

# FIDUCIARY HOT TOPICS

Q1 2025

## IRS Increases Some IRA and Plan Limits for 2025

On November 1, 2024, IRS Notice ([2024-80](#))<sup>1</sup> includes the 2025 cost-of-living adjustments (COLAs) for IRA and retirement plan related dollar limits. Key numbers are shown in the tables below. For additional information see IRS News Release [IR-2024-285](#).<sup>2</sup>

### 2025 Retirement Plan Limits

| Employer Plan Limits   | 2025                  | 2024        | 2023        |
|--|-----------------------|-------------|-------------|
| Elective Deferral Limit (401(k), 403(b), 457(b), and SARSEP)     | \$23,500              | \$23,000    | \$22,500    |
| Age 50 Catch-up Contribution Limit                               | \$7,500               | \$7,500     | \$7,500     |
| Age 60-63 Catch-up Limit   | \$11,250              | N/A         | N/A         |
| Annual Defined Benefit Limit                                     | \$280,000             | \$275,000   | \$265,000   |
| Annual Defined Contribution Limit                                | \$70,000              | \$69,000    | \$66,000    |
| Annual Compensation Limit  | \$350,000             | \$345,000   | \$330,000   |
| Highly Compensated Employee Dollar Threshold                     | \$160,000             | \$155,000   | \$150,000   |
| SIMPLE Standard Contribution Limit                               | \$16,500              | \$16,000    | \$15,500    |
| SIMPLE Small Employer Special Contribution Limit                 | \$17,600 <sup>1</sup> | \$17,600    | N/A         |
| SIMPLE Standard Age-50 Catch-up Contribution Limit               | \$3,500               | \$3,500     | \$3,500     |
| SIMPLE Small Employer Special Age-50 Catch-up Contribution Limit | \$3,850 <sup>1</sup>  | \$3,850     | N/A         |
| SIMPLE Age 60-63 Catch-up Contribution Limit                     | \$5,250               | N/A         | N/A         |
| SEP Coverage Minimum Comp  | \$750                 | \$750       | \$750       |
| SEP Compensation Limit   | \$350,000             | \$345,000   | \$330,000   |
| Top-heavy Key Employee Comp                                      | \$230,000             | \$220,000   | \$215,000   |
| Social Security Taxable Wage Base                                | \$176,100             | \$168,600   | \$160,200   |
| ESOP Maximum Amount Subject to a 5-year Distribution Period      | \$1,415,000           | \$1,380,000 | \$1,330,000 |
| ESOP Maximum Amount for Lengthening of the 5-year Period         | \$280,000             | \$275,000   | \$265,000   |

Source: [Notice 2024-80](#)

1. For SIMPLE plans with 25 or fewer employees and SIMPLE plans with 26-100 participants if 4% match or 3% nonelective employer contribution provided.

## 2025 IRA Limits

| IRA Limits   | 2025                | 2024                | 2023                |
|--|---------------------|---------------------|---------------------|
| IRA Contribution Limit   | \$7,000             | \$7,000             | \$6,500             |
| IRA Catch-up Contributions                                       | \$1,000             | \$1,000             | \$1,000             |
| Joint Return Covered by Workplace Retirement Plan                | \$126,000-\$146,000 | \$123,000-\$143,000 | \$116,000-\$136,000 |
| Single or Head of Household Covered by Workplace Retirement Plan | \$79,000-\$89,000   | \$77,000-\$87,000   | \$73,000-\$83,000   |
| Joint Return Spouse Not Covered by Workplace Retirement Plan     | \$236,000-\$246,000 | \$230,000-\$240,000 | \$218,000-\$228,000 |
| Married Filing Separately Covered by Workplace Retirement Plan   | \$0-\$10,000        | \$0-\$10,000        | \$0-\$10,000        |
| Roth IRA Joint Return  | \$236,000-\$246,000 | \$230,000-\$240,000 | \$218,000-\$228,000 |
| Roth IRA Single or Head of Household                             | \$150,000-\$165,000 | \$146,000-\$161,000 | \$138,000-\$153,000 |
| Roth IRA Married Filing Separately                               | \$0-\$10,000        | \$0-\$10,000        | \$0-\$10,000        |

Source: [Notice 2024-80](#)

## IRS Notice 2024-63 Gives Guidance on Student Loan Matching Contributions

On August 19, 2024, the IRS released [Notice 2024-63](#),<sup>3</sup> providing guidance under SECURE Act 2.0 on an employee's Qualified Student Loan Payment (QSLP) matching contributions in 401(k), 403(b), governmental 457(b) and savings incentive match plans for employees (SIMPLE) IRA plans. Among other items, the guidance, written in Q&A format, covers:

- QSLP qualification requirements,
- Payment certification requirements,
- Actual deferral percentage (ADP) testing,
- Timing of payments, and
- Tax year attribution.

The notice applies for plan years beginning after December 31, 2024. For plan years beginning prior to January 1, 2025, plan sponsors may rely on a good faith, reasonable interpretation of Section 110 of SECURE Act 2.0. Further guidance in the form of regulations and a model amendment is expected.

## DOL Clarifies Application of 2021 Cybersecurity Guidance

On September 6, 2024, the DOL issued the [EBSA's Compliance Assistance Release No. 2024-01](#),<sup>4</sup> clarifying that the cybersecurity guidance it issued in April, 2021, applies to all employee benefit plans subject to the Employee Retirement Income Security Act of 1974 (ERISA), including both employee pension benefit plans, (e.g., tax-qualified defined contribution and defined benefit retirement plans), and health and welfare plans. Consequently, employers, plan sponsors, fiduciaries and plan participants of employee pension benefit plans and health and welfare plans should follow the guidance and maintain strong cybersecurity practices.

In addition, the 2024 guidance references the following U.S. Department of Health and Human Services publications which are targeted to help health plans, and their service providers maintain good cybersecurity practices:

- [Health Industry Cybersecurity Practices: Managing Threats and Protecting Patients](#)<sup>5</sup>
- [Technical Volume 1: Cybersecurity Practices for Small Healthcare Organizations](#)<sup>6</sup>
- [Technical Volume 2: Cybersecurity Practices for Medium and Large Healthcare Organizations](#)<sup>7</sup>

Plan sponsors may also want to consider adding cybersecurity matters as a regular item to their plan committee meeting agendas moving forward, analogous to processes in place with respect to adopting, following, and monitoring the terms of investment policy statements and the like. Further vendor selection processes may also need to be adapted accordingly.

## DOL Celebrates ERISA's 50th Anniversary with a New Webpage

It was Labor Day 1974 when then-President Gerald Ford signed the Employee Retirement Income Security Act (ERISA) into law to help protect the health, retirement and other benefits of U.S. workers. In honor of ERISA's 50th anniversary, the Department of Labor, the federal agency charged with enforcing ERISA, launched a website focused on the accomplishments of ERISA through the years. The webpage traces the history of ERISA and its protections of the health, retirement savings and other benefits plans of America's workers. It also details how the department's [Employee Benefits Security Administration](#)<sup>8</sup> assists retirement plan beneficiaries and their families in claiming their benefits or reporting violations.

## IRS Issues Numerous Disaster Relief Notices in Wake of Devastating Events

Taxpayers and plan sponsors need to be aware of the many disaster relief news releases issued by the IRS in the past weeks and months. These releases often provide individuals and business owners more time to file tax returns, make tax payments and complete required reporting such as filing the various versions of IRS Form 5500, Annual Return/Report of Employee Benefits Plan. A cumulative list of these disaster relief notices can be found here [Tax Relief in Disaster Situations](#).<sup>9</sup>

For example, News Release [FL-2024-10](#),<sup>10</sup> issued October 11, 2024, grants tax relief for individuals and businesses in parts of Florida that were affected by Hurricane Milton that began on October 5, 2024. These taxpayers now have until May 1, 2025, to file various federal individual and business tax returns and make tax payments. The notice explains in more detail the specific actions that are affected. This relief also includes the filing of Form 5500 series returns, which are postponed for the affected areas through May 1, 2025, according to the notice.

## IRS Provides 403(b) Plan Sponsors with Guidance on Long-Term, Part-Time Employee Rules

[IRS Notice 2024-73](#)<sup>11</sup> provides guidance for ERISA-covered 403(b) plans related to the long-term, part-time (LTPT) coverage rules introduced by SECURE Act 1.0 and updated by SECURE Act 2.0. An ERISA 403(b) plan is one where the employer provides contributions or in some other manner controls the plan. Non-ERISA 403(b) plans as well as governmental and nonelecting church plans are not subject to the LTPT rules.

Among other items, the notice clarified an ERISA 403(b) plan:

- Must give any LTPT-qualified employee the ability to make salary deferrals;
- May retain an exclusion for part-time employees (e.g., employees who normally work less than 20 hours per week, who do not qualify as ERISA LTPT employees);
- May exclude student employees from making elective deferrals; and
- May exclude LTPT employees when determining whether the plan satisfies nondiscrimination requirements for matching contributions.

The IRS plans to issue additional guidance for LTPT rules, including proposed regulations for ERISA 403(b) plans. The notice also states the now proposed LTPT regulations for *401(k) plans*, when finalized, will apply no earlier than to plan years beginning on or after January 1, 2026.

## IRS PLR Allows Contribution Choice Among 401(k) and Other Benefit Arrangements

On August 23, 2024, IRS released a private letter ruling ([PLR202434006](#))<sup>12</sup> found no fault with an arrangement under which a sponsor allows employees to choose to have an employer contribution allocated among four employee benefit accounts it offers:

- A 401(k) plan,
- a health reimbursement arrangement (HRA),
- A health savings account (HSA), and an
- Educational assistance program (ESA, that, among other things, permits student loan repayments).

A PLR may be relied on only by the taxpayer who requested it and cannot be cited as authority or precedent by another taxpayer. Nevertheless, a PLR may provide insight into the IRS's thinking on a particular issue.

#### The proposal

In general, the sponsor is proposing to reduce its 401(k) plan discretionary contribution and allow eligible employees to make an annual irrevocable election to allocate an additional employer contribution, presumably funded out of the reduction to the 401(k) discretionary contribution, among the four benefit plans/programs described above [401(k), HRA, HSA, and EAP]. Critically, "... employees would not be permitted to receive the (additional employer contribution) in the form of cash or as a taxable benefit."

Employees "... would make the annual irrevocable election during open enrollment. [The sponsor] would make the Employer Contribution in accordance with the employee's election (or if no election has been made, the Employer Contribution would be made to the 401(k) Plan) by March 15 of the following year."

#### The IRS's ruling

The IRS ruled that the "additional discretionary contribution" would not be treated as an employee 401(k) elective deferral. Furthermore, the election by the employee to allocate the additional discretionary contribution between the four programs will not affect the favorable tax treatment of those programs.

#### Takeaways for plan sponsors

- Generally, the features that make this program work (under the Tax Code) are:
  - 1)The employee's inability to receive the additional discretionary contribution in cash;
  - 2)The employee election being irrevocably made in the year prior to the allocation of the benefit; and
  - 3)The nontaxability of the four allocation alternatives.
- Nondiscrimination testing would apply, ostensibly; however, the PLR does not address the topic.
- Any plan sponsor considering adopting a similar program will want to discuss the option with their own legal counsel and consider applying for a PLR.

## **IRS Notice 2024-77 Addresses SECURE 2.0 Changes to Plan Overpayments**

On October 15, 2024, the IRS published [Notice 2024-77](#),<sup>13</sup> providing guidance with respect to SECURE Act 2.0 changes to the treatment of "Inadvertent Benefit Overpayments." The guidance in the notice applies with respect to overpayments and rollovers (regardless of the date of overpayment), on the date of issue. For overpayments/rollovers prior to that date sponsors/participants may "rely on a good faith, reasonable interpretation" of the statute.

#### Background

An inadvertent benefit overpayment is a payment that exceeded the amount payable under the terms of the plan or a limitation provided in the Internal Revenue Code (IRC) or regulations, and:

- Occurs despite the existence of established practices and procedures,
- Is not egregious,
- Does not relate to the diversion or misuse of plan assets, and
- Is not directly or indirectly related to an abusive tax avoidance transaction.

Regarding plan overpayments, SECURE Act 2.0 changes permit:

- 1) plan fiduciaries (subject to certain exceptions) to pursue recoupment/make corrective payments with respect to inadvertent benefit overpayments, and
- 2) plan participants receiving overpayments (in certain circumstance) to treat them as eligible rollover distributions.

Generally, where recoupment is either not sought or not obtained, the corrective payment previously required under the IRS's Employee Plans Compliance Resolutions System (EPCRS) no longer applies. The exceptions to this rule include where the payment results in a:

- Payment that violates a defined benefit plan funding-based benefit restriction (IRC §436),
- Compensation limit failure [IRC. §401(a)(17)], or
- Contribution/benefit limit failure (IRC §415).

There will also be circumstances in which a corrective payment must be made with respect to a "related error." The notice provides the following example: If a plan participant received an inadvertent benefit overpayment due to an incorrect allocation of a profit-sharing contribution under a plan, another plan participant may have received a benefit underpayment. In this case, the benefit underpayment would be considered an additional failure in need of correction, which may require a corrective payment.

#### Recoupment, self-correction still allowed

The new rules, however, still permit a plan to seek recoupment, subject to applicable restrictions under ERISA (e.g., no interest charged, recoupment is not sought from any beneficiary (including a spouse) and limits on reductions of future payments, threats of litigation, and use of collection agencies).

Moreover, a plan may "self-correct" by increasing past benefits if certain requirements are met, including compliance with applicable correction procedures and, provided that the correction does not violate the IRC compensation limit and benefit limits.

#### Rollovers

Generally, if the plan does not seek recoupment, the overpayment is treated as an eligible rollover distribution ("... if the payment would have been an eligible rollover distribution but for being an overpayment"). This treatment does not apply to an overpayment that is an IRC § 401(a)(17) or 415 failure" (as described previously). Where recoupment is sought, the participant must be notified that any unreturned portion is not eligible for tax-free rollover treatment.

#### Summary

Notice 2024-77, effective as of October 15, 2024, provides additional guidance on the changes related to how plan sponsors may handle inadvertent benefit overpayments. More guidance is still needed, and interested parties may submit comments on the notice to the IRS through December 16, 2024. Key points of understanding for plan sponsors:

- Processes and procedures regarding recoupment/no recoupment of overpayments,
- The current correction methods offered under EPCRS if recoupment is sought,
- What restrictions now apply if recoupment is sought, and
- If the plan does not seek recoupment, the overpayment is treated as an eligible rollover distribution.

## **Plan Sponsors Win Two More Forfeiture Decisions**

Plaintiffs have filed several cases in the past months claiming the use of 401(k) plan forfeitures to reduce employer contributions, rather than to reduce participant-paid plan expenses, violates the ERISA fiduciary duty to act solely in the best interests of the plan participants. To date, in these cases, we have three decisions granting defendants' motion to dismiss –

- *Hutchins v. HP Inc.*, US District Court for the Northern District of California (June 17, 2024),
- *Naylor v. BAE Systems, Inc.*, US District Court for the Eastern District of Virginia (September 5, 2024) and
- *Dimou v. Thermo Fisher*, US District Court for the Southern District of California (September 19, 2024).

And two decisions denying defendants' motion to dismiss –

- *Perez-Cruet v. Qualcomm Incorporated*, US District Court for the Southern District of California (May 24, 2024) and in
- *Rodriguez v. Intuit Inc.*, US District Court for the Northern District of California (August 12, 2024).

Except for *Naylor* (in which the court found that the plan document mandated the plan use forfeitures to reduce employer contributions), all of these cases involve plan documents that give the plan sponsor/sponsor fiduciaries discretion to use forfeitures either to reduce employer contributions or to pay plan expenses. Bottom line: The courts are divided on what rule should apply in that circumstance.

## Legislative Update

Many provisions of the 2017 “Tax Cuts and Jobs Act” (TCJA) are set to expire in 2026, generating a tax increase for many individual taxpayers. The Joint Committee on Taxation estimates that extending current individual tax rules for another 10 years (the “budget window”) would increase “primary deficits” by \$3.3 Trillion.

In 2025, the federal government will have to address a tax/fiscal challenge: whether to allow some or all of the TCJA cuts to expire (resulting in increased taxes for many individuals), find some new sources of revenue, or face a significant increase in the federal deficit.

In response, Congress may look for “revenue raisers” in the qualified plan system to offset the cost of continuing/making permanent the TCJA tax cuts, including further “Rothification” of 401(k) contributions, capping total account balances in qualified retirement savings vehicles, and closing the door on back door Roth conversions.

Links:

1. <https://www.irs.gov/pub/irs-drop/n-24-80.pdf>
2. <https://www.irs.gov/newsroom/401k-limit-increases-to-23500-for-2025-ira-limit-remains-7000>
3. <https://www.irs.gov/pub/irs-drop/n-24-63.pdf>
4. <https://www.dol.gov/agencies/ebsa/key-topics/retirement-benefits/cybersecurity/compliance-assistance-release-2024-01>
5. <https://405d.hhs.gov/Documents/HICP-Main-508.pdf>
6. <https://405d.hhs.gov/Documents/tech-vol1-508.pdf>
7. <https://405d.hhs.gov/Documents/tech-vol2-508.pdf>
8. <https://www.dol.gov/agencies/ebsa>
9. <https://www.irs.gov/newsroom/tax-relief-in-disaster-situations>
10. <https://www.irs.gov/newsroom/irs-announces-tax-relief-for-victims-of-milton-various-deadlines-postponed-to-may-1-2025-in-all-of-florida>
11. <https://www.irs.gov/pub/irs-drop/n-24-73.pdf>
12. <https://www.irs.gov/pub/irs-wd/202434006.pdf>
13. <https://www.irs.gov/pub/irs-drop/n-24-77.pdf>

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