Included in Both 12.31.2022 and 3.31.2023 Annualized Returns

Rolled on in 3.31.2023 Three-Year Annualized Return

*Three-year annualized return
** Three-year peer group percentile rank

BACK TO BASICS: ROTH CONTRIBUTIONS

HOW IT WORKS

Unlike pre-tax contributions, Roth contributions are made on an after-tax basis and treated as wages for federal, state, and other applicable tax purposes. Although Roth contributions are made with after-tax money, they differ from after-tax contributions that may also be allowed in a retirement plan.

Roth contributions in a retirement plan have the same contribution limits as pre-tax contributions. Also, they are combined with pre-tax contributions for purposes of the 402(g) limit, which sits at $22,500 for 2023.

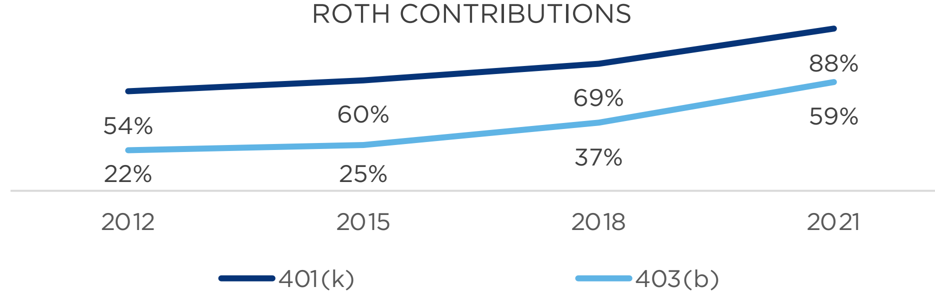
Contributions and earnings are not taxed at withdrawal if they remain in the plan for at least five years and the participant is at least 59 1/2 years old, dies, or becomes disabled before starting payments.

Unlike Roth IRAs, Roth retirement plan contributions are not subject to income restrictions. All participants are eligible to use this feature.

Roth contributions can only be rolled over to another qualified plan that allows for Roth contributions or to a Roth IRA.

Lastly, Roth contributions will not be subject to required minimum distribution (RMD) rules starting in 2024.

PERCENTAGE OF PLANS OFFERING ROTH CONTRIBUTIONS



BENEFITS

Roth contributions in a retirement plan allow employees who may have lower earnings—and therefore lower tax rates—to pay less taxes now than they might pay in retirement, when their income could be higher.

They also allow high earners who are not otherwise able to contribute to a Roth IRA to build Roth savings through their retirement plans and diversify the taxability of their incomes in retirement or delay RMDs.

These contributions allow optionality to employees who believe their tax rates will increase over time and would prefer to pay taxes now instead of in retirement.

Source: Plan Sponsor Council of America 401(k) and 403(b) survey data

SECURE SERIES: ROTH PROVISIONS

The SECURE 2.0 Act introduced several updates and policy changes specifically for Roth money in qualified retirement plans. This is an overview of three of the most impactful changes. Note that the Roth updates in SECURE 2.0 focus on expanding and enhancing Roth usage. They do not restrict any existing Roth functionality.

No RMDs for Roth Contributions (Mandatory)	Roth Employer Contribution (Optional)	Catch-up Contributions for High Earners (Mandatory)
Who: Participants in qualified retirement plans.	**Who:** Plan sponsors with qualified retirement plans.	**Who:** Participants in qualified retirement plans with prior-year wages exceeding $145,000. The $145,000 will be adjusted for inflation in the future.
What: Roth contributions in retirement plans will no longer be subject to required minimum distributions (RMDs). This aligns employer-sponsored plans with Roth IRAs.	**What:** Employers will have the ability to make matching and nonelective contributions to Roth accounts for their participants.	**What:** Any catch-up contributions made by participants who meet the wage qualification must be made as Roth contributions.
When: Effective January 1, 2024.	**When:** Effective immediately.	**When:** Effective January 1, 2024
Why: This provision eliminates an incentive for participants to roll existing Roth assets in an employer-sponsored plan into a Roth IRA.	**Why:** This change allows greater flexibility for plan sponsors to align with participants' preferences.	**Why:** Increasing Roth contributions will increase tax revenue to cover the cost of other SECURE 2.0 provisions.
Considerations: Sponsors should consider the implications of Roth money remaining in the plan for a longer period after retirement.	**Considerations:** Plan sponsors should consider the following: Is Roth currently offered in the plan? Are in-plan Roth conversions available? What are the administrative and tax implications of offering Roth employer contributions? Would this conflict with the current vesting schedule for employer contributions?	**Considerations:** Starting in 2024, unless Roth is available, participants will not be able to make catch-up contributions. This is a meaningful consideration for plans that do not offer Roth today.

SECURE SERIES: EMERGENCY SAVINGS

There are two optional emergency savings-related provisions in SECURE 2.0. Ahead of the 2024 effective date of these two provisions, plan sponsors should understand the differences between them so they can make informed decisions about whether to offer one, both, or neither.

	Emergency Withdrawal	Emergency Savings Account	Plan Sponsor Considerations
	Section 115, provides an exception from the 10% early withdrawal penalty for certain distributions used for emergency needs.	Section 127, allows employers to offer a pension-linked emergency savings account (PLESA) to participants in the retirement plan.	Both provisions are effective January 1, 2024, but neither is required. They may be offered together in the same plan.
Who Can Use it?	All eligible participants	Non-highly compensated participants only	Which demographic groups are you trying to solve for?
Maximum Amount Available	$1,000	$2,500 (maximum absolute contribution amount)	What amount will satisfy the need of your participants?
Contribution Type	Pre-tax	Roth	Do you currently offer Roth? Will participants understand the different tax implications?
Qualifying Definition	Unforeseeable and immediate financial needs relating to personal or family expenses	None; allows for withdrawals at the discretion of the participant	How much flexibility do you want to offer?
Documentation/Certification Required	Participants can self-certify	None required	How onerous is it for participants to gain access to the funds?
Distribution Frequency	Once per year if repaid*; otherwise, every three years	At least monthly	How often do your participants need access to the money? How much access do you want to provide?
Tax Implications	Taxable if not repaid within three years; 20% withholding applies at distribution	Not taxable at distribution; withholding does not apply	Will participants understand the different tax implications?
10% Early Withdrawal Penalty?	No	No	-
Can It Be Repaid to the Plan?	Yes	No	How will this affect plan leakage?
Investment Vehicle Used	N/A	Principal preservation fund with specific definition	What options are available?
Can the Employer Reduce the Maximum Dollar Amount?	Yes	Yes	Is there a reason to reduce the maximum dollar amount?
Do Recordkeeper Transaction Fees Apply?	To be determined (TBD)	TBD, but the first four withdrawals must be allowed without additional charges or fees to the participant	If applicable, are the transaction fees reasonable?

*Withdrawal can be repaid through elective deferrals or after-tax contributions that equal or exceed the distribution amount.

SECURE SERIES: QUALIFIED STUDENT LOAN PAYMENTS

SECURE 2.0 contains an optional provision designed to help participants pay down student debt and take full advantage of their employer's match contribution through qualified student loan payments (QSLPs). Section 110 allows employers to treat qualifying student loan payments as elective deferrals for purposes of matching contributions. It is effective for contributions made for plan years beginning after December 31, 2023.

- A QSLP is a matching contribution that must be available for all employees who are otherwise eligible for matching contributions. Vesting and match rates must be the same for QSLPs as for other matching contributions.
- Employees receiving QSLPs may be disaggregated for purposes of actual deferral percentage (ADP) testing.
- There are specific definitions for qualified higher education expenses, eligible student, eligible expenses, and qualified student loan payments. To qualify, the employee must meet these definitions.
- Employee self-certification is allowed. Certification must be performed annually.
- Employees can make elective deferrals in addition to student loan payments.
- The frequency of QSLPs may be the same as the match on elective deferrals or at a different frequency, with a minimum of once per year.

	NO STUDENT LOAN MATCH	STUDENT LOAN MATCH NO DEFERRAL	STUDENT LOAN MATCH SOME DEFERRAL
Student Loan Payments	$2,500	$2,500	$2,500
Employee Deferral	$0	$0	$500
Employer Match	$0	$2,500	$3,000

Scenarios assume a dollar-for-dollar match up to 5% and a $60,000 employee salary.

There are many outstanding questions regarding QSLP administration, including when model plan amendment language will be available, how payments will be tracked, and how the timing of QSLPs will work with plan testing. Plan sponsors that are interested in adding this option should ask their recordkeepers about timing, cost, and administration.

FIDUCIARY TRAINING: ERISA EXPENSE ACCOUNTS

Fiduciary training is a critical part of being a fiduciary, and it's a way to minimize risk through education and governance. As a fiduciary, it is important to understand what an ERISA expense account is and ensure that a prudent process is followed when using this type of account. It is also a fiduciary's responsibility to evaluate the impact this type of arrangement can have on overall plan costs.

WHAT IS AN ERISA EXPENSE ACCOUNT?

This is an account used to pay eligible plan expenses. The account is funded by rebates from certain investments in the plan lineup. This type of arrangement is known as *revenue sharing*, and there are options for how a plan sponsor can allocate the funds. If the credits are not allocated directly back to participants, they will be deposited within the plan to an ERISA expense or spending account.

USES

These accounts can be used to pay ERISA-approved plan expenses, including:

- Audit fees
- Third-party administrative and compliance fees
- Recordkeeping fees
- Advisory fees
- Required plan amendment costs

As a reminder, business or settlor plan expenses cannot be paid from plan assets. Funds not used by the end of the plan year in which they occur should be allocated to plan participants.

ERISA EXPENSE ACCOUNT VS. FORFEITURE ACCOUNT

ERISA expense accounts hold accumulated revenue credits from the investments held in a plan. A forfeiture account holds the unvested portion of an employer contribution that remains after a terminated participant's account is distributed. Forfeitures may be used to pay eligible plan expenses but may also be used to reduce or offset future employer contributions. An expense account may only be used toward applicable fees and as additional income, if allocated to participants.