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SUMMARY

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Defined contribution (DC) retirement plans are a common employee benefit in the United States, with 63% of all American workers having access to such plans in 2023. These plans may be offered by both private and public sector employers, receive favorable tax treatment, are subject to provisions specified in the Internal Revenue Code (IRC), and in the case of private sector plans are governed by the Employee Retirement Income Security Act of 1974 (ERISA; P.L. 93-406).

Employees may have the option to contribute to their plans on either a pre-tax or after-tax (Roth or after-tax non-Roth) basis. Pre-tax contributions and contributions to designated Roth accounts are called *elective deferrals* and are subject to an annual limit ($23,000 in 2024). Employers may also contribute in one of two ways: *matching contributions* equal a portion, or all, of the employee's contribution while *non-elective contributions* are not affected by the amount a participant contributes to their own account. The sum of employee and employer contributions to an account cannot exceed the overall annual limit of $69,000 in 2024. Employees aged 50 and over can make additional contributions each year, referred to as *catch-up contributions*, up to $7,500 in 2024.

Plan sponsors have a variety of choices when designing plans, and many of these choices are related to contributions. The choices include, for example, the plan type, participant eligibility criteria, frequency and nature of employer contributions, whether to automatically enroll participants (if not required), and whether to automatically increase participants' contributions.

In order to receive tax advantages, DC plans must adhere to provisions in the IRC. For example, plans have to ensure equitable coverage and benefits for a broad range of participants, such as rank-and-file employees and executives. Plans can automatically satisfy some of these requirements by using specified *safe harbor* provisions.

Congress is traditionally interested in promoting retirement security by encouraging higher DC contributions, particularly among lower income households. In recent years, two retirement-focused bills with contribution-related provisions became law: the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019, enacted as Division O of the Further Consolidated Appropriations Act, 2020 (P.L. 116-94), and the SECURE 2.0 Act of 2022, enacted as Division T of the Further Consolidated Appropriations Act, 2023 (P.L. 117-328).

This report provides an overview of DC plans, contributions to these plans, tax treatment of contributions, plan sponsor choices regarding contribution-related features, relevant IRC requirements, and related policy issues.

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# Introduction and Overview of Retirement Plans

Many employers offer retirement plans to employees to help them prepare financially for retirement. Retirement plans are a form of *deferred compensation* because they are structured such that employees forgo current compensation in exchange for compensation in the future. The federal government uses the tax code to encourage employers to establish and employees to participate in retirement plans. For example, employers can deduct contributions to retirement plans from business income, and participants (depending on the type of plan) can reduce either their current or future taxable income by contributing to these plans.[1] Plans that receive these advantages, called *tax-qualified plans*, must adhere to standards specified in the tax code.[2]

Both private and public sector employers may offer one (or both) of two types of retirement plans: defined benefit (DB) or defined contribution (DC) plans.[3] DB plans typically provide participants with fixed lifetime monthly payments during retirement.[4] DC plans provide participants with individual accounts to hold accumulated contributions and any investment earnings to be used for retirement income.[5]

The types of DC plans include profit-sharing plans, stock bonus plans, employee stock ownership plans (ESOPs), money purchase plans, 401(k) plans, 457(b) plans, 403(b) plans, and the Thrift Savings Plan (TSP).[6] DC plans are funded by employer contributions, employee contributions, or both. The tax code places limits on employer and employee contributions to DC plans. In general, in 2024, employee contributions are limited annually to the lesser of $23,000 or the employee's compensation, and total (employee plus employer) contributions are limited annually to the lesser of $69,000 or the employee's compensation.[7] This report generally focuses on contributions to private sector DC plans.[8]

Nearly all private sector pension plans are governed by the Employee Retirement Income Security Act of 1974 (ERISA; P.L. 93-406), which is enforced by the Department of the Treasury, the Department of Labor (DOL), and the Pension Benefit Guaranty Corporation (PBGC). Congress enacted ERISA to protect the interests of pension plan participants and beneficiaries. ERISA is codified in the *U.S. Code* in Title 26 (Internal Revenue Code, or IRC) and Title 29

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[1] The Department of the Treasury estimated that the reduction in federal revenues for all pension plan contributions and earnings is $252.2 billion in 2024. See Financial Report of the United States Government, Fiscal Year 2023, https://www.fiscal.treasury.gov/reports-statements/financial-report/current-report.html.

[2] One example is ensuring that plans benefit a broad range of employees (as opposed to exclusively managers or highly compensated employees). For more information, see Internal Revenue Service, "A Guide to Common Qualified Plan Requirements," https://www.irs.gov/retirement-plans/a-guide-to-common-qualified-plan-requirements.

[3] For an overview of pension plans, see CRS Report R47119, *Pensions and Individual Retirement Accounts (IRAs): An Overview*. For information on the number of participants in DB and DC plans, see CRS In Focus IF12007, *A Visual Depiction of the Shift from Defined Benefit (DB) to Defined Contribution (DC) Pension Plans in the Private Sector*.

[4] Some DB plans allow participants to receive benefits as lump-sum payments.

[5] For more information see CRS Report R47152, *Private-Sector Defined Contribution Pension Plans: An Introduction*.

[6] Private sector employers offer profit sharing, stock bonus, stock ownership, and 401(k) plans. Public educational organizations (including public primary and secondary schools, state colleges and universities, public junior colleges, and some tax-exempt entities) offer 403(b) plans. The federal government sponsors the TSP for the benefit of federal employees. State and local government employers offer 457(b) plans. See Department of Labor (DOL), "Types of Retirement Plans," https://www.dol.gov/general/topic/retirement/typesofplans.

[7] Employees aged 50 and above may also make additional contributions above the limits, referred to as *catch-up contributions*. In 2024, catch-up contributions are limited to $7,500.

[8] Holdings of DC plan assets by private sector participants are approximately 87% of all DC plan assets. For more information, see CRS Report R47699, *U.S. Retirement Assets: Data in Brief*.

(Labor Code). ERISA sets standards that pension plans must follow with regard to plan participation (who must be covered), minimum vesting requirements (how long an employee must work for an employer to have a legal right to a benefit), and fiduciary duties (how a pension plan is run in the sole interest of participants). ERISA covers only pension plans run by private sector employers and nonprofit organizations. Pension plans established by the federal, state, and local governments and by churches are exempt from ERISA's coverage.[9]

Profit-sharing plans and money purchase plans are private sector DC plans that allow for employer contributions.[10] Profit-sharing plans may also include a cash-or-deferred arrangement (CODA), which allows employees to elect to defer a portion of their wages to the plan. These are profit-sharing plans with a 401(k) component, commonly referred to as 401(k) plans named after the corresponding section of the IRC.[11]

Congress has authorized other DC plans with fewer administrative burdens to encourage small businesses to offer their employees retirement benefits. Examples include Simplified Employee Pensions (SEPs), Salary Reduction SEPs (SARSEPs), Savings Incentive Match Plan for Employees (SIMPLE) 401(k)s, SIMPLE individual retirement accounts (IRAs), and Payroll Deduction IRAs.[12] Multiple employer plans (MEPs) and pooled employer plans (PEPs) are DC plans with more than one participating employer.[13]

Recent pensions legislation has included provisions affecting contributions to DC plans: the Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019, enacted as Division O of the Further Consolidated Appropriations Act, 2020 (P.L. 116-94); and the SECURE 2.0 Act of 2022, enacted as Division T of the Further Consolidated Appropriations Act, 2023 (P.L. 117-328). After the enactment of SECURE 2.0, the SECURE Act of 2019 has commonly been referred to as SECURE 1.0.

[9] Governmental plans, such as 403(b) and 457(b) plans that are sponsored by governmental employers, are not subject to ERISA with respect to the Labor Code but are subject to certain IRC provisions. Church plans can elect to be covered by ERISA. See Internal Revenue Service (IRS), "Issue Snapshot—Church Plans, Automatic Contribution Arrangements, and the Consolidated Appropriations Act, 2016," August 18, 2023, https://www.irs.gov/retirement-plans/issue-snapshot-church-plans-automatic-contribution-arrangements-and-the-consolidated-appropriations-act-2016.

[10] Employer contributions to profit-sharing plans are at the discretion of employers. Money purchase plans require employers to contribute 5% of employees' compensation.

[11] Section 401(k) of the IRC was added by the Revenue Act of 1978. The growth of 401(k) plans began after the IRS regulations issued in 1981. See IRS, "Certain Cash or Deferred Arrangement Under Employee Plans," 46 *Federal Register* 217 (November 10, 1981), pp. 55544ff., https://www.govinfo.gov/content/pkg/FR-1981-11-10/pdf/FR-1981-11-10.pdf. For more information, see IRS, "401(k) Plans," https://www.irs.gov/retirement-plans/401k-plans.

[12] SEPs allow employers to make contributions toward employees' IRAs. Salary Reduction SEPs (SARSEPs) are SEPs that permit employee contributions. Starting in 1997 employers were no longer permitted to establish SARSEPs but existing plans were allowed to continue. SIMPLE 401(k)s allow small employers with fewer than 100 employees to set up plans with reduced plan requirements. SIMPLE IRAs allow small employers with fewer than 100 employees to contribute to employees' traditional IRAs with required employer contributions. Payroll Deduction IRAs allow employees to contribute directly from their paychecks to IRAs. See DOL, "Types of Retirement Plans;" IRS, "Salary Reduction Simplified Employee Pension Plan (SARSEP)," December 1, 2023, https://www.irs.gov/retirement-plans/plan-sponsor/salary-reduction-simplified-employee-pension-plan-sarsep; Investment Company Institute, "401(k) Plans: A 25-Year Retrospective," *Research Perspective*, vol. 12, no 2 (November 2006), p. 6, https://www.ici.org/doc-server/pdf%3Aper12-02.pdf; IRS, "SIMPLE IRA Plan," December 1, 2023, https://www.irs.gov/retirement-plans/plan-sponsor/simple-ira-plan; IRS, "Payroll Deduction IRA," December 1, 2023, https://www.irs.gov/retirement-plans/plan-sponsor/payroll-deduction-ira.

[13] PEPs were authorized by Section 101 of SECURE 1.0. For more information on MEPs and PEPs see IRS, "Multiple Employer Plans," https://www.irs.gov/retirement-plans/multiple-employer-plans.

# Types of DC Contributions

Contributions to DC plans are a component of employee compensation and therefore are subject to taxation. Contributions to DC plans can be categorized in a variety of ways, such as (1) the tax treatment (pre-tax, after-tax Roth, or after-tax non-Roth) or (2) the contributor (employee or employer).

## Individual Income Tax Treatment of Contributions

Compensation that is contributed to DC plans and/or the earnings on those contributions receive favorable tax treatment. Participants realize these tax advantages at three possible points:

1. At the point of contribution, contributions can be excluded from that year's taxable income and income taxes can be deferred until distribution;
2. While funds are held in DC plan accounts, the portion of account balances attributable to investment earnings grows tax deferred; and
3. Upon distribution, investment gains are either included in taxable income or withdrawn tax-free.[14]

The three different types of DC plan contributions provide plan participants with a combination of these tax preferences. Plans may offer employees the option to make pre-tax, designated Roth, and after-tax non-Roth contributions. Pre-tax and designated Roth contributions made by employees are referred to as *elective deferrals*. Two separate accounts comprise DC accounts: one for pre-tax and after-tax non-Roth contributions and another for designated Roth contributions.

### Pre-Tax Contributions

Traditionally, contributions to a DC account are pre-tax—that is, contributions are excluded from the participant's taxable income at the time of contribution. Contributions and investment gains grow tax-free within DC plan accounts. Upon distribution, qualified withdrawals attributable to pre-tax contributions, including earnings, are included in taxable income. Almost all DC plans (98%) surveyed by Plan Sponsor Council of America (PSCA) permitted participants to make pre-tax contributions.[15] According to PSCA's survey of plans, 80% of employees eligible to make pre-tax contributions did so in 2021.[16]

### Designated Roth Contributions (After-Tax Contributions)

The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA; P.L. 107-16) allowed plans to offer designated Roth accounts starting in 2006.[17] Contributions to designated Roth accounts are after-tax—that is, contributions are not excluded from the participant's taxable

[14] Distributions prior to the age of 59½, death, or disability are subject to an additional 10% tax penalty unless the distribution meets one of the exemptions in Title 26, Section 72(t), of the *U.S. Code*.

[15] See PSCA, "65th Annual Survey of Profit Sharing and 401(k) Plans," Table 23, p. 25, https://www.psca.org/research/401k/65thAR. The annual PSCA survey profiles the characteristics of plans on various topics such as automatic enrollment, employer contributions, and Roth features. This report references the 65th Annual Survey, which profiled 557 plans in the 2021 plan year.

[16] See PSCA, "65th Annual Survey," Table 29, p. 27.

[17] DC designated Roth accounts are derived from similarly arranged Roth IRAs, which were enacted by the Taxpayer Relief Act of 1997 (P.L. 105-34). Unlike DC designated Roth accounts, only taxpayers with incomes below set thresholds can contribute to Roth IRAs ($161,000 for single earners and $240,000 for joint filers), and contributions to a Roth IRA are more limited (maximum of $7,000 per year in 2024).

income.[18] Contributions and investment gains grow tax-free within DC plan accounts. Qualified distributions from designated Roth accounts are excluded from taxable income. Most DC plans surveyed by PSCA (88%) permitted participants to make designated Roth contributions.[19] According to PSCA's survey of plans, 28% of employees eligible to make designated Roth contributions did so in 2021.[20]

### After-Tax Non-Roth Contributions

Plans may (but are not required to) allow participants to make after-tax non-Roth contributions, which are not excluded from taxable income and any related earnings grow tax deferred.[21] The portion of a distribution attributable to any investment earnings is included in taxable income, but the portion attributable to contributions is not taxed upon disbursement, as taxes were already paid at the time of contribution.[22]

Among plans surveyed by PSCA, 21% of DC plans permitted participants to make after-tax non-Roth contributions,[23] and 10% of employees eligible to make after-tax non-Roth contributions did so in 2021.[24]

## Employee and Employer Contributions and Annual Limits

Contributions to DC plans are made by employees, employers, or both. Annual limits apply to employee contributions and overall (employee plus employer) contributions. Each tax year, limits for elective deferrals, catch-up contributions, and total contributions are adjusted for increases to the cost of living.[25]

### Employee Contributions

DC plans may, but are not required to, allow employees to make contributions. Plans that offer employee contributions must enable employees to make pre-tax contributions. Plans may also allow participants to make designated Roth and/or after-tax non-Roth contributions.

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[18] Roth IRAs are a similar retirement account that are not sponsored by employers. Similar to contributions to designated Roth accounts, contributions to Roth IRAs are not deducted from taxable income, but earnings within Roth IRAs are not taxed. Unlike designated Roth accounts, contributions but not earnings to Roth IRAs may additionally be removed penalty-free after five years. See IRS, "Roth IRAs," August 29, 2023, https://www.irs.gov/retirement-plans/roth-iras; IRS, "Instructions for Form 8606 (2023)," January 10, 2024, https://www.irs.gov/instructions/i8606.

[19] See PSCA, "65th Annual Survey," Table 23, p. 25.

[20] PSCA, "65th Annual Survey," Table 29, p. 27.

[21] See IRS, "Rollovers of After-Tax Contributions in Retirement Plans," https://www.irs.gov/retirement-plans/rollovers-of-after-tax-contributions-in-retirement-plans.

[22] For further detail on after-tax non-Roth contributions, see CRS In Focus IF11963, *Rollovers and Conversions to Roth IRAs and Designated Roth Accounts: Proposed Changes in Budget Reconciliation*.

[23] PSCA, "65th Annual Survey," Table 23, p. 25.

[24] PSCA, "65th Annual Survey," Table 29, p. 27.

[25] See IRS, "2024 Limitations Adjusted as Provided in Section 415(d), etc.," https://www.irs.gov/pub/irs-drop/n-23-75.pdf; and IRS, "COLA Increases for Dollar Limitations on Benefits and Contributions," https://www.irs.gov/retirement-plans/cola-increases-for-dollar-limitations-on-benefits-and-contributions.

Pre-tax and designated Roth contributions, called elective deferrals, are limited to $23,000 in 2024.[26] Individual plans may impose lower employee contribution limits.[27] Plans may also allow after-tax non-Roth contributions. After-tax non-Roth contributions are *not* elective deferrals and thus are not subject to the $23,000 elective deferral limit, but they are included in the overall contribution limit of $69,000.[28]

### *Catch-Up Contributions*

EGTRRA authorized plans to allow *catch-up contributions*, which are additional contributions above the elective deferral limit for employees aged 50 and older.[29] In 2024, the catch-up contribution limit is the lesser of $7,500 or the employee's compensation in excess of the elective deferral contribution limit.[30]

Catch-up contributions do not count toward the overall $69,000 contribution limit. For example, the total employee plus employer contribution limit for an employee who made $3,000 in catch-up contributions is $72,000 in 2024, whereas the total contribution limit for an employee who made the maximum catch-up contribution of $7,500 is $76,500 in 2024.

An employee covered by a 403(b) plan may also be eligible for further catch-up contributions if offered by the plan sponsor. An employee of any age covered by a 403(b) plan and with more than 15 years of tenure with the same eligible 403(b) employer is eligible for additional catch-up contributions. These employees can make additional contributions amounting to the lesser of $3,000, $15,000 minus past 403(b) catch-up contributions, or $5,000 for each year of tenure minus total past elective deferrals.[31]

These contributions do not count against the overall $69,000 contribution limit or the $7,500 catch-up contribution limit for employees aged 50 and above.[32]

SECURE 2.0 changed catch-up contributions in the following ways:

- Section 109 of SECURE 2.0 introduced higher catch-up limits for participants aged 60-63 beginning in 2025. The higher limits will be indexed to the regular catch-up limit for those aged 50 and over. Specifically, it will be the greater of $10,000 or 50% more than

[26] SIMPLE 401(k) plan contributions are limited to $16,000 in 2024. SARSEP and SEP contributions are limited to $6,000 in 2024. See IRS, "Retirement Topics: 401(k) and Profit-Sharing Plan Contribution Limits," https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-401k-and-profit-sharing-plan-contribution-limits.

[27] For example, highly compensated employees may have lower deferral limits in place to allow a plan to pass nondiscrimination tests. See IRS, "401(k) and Profit Sharing Plan Contribution Limits;" and IRS, "401(k) Plan Fix-It Guide: The Plan Failed the 401(k) ADP and ACP Nondiscrimination Tests," May 6, 2024, https://www.irs.gov/retirement-plans/401k-plan-fix-it-guide-the-plan-failed-the-401k-adp-and-acp-nondiscrimination-tests.

[28] See James Royal and Brian Beers, "What Is an After-Tax 401(k) and Who Should Make Contributions to One?," Bankrate, April 16, 2024, https://www.bankrate.com/retirement/after-tax-401k/.

[29] Beginning in the tax year of the participant's 50th birthday.

[30] For employees in the TSP or 401(k), governmental 457(b), SARSEP, and SEP plans. IRS, "Retirement Topics: Catch-Up Contributions," March 20, 2024, https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-catch-up-contributions.

[31] See IRS, "Retirement Topics—403(b) Contribution Limits," https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-403b-contribution-limits.

[32] Because 403(b) participants with 15 years of service at any age can make up to $3,000 in catch-up contributions, those aged 50 and above and with at least 15 years of service may be permitted to make total catch-up contributions of $10,500: $7,500 in regular catch-up contributions plus the maximum 403(b) additional catch-up contribution of $3,000. If these employees made $10,500 in total catch-up contributions, then their total employer and employee contributions could equal to up to $79,500.

the regular catch-up amount. For example, if the regular catch-up contribution limit in 2025 were $7,500, then the increased limit would be $11,250.

- Section 603 of SECURE 2.0 requires that catch-up contributions by employees with salaries above $145,000 in 2024 be made on a Roth basis. This requirement was initially planned to take effect beginning in 2024, but the IRS has postponed implementation until 2026 to allow plans time to facilitate an orderly transition to comply with the requirement.[33]

### *Elective Deferral Data*

In 2018—the most recent year for which data are available—of the 154.4 million tax filers, which include private and public sector workers, 60.3 million (39.3%) made elective deferrals. Among those 60.3 million filers, 8.5% made the maximum deferral amount.[34]

Among those who made elective deferrals to employer plans, the average contribution was $5,510 (6.6% of their wage income). The average contribution among those who did not make the maximum elective deferral contribution was $4,301 (6.4% of their wage income).[35]

## Employer Contributions

Most employers who offer DC plans make contributions to their employees' accounts. An employer can contribute an amount (1) based on an employee's elective deferral (called an employer *match*) and/or (2) independent of an employee's elective contribution (called a *nonelective contribution*).

Among DC plans in Vanguard's "How America Saves" in 2022, 95% of plans (covering 98% of participants) offered employer contributions as an employee benefit, 49% of plans offered only matching contributions, 10% offered only nonelective contributions, 36% offered both matching and non-elective contributions, and 5% offered neither.[36] According to Fidelity's analysis, in the first quarter of 2023 the average employer contribution (including non-elective and matching contributions) was 4.8% of an employee's wage income.[37]

[33] Because some plans do not offer designated Roth accounts, compliance may not have been feasible on the original timeline outlined in SECURE 2.0. For further information see IRS, "Guidance on Section 603 of the SECURE 2.0 Act with Respect to Catch-Up Contributions," https://www.irs.gov/pub/irs-drop/n-23-62.pdf.

[34] CRS analysis of the most recent year for which data are available from IRS, "Statistics of Income," Table 2-A, 2-F, 2018, retrieved from https://www.irs.gov/pub/irs-soi/18inallw2.xls. The IRS has published corresponding data for contributions to IRAs more recently. For more information on IRA contribution data, see CRS Report R48051, *Contributions to Individual Retirement Accounts (IRAs): Fact Sheet*. For more information on the Statistics of Income W-2 series, see https://www.irs.gov/statistics/soi-tax-stats-individual-information-return-form-w2-statistics.

[35] Ibid. Maximum elective contributions vary depending on age and contribution type. Taxpayers whose contributions equaled all of their wage income were also designated as making a maximum contribution.

[36] Vanguard, "How America Saves 2023," Figure 6, p. 21, June 2023, https://institutional.vanguard.com/content/dam/inst/iig-transformation/has/2023/pdf/has-insights/how-america-saves-report-2023.pdf. "How America Saves" is an annual publication by Vanguard that analyzes the approximately 1,700 plans, covering 5 million participants, for which Vanguard provided nondiscrimination testing services for in 2022. These are a subset of Vanguard's recordkeeping clientele, which are in turn a subset of Vanguard-managed plans.

[37] See Fidelity, "Building Financial Futures," 2024, p. 7, https://www.fidelityworkplace.com/s/page-resource?ccsource=oa%7Cwpsreslib%7Cpressrelease%7Cwps-buildfinfut%7Cwps-bff%7C%7C%7Cwps-bff-11-14-22%7C&cId=fidelity_building_financial_futures_report.

Employers may deduct DC plan contributions from corporate income as a business expense. Employers in 2024 are limited to deducting 25% of employees' total compensation, excluding any individual employee's compensation above $345,000.[38]

Prior to enactment of SECURE 2.0, employer contributions had to be made on a pre-tax basis (i.e., employees are not immediately taxed on employer contributions). Section 604 of SECURE 2.0 allows employers to make matching contributions on a Roth basis effective at enactment, but the pre-tax option must be available.

**Taxation of DC Contributions**

The tax treatment of DC contributions varies depending on the type of contribution. Elective deferrals and employer contributions made on a pre-tax basis are not included in the employee's taxable income at the time of contribution but are included in taxable income upon distribution. Elective deferrals and employer contributions made on a Roth basis are included in the employee's taxable income at the time of contribution. Because Roth employer contributions increase an employee's tax liability, the employee's after-tax income will decrease (whether through additional withholding or making estimated tax payments).[39]

Social Security and Medicare (FICA) taxes (15.3% of wage income split between employees and employers) apply to some DC contributions. All employee contributions (pre-tax, Roth, and after-tax non-Roth) and employer Roth contributions are subject to both employer and employee portions of FICA taxes.[40] Employer pre-tax contributions are *not* subject to FICA taxes on either employees or employers.[41]

### *Matching Contributions*

The employer *match* generally corresponds to a portion or all of an employee's contributions up to a predetermined dollar amount or percentage of compensation. Therefore, employees must contribute to their plans in order to receive employer matching contributions. According to "How America Saves," the most common formula for an employer match is 50% of an employee's contributions up to 6% of the employee's wage income.[42] Some plans cap their matching contributions based on an annual dollar amount rather than a percentage of compensation. "How America Saves" reported that 9% of plan participants in its report who are covered by a match are subject to dollar limits.[43]

Most DC plans offer a match. "How America Saves" reported that 85% of plans in 2022 offered matching contributions.[44] Employers may also match catch-up contributions.

Companies have the option to suspend matching contributions. For example, in response to the COVID-19 pandemic, a number of companies suspended their match. In an April 2020 survey by

38 In 2021, the average total employer contribution among plans surveyed by PSCA was 5.6% of company payroll. For information on employer deduction limits, see IRS, Publication 560, *Retirement Plans for Small Businesses (SEP, SIMPLE, and Qualified Plans)*, 2024, p. 23, https://www.irs.gov/publications/p560.

39 In general, if a person's tax withholding is too low, then he or she may face an underpayment penalty. See IRS, "Underpayment of Estimated Tax by Individual Penalty," November 1, 2023, https://www.irs.gov/payments/underpayment-of-estimated-tax-by-individuals-penalty; IRS, "Miscellaneous Changes Under the SECURE 2.0 Act of 2022," 2024, https://www.irs.gov/pub/irs-drop/n-24-02.pdf.

40 See IRS, "Plan Contributions Subject to Withholding for FICA, Medicare or Federal Income Tax?," May 3, 2023, https://www.irs.gov/retirement-plans/retirement-plan-faqs-regarding-contributions-are-retirement-plan-contributions-subject-to-withholding-for-fica-medicare-or-federal-income-tax.

41 For further information on IRS guidance relating to Section 604 of SECURE 2.0, see IRS, "Underpayment of Estimated Tax by Individual Penalty."

42 For example, an employee earning $100,000 a year who contributes $6,000 would receive a $3,000 employer match. Any contributions by the employee in excess of $6,000 would not be matched.

43 See Vanguard, "How America Saves 2023," p. 22.

44 Vanguard, "How America Saves 2023," p. 21.

PSCA, 16% of organizations reported they had done so.[45] In response to the 2007-2009 recession, among employers offering matches, 19% suspended or reduced the match amounts.[46]

Employers are permitted to treat qualified student loan payments as contributions for the purposes of matching. In 2017, the IRS approved a request by an employer to match its employees' student loan payments.[47] Section 110 of SECURE 2.0 permitted all plans to match student loan payments starting in 2024.[48]

### *Non-Elective Contributions*

Employers can make contributions to employees' accounts regardless of whether employees contribute. Because they are not dependent on employee contributions, they are called *non-elective contributions*.

The amount of non-elective contributions are (1) set by the plan in a prescribed formula (*automatic non-elective contributions*) or (2) made at the discretion of the employer (*profit-sharing contributions*).

The level of automatic contributions that employees receive is typically based on their income or tenure. For example, a plan might have an automatic non-elective contribution that provides a contribution of 3% of an employee's salary once every plan year. In 2022, at least 18% of plans surveyed by PSCA made automatic non-elective contributions, and 8% of plans reported making automatic non-elective contributions but no matching contributions.[49]

Profit-sharing contributions are at the discretion of employers. While employers can choose when to contribute and how much to contribute overall, profit-sharing contributions are allocated among employees according to a formula set by the plan documents.[50] Formulas for allocating profit-sharing funds may consider factors such as age, compensation, employee titles, and seniority of employment.[51]

Employers may make profit-sharing contributions even if they sustain losses in a given year. Profit-sharing contributions allow employers to make contributions based on performance, year-to-year conditions, or the availability of funds. For example, employers may choose to not make profit-sharing contributions if profits shrink dramatically in one year or alternatively could choose to make profit-sharing contributions to reward employees.

[45] Nevin Adams and Hattie Greenan, "How Are Plan Sponsors Responding to the COVID-19 Pandemic?," PSCA, https://www.psca.org/sites/psca.org/files/uploads/Research/snapshot_surveys/CARES%20Act%20Snapshot%20Summary.pdf.

[46] See Sarah O'Brien, "Employers May Drop 401(k) Matches as Companies Look to Cut Expenses," *CNBC*, March 31, 2020, https://www.cnbc.com/2020/03/31/employers-may-drop-401k-matches-as-companies-look-to-cut-expenses.html.

[47] See IRS, P.L.R. 2018-33-012, August 17, 2018, https://www.irs.gov/pub/irs-wd/201833012.pdf.

[48] See Joint Committee on Taxation, "General Explanation of Tax Legislation Enacted in the 117th Congress," p. 332, https://www.jct.gov/getattachment/90655774-4645-4790-9d20-4874ce634234/JCS-1-23.pdf#page=344.

[49] In comparison, among plans in "How America Saves," 49% of plans offered matching contributions but no non-elective contributions in 2022.

[50] See IRS, "Choosing a Retirement Plan; Profit-Sharing Plan," March 1, 2024, https://www.irs.gov/retirement-plans/choosing-a-retirement-plan-profit-sharing-plan; Manning and Napier, "Profit Sharing Allocation Methods—the Better Part of Discretion," May 13, 2020, https://www.manning-napier.com/insights/profit-sharing-allocation-methods-the-better-part-of-discretion.

[51] See Manning and Napier, "Profit Sharing Allocation Methods."

# Plan Sponsor Design Choices That Affect Contributions

Plan sponsors have discretion to design their plans and customize features, subject to federal law. The choices plan sponsors make affect employee and employer contributions. These choices include:

- whether or not to have a plan, and if so what type;
- how long until employees are eligible to participate in the plan;
- how much employees may contribute;
- which types of employee contributions are permitted;
- whether employers match contributions, and if so, by what formula;
- whether employers make non-elective contributions and, if so, how non-elective contributions are calculated;
- how often employers make contributions;
- whether or not employees are automatically enrolled;
- what the default contribution rate is, if automatically enrolled;
- whether to automatically increase employee contributions (i.e., automatic escalation); and
- when employees take ownership of employer contributions, referred to as *vesting*.

Employers may choose among these features to meet the needs of a specific workforce or to provide competitive employee benefits. Plan sponsors may use plan features to encourage employee participation, incentivize employee contributions, or recruit and retain employees.[52]

**Nondiscrimination and Top-Heavy Tests**

Sponsors of tax-qualified plans annually conduct multiple tests to comply with the tax code. The *nondiscrimination tests* ensure that benefits flow to both rank-and-file and management employees. The *top-heavy test* confirms that plan assets are not disproportionately held by management. Plans are in danger of losing tax-qualified status if they fail either test and fail to correct the errors. Plans at risk of failing either test may remedy the failures by making compensatory employer contributions (referred to as *qualified employer contributions*) or reducing the amount employees may contribute.

Plans can avoid aspects of the nondiscrimination tests and the top-heavy test by adopting *safe harbor* plan features. With limited exceptions, safe harbor plans automatically pass these tests by adopting a set of plan features involving employer contributions and automatic enrollment.

## Plan Type

The variety of available plan types allows employers to select from different benefits and limitations suited to each employer and covered employees. Private sector sponsors can choose from profit-sharing plans, ESOPs, money purchase plans, SIMPLE plans, or SEPs. A private sector sponsor may allow employees to contribute to its plan by including a 401(k) feature as a

[52] See William F. Basset, Michael J. Fleming, and Anthony P. Rodrigues, *How Workers Use 401(k) Plans: The Participation, Contributions, and Withdrawal Decisions*, Federal Reserve Bank of New York, p. 11, https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr38.pdf.

component of a profit-sharing plan or ESOP.[53] Tax-exempt employers may select 403(b) plans, which are similar to 401(k) plans. SEPs and SIMPLE plans reduce administrative burden. While SEPs are available to any employer, SIMPLE plans require employers to have fewer than 100 employees and provide no other retirement plan.[54] MEPs and PEPs allow employers to share administrative costs.[55]

Public employers such as school districts may offer 403(b)s, whereas state and local governments may offer 457(b) plans, and the federal government offers TSP to most employees.[56] In 2021, there were 644,671 401(k) plans, 20,270 403(b) plans, and 53,795 other DC plans.[57]

## Participant Eligibility

*Minimum participation standards* require that plan sponsors must allow all full-time employees at least 21 years or older and with at least one year of service to participate in their retirement plans.[58] Employers may choose to allow other employees, such as those less than 21 years old or with less than one year of service, to participate in their plans. Section 112 of SECURE 1.0 requires that part-time employees with three consecutive years with at least 500 hours of service must be eligible to participate in their employers' plans.[59] Plan sponsors may also limit plan eligibility to employee subsets or deny eligibility to certain employee classifications (such as employees covered by a collective bargaining agreement).[60]

## Employer Contribution Choices

Employers may specify a variety of employee and employer contributions. These include contribution limits, availability of designated Roth accounts, after-tax non-Roth contributions, and match rates.

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[53] A KSOP integrates a 401(k) with an ESOP. For more information, see Employee Ownership Foundation, "The KSOP: ESOPs and 401(k) Plans," https://corporatefinanceinstitute.com/resources/wealth-management/ksop/.

[54] See IRS, "Choosing a Retirement Plan: SIMPLE 401(k) Plan," December 21, 2023, https://www.irs.gov/retirement-plans/choosing-a-retirement-plan-simple-401k-plan.

[55] DOL, Employee Benefits Security Administration (EBSA), "Annual Reporting and Disclosure," 88 *Federal Register* 11793 (February 24, 2023), https://www.federalregister.gov/documents/2023/02/24/2023-02652/annual-reporting-and-disclosure.

[56] For more information on 403(b) plans, see CRS In Focus IF12518, *403(b) Pension Plans: Overview and Legislative Developments*.

[57] See DOL, EBSA, *Private Pension Plan Bulletin: Abstract of 2021 Form 5550 Annual Reports*, September 2023, Table A1, https://www.dol.gov/sites/dolgov/files/ebsa/researchers/statistics/retirement-bulletins/private-pension-plan-bulletins-abstract-2021.pdf. DC plans are less common among state and local governmental employers: 39% of state and local government employees had access to DC plans in 2023, compared to 67% of private sector workers. See CRS Report R43439, *Worker Participation in Employer-Sponsored Pensions: Data in Brief*.

[58] See 26 U.S.C. § 410. A year of service is defined as 1,000 hours of service within a 12-month period. Non-401(k) DC plans may require two years of service if employees are immediately vested in all benefits. See IRS, "Retirement Topics—Eligibility and Participation," June 5, 2023, https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-eligibility-and-participation.

[59] Section 125 of SECURE 2.0 requires employers to make part-time employees with two consecutive years with at least 500 hours of service to be eligible to participate in their employers' plans starting in 2025.

[60] See 26 U.S.C. § 410(b)(3). IRS, "Operating a 401(k) Plan," August, 29 2023, https://www.irs.gov/retirement-plans/operating-a-401k-plan; EBSA, "FAQs about Retirement Plans and ERISA," https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/faqs/retirement-plans-and-erisa-for-workers.pdf.

## Contribution Limits

While elective deferrals and total DC plan contributions may not exceed the specified limits (the lower of employee compensation or $23,000 for elective deferrals and $69,000 for employee and employer contributions in 2024, excluding catch-up contributions) plans may set lower contribution limits. A lower limit on contributions primarily affects higher-earning employees who are the most likely to make the maximum contribution. Thus, limiting elective deferrals can be an effective remedy for plan sponsors who are at risk of failing the nondiscrimination tests. Highly compensated employees in a plan failing the nondiscrimination tests could also have a portion of their elective deferrals returned.[61]

## Options for Employee Contributions

Employers may decide which types of employee contributions are permitted. All DC plans with a CODA feature (such as a 401(k) plan) must allow employees to make pre-tax contributions. At the discretion of the employer, employees may have the option to make designated Roth and/or after-tax non-Roth contributions. Plan sponsors may not allow designated Roth or after-tax non-Roth contributions without also permitting pre-tax contributions.[62]

Employers also choose whether to allow employees to make catch-up contributions. Most plans allow participants aged 50 and over who have maximized elective deferrals to make up to $7,500 in catch-up contributions in 2024.[63] Plans choosing not to allow catch-up contributions reduce the ability of participants aged 50 or above to maximize their contributions. Additionally, when plans limit elective deferrals to an amount below the elective deferral limit, participants may be unable to make catch-up contributions.

## Matching Contributions

An employer can make matching contributions in a variety of ways. For example, a plan sponsor can offer a match on elective deferrals but not on catch-up contributions. For plans that offer matching contributions, the match can affect participants' contribution choices. Evidence suggests that employees tend to contribute more when offered a match.[64] A higher return on an employee's contributions, called a *match rate*, is more effective at encouraging employee contributions.[65]

"How America Saves" reported that in plans with matching contributions, the most common form of match, used by 15% of plans, is 50% on the first 6% of an employee's pay. For example, an employee who makes $100,000 and contributes 10% of their salary would make an annual

[61] See IRS, "401(k) Plan Fix-It Guide: The Plan Failed the 401(k) ADP and ACP Nondiscrimination Tests."

[62] IRS, "Retirement Plans FAQs on Designated Roth Accounts," April 15, 2024, https://www.irs.gov/retirement-plans/retirement-plans-faqs-on-designated-roth-accounts.

[63] An employer who allows catch-up contributions for one plan must also allow catch-up contributions for all employer-sponsored plans offering elective deferrals. See IRS, Notice 2002-4, https://www.irs.gov/pub/irs-drop/n-02-4.pdf.

[64] See Justin Falk and Nadia S. Karamcheva, "The Impact of an Employer Match and Automatic Enrollment on the Savings Behavior of Public-Sector Workers," *Journal of Pension Economics and Finance*, vol. 22, no. 1 (2023), pp. 38-68, https://www.cambridge.org/core/journals/journal-of-pension-economics-and-finance/article/impact-of-an-employer-match-and-automatic-enrollment-on-the-savings-behavior-of-publicsector-workers/A32AFE2FCF8AD6DC10C064171097B460; James J. Choi, *Contributions to Defined Contribution Pension Plans*, National Bureau of Economic Research, Working Paper no. 21467, August 2015, p. 10-11, https://www.nber.org/system/files/working_papers/w21467/w21467.pdf.

[65] See Galina Young and Jean A. Young, "Stretching the Match: Unintended Effects on Plan Contributions," Vanguard, December 2018, pp. 8-10, https://institutional.vanguard.com/iam/pdf/CIRSTM.pdf.

contribution of $10,000 and receive a $3,000 employer matching contribution. Other common match formulas (each used by 10% of plans) are 100% on the first 6% of pay and 100% on the first 3% of pay and 50% on the next 2% of pay.[66]

The contribution needed to receive the maximum employer match (the *matching threshold*) can affect employee contribution decisions, because employees may perceive this level as an optimal contribution rate (called an *anchor effect*).[67] Participants who might have otherwise contributed above or below the matching threshold contribute at a rate nearer to the matching threshold when a match is present.[68]

*How America Saves* reported that 69% of participants chose or were automatically enrolled at contribution levels at or above the matching thresholds.[69] The report also found that participants who voluntarily elected their contribution rates were more likely to receive the full employer match than those who were automatically enrolled at default contribution rates.[70] According to the 2022 PSCA survey of plans, 65% of plans set their default employee elective deferral rates at levels high enough to receive the maximum matching contribution amount.[71]

## Nonelective Contributions

Nonelective contributions are also a voluntary benefit that may be offered by employers.[72] For plans that provide non-elective contributions, employers have wide discretion to determine the frequency and level of contributions. Unlike matching contributions, non-elective employer contributions are not determined by elective deferrals.

Employers may choose to make non-elective contributions in order to meet the traditional safe harbor requirements specified by IRC Section 401(k)(12) or Qualified Automatic Contribution Arrangement (QACA) requirements specified by IRC Section 401(k)(13). If a plan elects this option, the employer must contribute 3% of a non-highly compensated employee's salary, with immediate vesting.[73]

If an employer offers non-elective contributions that are not in service of a safe harbor requirement, the employer has full discretion regarding the amount contributed. Among plans captured by "How America Saves," the value of nonmatching contributions varied from 1% of an employee's pay to more than 10%. The median nonmatching contribution was 4.1% of pay in 2022.[74] The median nonmatching contribution has remained stable since 2013.[75] About half of

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66 See Vanguard, "How America Saves 2023," p. 22.

67 See James J. Choi et al., "Small Cues Change Savings Choices," *Journal of Economic Behavior and Organization*, vol. 142 (2017), pp. 378-395, https://faculty.wharton.upenn.edu/wp-content/uploads/2013/06/choi-et-al-small-cues-change-savings-choices.pdf.

68 See Justin Falk and Nadia S. Karamcheva, "The Effect of the Employer Match and Defaults on Federal Workers' Savings Behavior in the Thrift Savings Plan," Congressional Budget Office, July 2019, pp. 2-4, https://www.cbo.gov/system/files/2019-07/55447-CBO-tsp-employer-match-savings-behavior.pdf.

69 See Vanguard, "How America Saves 2023," p. 25.

70 See Vanguard, "How America Saves 2023," p. 22.

71 See PSCA, "65th Annual Survey," Table 118, p. 59.

72 Non-elective contributions may come in the form of profit-sharing contributions or ESOP contributions.

73 See IRS, "401(k) Plan Fix-It Guide—401(k) Plan—Overview," March 1, 2024, https://www.irs.gov/retirement-plans/401k-plan-fix-it-guide-401k-plan-overview.

74 See Vanguard, "How America Saves 2023," p. 25.

75 Vanguard, "How America Saves 2023," p. 26.

plans that offered nonmatching contributions adjusted their formulas based on employee age or tenure.[76]

## Frequency of Employer Contributions

Plan sponsors choose when to make employer contributions. Many employers align their contributions with pay periods, while others contribute less frequently such as on a monthly or quarterly basis.[77] Matching contributions are likely to be made at the same time as payroll. PSCA reports that 82% of surveyed plans made matching contributions on the same schedule as payroll, while 6% of surveyed plans made matching contributions on an annual basis.[78] PSCA reported that 56% of surveyed plans made non-elective contributions on the same schedule as payroll, while 16% of surveyed plans made non-elective contributions on an annual basis.[79]

Employers may schedule contributions less frequently to lower costs. Less frequent match allocations can help employers defer costs or allow them to avoid paying recently earned contributions to employees who separated between contribution periods.[80] When non-elective contributions are paid less frequently than payroll, employees who leave their jobs will not receive the employer contributions they otherwise would have.

### The Effect of Elective Contribution Limits on Employer Contributions and True-Up Matches

Most DC plans that offer matching contributions use a per-paycheck formula. Under this structure, employees who contribute large portions of each paycheck may reach the elective deferral limit before the end of the calendar year and miss out on the matching contributions they would have received on later paychecks.

For example, an employee aged 40, making $175,000 in 2024, contributing 15% every month, and receiving a 100% match on the first 5% of wage income would contribute $2,188 and receive $729 in matching contributions for each of the first 10 months. Under this arrangement, the employee would reach the elective deferral limit midway through the 11th month of the plan year and therefore be unable to contribute further. Consequently, the employee would be losing out on about $1,094 in matching contributions, as they were unable to make contributions in the final month and a half of the plan year. This employee would have benefited more from the matching component of the DC plan had they contributed 12% of their wage income every month until the last month of the plan year, when the annual elective deferral limit was reached.

The *true-up* mechanism enables employers to make year-end contributions so that employees receive the equivalent match as if they had distributed their contributions evenly throughout the calendar year. According to the PSCA, 64.5% of surveyed plans had true-up provisions.[81] The

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[76] Vanguard, "How America Saves 2023," p. 25.

[77] Profit-sharing contributions, which are a type of non-elective contribution, are more likely to be made on an annual basis, as they may be determined by annual company performance. See Jeanne Sahadi, "Profit Sharing Plan ABCs," *CNN Money*, October 4, 2000, https://money.cnn.com/2000/10/04/strategies/q_retire_profitshare/index.htm.

[78] See PSCA, "65th Annual Survey," Table 63, p. 38.

[79] PSCA, "65th Annual Survey," Table 63, p. 38.

[80] See Roger Ma, "Why Your 401(k) Employer Match May Not Be Free Money After All," *Forbes*, April 3, 2017, https://www.forbes.com/sites/rogerma/2017/04/03/why-your-401k-employer-match-may-not-be-free-money-after-all/.

[81] See PSCA, "65th Annual Survey," Table 64, p. 39.

true-up mechanism can also benefit employees who are onboarded or otherwise begin contributing to their plans midyear.

## Default Features

Plan sponsors have the option to enroll employees without their affirmative election (referred to *automatic enrollment*), although employees can always opt out. When a sponsor automatically enrolls employees, it must set a default employee contribution rate. The sponsor can also set whether and by how much to increase the contribution rate over time (referred to as *automatic escalation*).[82] Employees can set their contribution rates at different levels.

### Automatic Enrollment

Participants who have not opted out of their plans are typically automatically enrolled at either the time of employment, the beginning of the next plan year, or upon qualifying for plan participation.[83] Employee contributions are considered elective deferrals, because employees can choose different rates of deferral or opt out of the plan.[84]

Automatic enrollment affects participation and contribution rates. Participation rates are higher in plans with automatic enrollment.[85] Automatically enrolled participants tend to keep their contribution rates near or at the default rates.[86] Employees might keep the default rates because of anchor effect or a perception that it is a recommended level set by employers.[87] To provide employees with a reasonable period to decline participation, regulations outline when employers must notify employees that the plan has an automatic enrollment feature and when the first default election can take place.[88] An employee eligible for the plan can make an affirmative election to enroll prior to being automatically enrolled.[89]

Employers may choose to add automatic enrollment to their plans for a variety of reasons, such as to promote retirement savings, increase the likelihood of passing the IRC's nondiscrimination

[82] When employees are automatically enrolled, employers must provide a default investment option. See "Default Investment Alternatives Under Participant Directed Individual Account Plans," 72 *Federal Register* 60452 (October 24, 2007); and EBSA, "Regulation Relating to Qualified Default Investment Alternatives in Participant-Directed Individual Account Plans," April, 2008, https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/fact-sheets/final-rule-qdia-in-participant-directed-account-plans.pdf.

[83] See Brian Furgala, "Automatic Enrollment—Is It Right for Your Small Business 401(k) Plan?," Employee Fiduciary, March 22, 2023, https://www.employeefiduciary.com/blog/automatic-enrollment-is-it-right-for-your-small-business.

[84] In some cases, employees can receive refunds of contributions made by automatic enrollment if they opt out. See IRS, Rev. Rul. 2000-8; 2000-1 C.B. 617, https://www.irs.gov/pub/irs-drop/rr-00-8.pdf.

[85] Plans captured by "How America Saves" with automatic enrollment had participation rates 23 percentage points higher than plans without automatic enrollment (93% versus 70%). See Vanguard, "How America Saves 2023." June 2023, https://institutional.vanguard.com/content/dam/inst/iig-transformation/has/2023/pdf/has-insights/how-america-saves-report-2023.pdf.

[86] See Brigitte C. Madrian and Dennis F. Shea, *The Power of Suggestion: Inertia in 401(K) Participation and Savings Behavior*, National Bureau of Economic Research, Working Paper no. 7682, May 2000, pp. 20-21, 23, https://www.nber.org/system/files/working_papers/w7682/w7682.pdf.

[87] Madrian and Shea, *The Power of Suggestion*, pp. 2, 23.

[88] See IRS, "Automatic Contribution Arrangement," 74 *Federal Register* 8200 (February 24, 2009), https://www.federalregister.gov/documents/2009/02/24/E9-3716/automatic-contribution-arrangements.

[89] IRS, "Automatic Contribution Arrangement."

testing, reduce their tax burden, retain employees, and simplify administration needed to enroll employees.[90]

The three automatic contribution arrangements are:

- **Basic/automatic contribution arrangement (ACA):** Employees are automatically enrolled at a uniform default contribution rate. Employees must be given notice they can unenroll from the plan and can always opt-out of contributing. Employees must be notified that the plan has an automatic enrollment arrangement prior to the first automatic contribution and in each subsequent plan year.[91]
- **Eligible automatic contribution arrangement (EACA):** Employees are automatically enrolled at a uniform default contribution rate and must be notified that the plan has an automatic enrollment arrangement 30-90 days prior to the first automatic contribution and before each subsequent plan year.[92] Employers may allow participants to withdraw contributions within 30-90 days from the first default contribution.[93] Plans with EACAs have an extended period to cure nondiscrimination plan failures.[94]
- **Qualified automatic contribution arrangement (QACA):** A set of plan features that satisfy annual nondiscrimination and safe harbor requirements. Plans must automatically enroll participants at default contribution rates of at least 3% and no greater than 10%. If the default contribution rate is less than 6%, employee contributions increase automatically by 1% of employee compensation per year until reaching a set level no less than 6% and no greater than 15% of employee compensation. Employers are also required to make employer contributions under QACA plans. An employer must either (1) match at least 100% of the first 1% of an employee's wage income and 50% of the next 5% of an employee's wage income or (2) contribute at least 4% of an employee's wage income in non-elective contributions. Employees must be fully vested in the first 4% of all employer contributions after at most two years. A QACA plan is required to notify employees that it has an automatic enrollment arrangement 30-90 days prior to the first automatic contribution and before each subsequent plan year.[95]

[90] For more information, see EBSA, *Adding Automatic Enrollment to Your 401(k) Plan*, September 2019, https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/publications/adding-automatic-enrollment-to-your-401k-plan.pdf; and American Century Investments, "How Auto Enrollment Benefits Employees and Employers," October 15, 2021, https://www.americancentury.com/insights/auto-enrollment-benefits-employees-employers/.

[91] See DOL, *Automatic Enrollment 401(k) Plans for Small Businesses*, November 2022, p. 8, https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/publications/automatic-enrollment-401k-plans-for-small-businesses.pdf.

[92] DOL, *Automatic Enrollment 401(k) Plans for Small Businesses*, p. 13.

[93] See IRS, "Internal Revenue Bulletin: 2009-12," March 23, 2009, https://www.irs.gov/irb/2009-12_IRB#TD-9447.

[94] See IRS, "401(k) Plan Fix-It Guide: The Plan Failed the 401(k) ADP and ACP Nondiscrimination Tests," May 6, 2024, https://www.irs.gov/retirement-plans/401k-plan-fix-it-guide-the-plan-failed-the-401k-adp-and-acp-nondiscrimination-tests; and IRS, TD 9447, https://www.irs.gov/irb/2009-12_IRB#TD-9447.

[95] See DOL, *Automatic Enrollment 401(k) Plans for Small Businesses*, p. 13.

PSCA reported that 59% of surveyed plans in 2022 had an automatic enrollment feature.[96] The Bureau of Labor Statistics (BLS) estimated that in 2022, 42% of private sector workers in savings and thrift plans were covered by plans with automatic enrollment.[97]

## Automatic Escalation

In some plans with automatic enrollment, employee contributions are automatically increased. Plans with automatic escalation have scheduled contribution increases up to certain limits, subject to a statutory maximum. For example, a plan with an automatic escalation provision might increase contributions by 1% every year until the deferral rate reaches 10%. Employers may escalate employee contributions by 1% per year until the contribution rate is 15% of an employee's wages. PSCA reported that 49% of plans set an automatic escalation cap of 10%.[98]

Among PSCA surveyed plans with automatic enrollment, 43% automatically escalate the contributions of all participants, 11% escalate for participants contributing under the full employer match threshold, and 24% allow participants to opt into automatic escalation.[99] BLS estimated that 26% of private sector workers in savings and thrift plans were covered by plans with automatic escalation in 2022.[100]

## Growth of Automatic Enrollment and Automatic Escalation

Automatic enrollment has become increasingly common since the enactment of the Pension Protection Act of 2006 (PPA, P.L. 109-280). The percentage of employees covered by plans with automatic enrollment doubled from 21% in 2010 to 42% in 2022. Adoption of automatic escalation grew from plans covering 6% of employees in 2010 to those covering 21% of employees in 2022.[101]

Section 101 of SECURE 2.0 required that—with some exceptions—401(k) plans established in 2025 or later must have an automatic enrollment feature with a default contribution level of at least 3% and include an automatic escalation provision of 1% per year to a level of at least 10% and no more than 15%.[102]

Plan sponsors might offer automatic enrollment and escalation for a variety of reasons, such as a desire to increase their employees' retirement savings, reduce management fees, and help pass nondiscrimination tests.[103]

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96 See PSCA, "65th Annual Survey," Table 113, p. 58.

97 See BLS, "What Is Automatic Enrollment in Savings and Thrift Defined Contribution Plans?," April 13, 2023, https://www.bls.gov/ebs/factsheets/automatic-enrollment-in-savings-and-thrift-defined-contribution-plans.htm.

98 See PSCA, "65th Annual Survey," Table 127, p. 62.

99 PSCA, "65th Annual Survey," Table 122, p. 61. Table 125 of the PSCA survey indicated that among plans with an automatic escalation feature, 28% escalated employee contributions to the match threshold, and 55% escalated employee contributions beyond the match threshold.

100 See BLS, "What Is Automatic Enrollment in Savings and Thrift Defined Contribution Plans?"

101 See BLS, *Employee Benefits Survey—Retirement Plan Provisions for Private Industry Workers in the United States*, Table 5, April 13, 2023.

102 The exceptions include businesses with 10 or fewer employees, businesses that have been in operation for under three years, church plans, and governmental plans.

103 Because automatic enrollment increases the size of plans, plan sponsors are better able to take advantage of economies of scale to lower transaction costs. See EBSA, "Understanding Retirement Plan Fees and Expenses," September 2021, https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/publications/understanding-retirement-plan-fees-and-expenses.pdf. In a 2011 survey, one-fifth of plan sponsors reported that (continued...)

## Vesting

Participants might not have immediate ownership of all assets in their accounts. *Vesting* refers to the transfer of ownership to employees. Participants have immediate legal ownership of (i.e., are immediately vested in) their own contributions and attributable investment earnings. Employer contributions may be subject to varying *vesting periods*. For example, employer contributions to SEP plans, SIMPLE plans, and other qualified employer contributions (including traditional safe harbor plan contributions) are immediately vested.[104] Other employer contributions are subject to *minimum vesting schedules*, which are the length of time upon which employer contributions are partially or fully vested. However, employers may set shorter vesting periods.[105]

Sponsors can choose from two minimum vesting schedules. Employees must be either 100% vested in employer contributions upon three years of employment (*cliff vesting*) or 20% vested for each year starting after the first year (*graded vesting*). Employees must be fully vested upon attaining the plan's retirement age or when the plan is terminated.[106]

Possible uses of vesting schedules include controlling costs and retaining employees.[107] Employees who are not yet fully vested may have an incentive to stay with their current employers until they are fully vested. Plan sponsors have increasingly chosen to immediately vest all employer contributions. From 2012 to 2022, the prevalence of immediate vesting of employer contributions has increased from 31% to 36% of private industry workers covered by savings and thrift plans.[108] "How America Saves" also reported that among plans without immediate vesting, the three-year cliff, five-year graded, and six-year graded vesting schedules were the most common.[109]

Upon leaving their employers, employees forfeit any assets in which they are not vested. These forfeited funds remain plan assets that can be used for plan expenses or qualified employer contributions.[110]

improving the results of nondiscrimination tests was a primary motivator for implementing automatic enrollment. In plans with automatic enrollment or automatic escalation, generally the rates and levels of contributions diverge less between highly compensated and non-highly compensated employees. See David Ramirez, "401(k) Nondiscrimination Testing: What Is It and How to Improve Your Results," February 7, 2024, https://www.forusall.com/401k-blog/401k-nondiscrimination-testing.

104 See IRS, "SIMPLE IRA Plan."

105 See IRS, "Retirement Topics—Vesting," https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-vesting.

106 IRS, "Retirement Topics—Vesting."

107 See Judy Ward, "Has Vesting Gotten Controversial?," *Plan Sponsor*, July 8, 2022, https://www.plansponsor.com/in-depth/vesting-gotten-controversial/.

108 For 2012 data, see John E. Foster and David C. Zook, *Selected Characteristics of Savings and Thrift Plans for Private Industry Workers*, BLS, July 2015, https://www.bls.gov/opub/btn/volume-4/pdf/selected-characteristics-of-savings-and-thrift-plans-for-private-industry-workers.pdf. For 2022 data, see tables available at BLS, "Retirement Plan Provisions for Private Industry Workers in the United States, 2022," April 2023, https://www.bls.gov/ebs/publications/retirement-plan-provisions-for-private-industry-workers-2022.htm.

109 See Vanguard, "How America Saves 2023," p. 20.

110 See IRS, "Issue Snapshot—Plan Forfeitures Used for Qualified Nonelective and Qualified Matching Contributions," April 17, 2024, https://www.irs.gov/retirement-plans/issue-snapshot-plan-forfeitures-used-for-qualified-nonelective-and-qualified-matching-contributions.

# Maintaining Tax-Qualified Status

Employers and participants receive favorable tax treatment to encourage the establishment of and contributions to retirement plans. One of the conditions for receiving these tax preferences is that plans benefit rank-and-file employees as well as highly paid employees and owners.

Each year, plans must satisfy certain requirements to show that benefits are not excessively distributed to highly paid employees and that plan assets do not accumulate among a select few employees. These requirements are the *minimum coverage* requirement, the *nondiscrimination tests*, and the *top-heavy test*. Plans that fail or are at risk of failing any of these three tests can correct the mistakes by, for example, making additional employer contributions or refunding contributions to certain employees. Plans that do not correct the mistakes could lose their tax-qualified status. Plans may choose features that allow them to automatically pass some of these tests. These plans are referred to as *safe harbor plans* and may include vesting provisions and minimum employer contributions.

## Minimum Coverage Requirements

A 401(k) plan must be available to a nondiscriminatory cross-section of employees, referred to as *minimum coverage*. For the purposes of minimum coverage, employees are classified as either highly compensated employees (HCEs) or non-highly compensated employees (NHCEs). HCEs in 2024 are owners with at least 5% ownership, employees with compensation greater than $155,000, or the top 20% of employees by compensation.[111] To pass the coverage test, plans must meet either (1) the *ratio-percentage test* or (2) both the *nondiscriminatory classification test* and the *average benefit percentage* (ABP) *test*.[112]

A plan passes the *ratio-percentage test* if the percentage of NHCEs eligible to make elective contributions or receive employer contributions (i.e., benefit from the plan) is no less than 70% of the percentage of HCEs who are eligible to benefit from the plan.

A plan passes the *nondiscriminatory classification test* if the plan benefits a class of employees that is both "reasonable and non-discriminatory." Reasonable and nondiscriminatory classifications include job category (such as accountant or press operator), nature of compensation (such as hourly or salaried), and geographic location (such as headquarters or field office).[113]

A plan passes the ABP test if the average percentage of compensation NHCEs receive as employer contributions (referred to as the *actual benefit percentage*) divided by the actual benefit percentage for HCEs is higher than 70%.[114]

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[111] For the purposes of minimum coverage and other nondiscrimination tests, employee classifications in a given year are based on the prior year's compensation. For example, in 2024, HCEs include those who made $155,000 in 2023. The highly compensated limit is adjusted annually. Certain employees are not included in nondiscriminatory tests. These exempted employees include (1) employees covered by a collective bargaining agreement with retirement benefits reached in good faith, (2) air pilots covered by a Railroad Labor Act Title II collective bargaining agreement, and (3) non-resident aliens who receive no income. See 26 U.S.C. §410(b); 26 U.S.C. §7701(a)(46); 26 C.F.R. §1.140(b)-6; 26 C.F.R. §1.140(b)-9.

[112] For more information, see 26 C.F.R. §1.140(b)-8(b); IRS, Rev. Proc. 95-34; 26 C.F.R. §14.10(b).2.

[113] A classification is deemed automatically nondiscriminatory if the *ratio percentage* is greater than 50% minus 0.75% for each percentage point of NHCE concentration (the percentage of employees who are NHCEs) above 60%. The *ratio-percentage* is the percentage of NHCEs eligible to benefit from the plan divided by the percentage of HCEs eligible to benefit from the plan. See 26 C.F.R. §1.401(b).4.

[114] See 26 C.F.R. §1.401(b)-5.

## Nondiscrimination Tests

Regulations require 401(k) plans to demonstrate that plan benefits do not disproportionately favor HCEs. The IRC's three nondiscrimination tests ensure that elective contributions, matching contributions, and non-elective contributions are not concentrated among HCEs.

- Elective deferrals are tested by the *Average Deferral Percentage* (ADP) test.
- Matching contributions and after-tax non-Roth employee contributions are tested by the *Actual Contribution Percentage* (ACP) test.
- Non-elective contributions must be allocated according to a *uniform allocation formula*.

Plans must also be generally available to all employees to pass the requirements of the nondiscrimination tests. For example, a plan cannot alert only HCEs to the availability of the plan.[115]

### ADP Test and ACP Test

To pass the ADP and ACP tests, plans must demonstrate that contributions, as a percentage of compensation, do not differ too greatly between HCEs and NHCEs in favor of HCEs.

- The ADP test compares the average elective deferrals as a percentage of compensation—referred to as the *average deferral percentage* (ADP)—for HCEs to that of NHCEs.[116]
- The ACP test compares the average matching and after-tax non-Roth contributions as a percentage of compensation—referred to as the *actual contribution percentage* (ACP)—for HCEs to that of NHCEs.[117]

Each plan sponsor conducts the ADP and ACP tests using contributions from the prior plan year unless it elects to use the current plan year's contributions.[118] If an HCE is eligible for multiple plans sponsored by the same employer, then the HCE's contributions to all plans are included in the ADP and ACP tests for all plans that the HCE participates in sponsored by the employer.[119]

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115 See 26 C.F.R. §1.401(a)(4)-4.

116 Qualified employer contributions that are made in a nondiscriminatory manner may be included in calculating the ADP. Catch-up contributions, EACA-eligible withdrawals, and additional contributions under the Uniformed Services Employment and Reemployment Rights Act made by former uniformed service members are not considered elective deferrals for the purposes of the ADP. See 26 C.F.R. §1.401(m)-2(a)(6)(ii); 26 C.F.R. §1.401(m)-2(a)(5)(iii), (v), (vi).

117 Qualified non-elective contributions that are made in a nondiscriminatory manner may be included in calculating the ACP. Elective deferrals may be included in the ACP if the ADP for the same plan is satisfied. Forfeited employer contributions and matching contributions to NHCEs above the lesser of 5% of employee compensation, the level of an employee's elective deferrals, or twice the median rate of total contributions is not included in calculating the ACP. See 26 C.F.R. §1.401(m)-2(a)(5), (6).

118 Once a plan sponsor elects to use current plan year, it cannot switch to testing the prior year for a period of five years. In a plan's first year, the ADP and ACP for NHCEs is considered to be 3%. See 26 C.F.R. §1.401(k)-2(a)(2)(ii), (c)(1), (c)(2).

119 If HCEs in a plan participate in another plan sponsored by the same employer, then the elective contributions and employer contributions to that plan must be included in both the ADP and ACP. A plan sponsor can choose to include only those employees who are above the age of 21 and have at least one year of service in the tests, referred to as *disaggregation*. See 26 C.F.R. §1.401(k)-2(a); 26 C.F.R. §1.401(k)-6.

The ADP or ACP for HCEs may not exceed that of NHCEs by the greater of (1) the lesser of (a) 100% or (b) two percentage points or (2) 25%.[120]

Small business plans are commonly at risk of failing the ADP and ACP tests, perhaps because owners typically constitute a high percentage of participants.[121]

### *Remedying ADP and ACP Test Failures*

If a plan fails either the ADP test or the ACP test, the plan can avoid losing tax-qualified status by taking corrective actions that reduce the difference between the test percentages. Contributions made by HCEs that cause a plan to fail are referred to as *excess contributions*, which are attributed to HCEs based on each HCE's contribution dollar amount.

A plan may pass the ADP and ACP tests only if there are no excess contributions. The three ways to reduce excess contributions are (1) forfeit contributions for HCEs, (2) reclassify excess contributions for HCEs, or (3) make additional contributions on behalf of NHCEs.[122]

To reduce excess contributions for purposes of correcting an ADP test, a plan sponsor may do the following:

- Distribute excess contributions and attributable earnings to HCEs within 12 months.
- Reclassify excess contributions as after-tax non-Roth contributions within 2.5 months of the failed plan year. (These contributions would therefore be taxable and included in the ACP test.)
- Reclassify elective deferrals as catch-up contributions for those HCEs who are eligible.[123]
- Make qualified employer contributions to all NHCEs or all NHCEs earning less than a plan-specified amount. These qualified employer contributions are included in calculating the ADP.[124]

To reduce excess contributions for purposes of correcting an ACP test, a plan sponsor may do the following:

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[120] For example, if the ADP of the NHCEs is 3%, then the ADP of HCEs must be no more than 5%, because that is the lesser of 6% (1a) and 5% (1b) and the greater of 3.75% (2) and 5% (1). For more information, see IRS, "401(k) Plan Fix-It Guide: The Plan Failed the 401(k) ADP and ACP Nondiscrimination Tests."

[121] See Eric Droblyen, "401(k) Nondiscrimination Testing Study—What % of Plans Fail?," Employee Fiduciary, January 9, 2024, https://www.employeefiduciary.com/blog/401k-nondiscrimination-testing-study.

[122] Any forfeited contributions or contributions that are reclassified as after-tax would be subject to taxation in the tax year they are forfeited. See 26 C.F.R. §1.401(K)-2(b)(3)(ii).

[123] For example, if a plan has a number of HCEs over the age of 50 who each made $20,000 in elective deferrals, the plan sponsor could collectively reclassify some of these deferrals as catch-up contributions in order to pass the test.

[124] Distributions are not subject to the distribution penalty if they are made within 2.5 months of the plan year that failed the ADP, nor are they counted toward a minimum distribution. Qualified employer contributions to NHCEs must be made either proportionally to compensation or in equal amounts. Qualified employer contributions to NHCEs may not exceed 5% of an employee's pay or twice the median qualified employer contribution as a percentage of compensation previously contributed to NHCEs accounts. See 26 C.F.R. §1.401(k)-2(b)(1), 7(c)(3); IRS, "401(k) Plan Fix-It Guide: The Plan Failed the 401(k) ADP and ACP Nondiscrimination Tests."

- Distribute excess contributions (matching contributions made to HCEs or after-tax non-Roth contributions made by HCEs) and attributable earnings to HCEs within 12 months.[125]
- Make qualified non-elective contributions to all NHCEs or all NHCEs earning less than a plan-specified amount. These qualified non-elective contributions are included in calculating the ACP.[126]

A plan that fails either test may also remedy the failure by excluding some permitted employees from the test or including other allowable contributions into the calculations of the relevant test percentages.

### *Safe Harbor from ACP and ADP Tests*

Plans may be exempt from ACP and ADP testing if they adopt certain plan designs or features. A Safe Harbor 401(k) plan is designed to bypass ACP and ADP tests.[127] SIMPLE 401(k) plans and plans with a QACA feature are also exempt from ACP and ADP testing.

In a Safe Harbor 401(k), sponsors must contribute to participants' accounts in one of the following ways:

- provide a 3% qualified non-elective contribution per participant,
- provide a 100% qualified match for the first 3% of employee contributions and a 50% qualified match for the next 2% of employee contributions,[128] or
- provide an *enhanced matching formula* in which the qualified employer contributions are at least as favorable as the match option described in the preceding bullet point.[129]

Because all employer contributions described above are qualified employer contributions, they are nonforfeitable and immediately vested.[130] Employer contributions to QACA plans, which automatically pass the ACP and ADP tests, are not considered qualified employer contributions

[125] These distributions are not subject to the early withdrawal tax penalty, which is an additional 10% tax on most DC plan withdrawals made before age 59 ½ years if they are made within 2.5 months, nor are they counted toward a required minimum distribution. For information on the early withdrawal tax penalty, see IRS, "Retirement Topics: Exceptions to Tax on Early Distributions," https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-exceptions-to-tax-on-early-distributions.

[126] Distributions are not subject to the distribution penalty if they are made within 2.5 months of the plan year that failed the ACP, nor are they counted toward a minimum distribution. Qualified non-elective contributions to NHCEs must be made either proportionally to compensation or in equal amounts. Qualified employer contributions to NHCEs may not exceed 5% of an employee's pay or twice the median qualified employer contribution as a percentage of compensation previously contributed to NHCEs accounts. See 26 C.F.R. §1.401(k)-2(b)(1), 7(c)(3); IRS, "401(k) Plan Fix-It Guide: The Plan Failed the 401(k) ADP and ACP Nondiscrimination Tests."

[127] A Safe Harbor 401(k) plan may still be subject to ACP and ADP testing if participants are eligible to make elective deferrals prior to becoming eligible for employer contributions, the employer makes profit-sharing contributions, the employer provides a match for employee contributions above 6% of income, or employees are permitted to make contributions on an after-tax basis.

[128] See J. P. Morgan Everyday 401(K) Help Center, "Safe Harbor Plans—What You Should Know," https://jpmorganeveryday401k.zendesk.com/hc/en-us/articles/11944294554903-Safe-Harbor-Plans-What-You-Should-Know.

[129] If a plan uses the enhanced matching formula, it must be designed so that employees do not receive a match for contributions above 6% and the match rate does not increase as the employee contribution rate increases. (For example, a 50% match on the first 3% and 100% match on next 2% would not be permitted.)

[130] See 86 C.F.R. §34469.

and do not immediately vest.[131] Plans can also be exempt from ACP and ADP tests by implementing QACAs. Because the minimum employer contributions required by a QACA are similar to safe harbor requirements, plans that have adopted a QACA feature are assumed to have a nondiscriminatory contribution structure.

PSCA's survey reports that 12.4% of all surveyed plans are exempt from ACP and ADP tests through the use of QACAs and that 32.2% of all surveyed plans are exempt through Safe Harbor 401(k) plan designs.[132] A majority of plans surveyed by PSCA (54.2%) are subject to ACP and ADP testing.[133]

SIMPLE 401(k) plans are also excluded from ACP and ADP testing and have required contribution arrangements that are intended to simplify the administrative burden for small businesses.[134]

### Uniform Allocation Formula

To ensure that non-elective contributions are distributed among a broad range of participants, the allocation of non-elective contributions must meet a *uniform allocation formula*. Non-elective contributions meet a uniform allocation formula if they are made (1) as a uniform dollar amount; (2) as a uniform percentage of compensation; or (3) according to a formula based on an employee's age, service, or both, referred to as a *uniform point system*.[135] Regardless of the method of allocation, the average non-elective contributions as a percentage of compensation for HCEs must be less than or equal to that of NHCEs.[136]

Plans may be excused from having to meet the uniform allocation formula by taking into account employer Social Security contributions in combination with non-elective contributions. Because HCEs' incomes are likely to exceed the maximum taxable income for Social Security payroll taxes ($168,600 in 2024), the employer Social Security contributions as a percentage of income for HCEs are likely to be less than those for NHCEs.[137] Because of this disparity, plans may provide HCEs with additional non-elective contributions.[138]

## Top-Heavy Plan Testing

In addition to meeting nondiscrimination tests, plans must ensure that plan assets are not disproportionally concentrated among highly paid employees or owners. Plans can lose their tax-qualified status if more than 60% of their assets are held by *key employees*[139]—classified as

[131] See IRS, "Issue Snapshot—Vesting Schedules for Matching Contributions," May 5, 2023, https://www.irs.gov/retirement-plans/issue-snapshot-vesting-schedules-for-matching-contributions.

[132] See PSCA, "65th Annual Survey," Table 55, p. 35.

[133] PSCA, "65th Annual Survey," Table 55, p. 35.

[134] SIMPLE 401(k) plans are for employers with 100 or fewer employees. See IRS, "Choosing a Retirement Plan: SIMPLE 401(k) Plan."

[135] See 26 C.F.R. §1.401(a)(4)-2(b)(3), 2(b)(2).

[136] See 26 C.F.R. §1.401(a)(4)-2(b)(3)(i)(B).

[137] For more information about the maximum taxable income for Social Security taxes, see CRS In Focus IF12360, *Social Security Taxable Earnings Base: An Overview*.

[138] For more information about permitted disparities, see IRS, "Explanation No. 5B Permitted Disparity," revised June 2021, https://www.irs.gov/pub/irs-pdf/p4964.pdf; and 26 C.F.R. §1.401(l)-1.

[139] Assets held by former employees (worked no more than one hour in the testing period) are included in the top-heavy test. See IRS, "Is My 401(k) Top-Heavy?," January 29, 2024, https://www.irs.gov/retirement-plans/is-my-401k-top heavy.

employees earning more than $220,000 in 2024, those with more than 5% ownership of the firm, or those with more than 1% ownership of the firm who are earning more than $155,000 in 2024.[140]

Small business plans are commonly at risk of failing the top-heavy test because owners constitute a high percentage of participants.[141]

### Safe Harbor from Top-Heavy Plan Testing

Plans can be exempted from top-heavy plan testing by meeting safe harbor requirements. To be exempted from testing, participants may make only elective deferrals (pre-tax or Roth) and receive only specific employer contributions. Allowable employer contributions include:

- matching contributions up to 4% of an employee's compensation,
- non-elective employer contributions of 3% of an employee's compensation, or
- matching contributions up to 3.5% of an employee's salary or non-elective contributions up to 3% of an employee's salary in a plan that has automatic enrollment.[142]

QACA plans are automatically exempted from the top-heavy test. A plan that meets the safe harbor requirements may still be subject to the top-heavy test if participants are eligible to make elective deferrals prior to being eligible for employer contributions.

A plan that fails the top-heavy test may remedy its failure by contributing to all non-key employees the lesser of:

- 3% of an employee's compensation for the year, or
- the highest elective deferral percentage made by a key employee in that year.[143]

Plans found to be top-heavy for past years must make corrective payments to non-key employees for those years.[144]

## Saver's Credit and Saver's Match

The Retirement Savings Contributions Credit, also called the *Saver's Credit*, is a non-refundable federal tax credit for filers who contribute to retirement accounts and have adjusted gross income (AGI) below specified thresholds ($38,250 for single filers and $76,500 for joint filers in 2024).[145] The Saver's Credit is intended to increase retirement savings among low-income

[140] Amount is adjusted annually for inflation. See IRS, "Is My 401(k) Top-Heavy?"

[141] See Droblyen, "401(k) Nondiscrimination Testing Study."

[142] See IRS, "Is My 401(k) Top-Heavy?"

[143] See IRS, "Is My 401(k) Top-Heavy?"

[144] See IRS, "401(k) Plan Fix-It Guide: The Plan Was Top-Heavy and Required Minimum Contributions Were Not Made to the Plan," August 29, 2023, https://www.irs.gov/retirement-plans/401k-plan-fix-it-guide-the-plan-was-top-heavy-and-required-minimum-contributions-were-not-made-to-the-plan.

[145] Non-refundable tax credits can reduce only a taxpayers income tax liability. If a taxpayer's federal tax liability is zero or once a taxpayer's income tax liability is reduced to zero, they are unable to benefit further from non-refundable tax credits. In contrast, refundable tax credits can exceed a taxpayer's income tax liability, providing cash payments to taxpayers who owe little or no income tax. To claim the credit, a filer must be over 18, not a student, and not claimed as a dependent. See IRS, "Retirement Savings Contributions Credit (Saver's Credit)," revised August 29, 2023, https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-savings-contributions-savers-credit.

households and was authorized by Section 618 of EGTRAA.[146] Section 103 of SECURE 2.0 replaced the Saver's Credit with a matching contribution referred to as the *Saver's Match* in 2027.

## Saver's Credit

Contributions to DC plans, IRAs, and Achieving a Better Life Experience (ABLE) accounts are eligible for the Saver's Credit.[147] The maximum Saver's Credit is $1,000 for single filers and $2,000 for joint filers. Depending on the filer's AGI, the credit is 50%, 20%, or 10% of the contribution (see **Table 1**). Employer contributions to a filer's retirement account do not affect the filer's ability to claim the Saver's Credit.[148]

**Table 1. Saver's Credit Income Bands**

2024 Tax Year

| Credit Rate | Single Filers | Head of Household Filers | Joint Filers |
|---|---|---|---|
| 50% | Less than $23,000 | Less than $34,500 | Less than $46,000 |
| 20% | $23,001-$25,000 | $34,501-$37,500 | $46,001-$50,000 |
| 10% | $25,001-$38,250 | $37,501-$57,375 | $50,001-$76,500 |
| No Credit | Above $38,250 | Above $57,375 | Above $76,500 |

**Source:** IRS, "2024 Limitations Adjusted as Provided in Section 415(d), etc.," Notice 2023-75, https://www.irs.gov/pub/irs-drop/n-23-75.pdf.

Because the Saver's Credit is non-refundable, the benefit for filers with low or no tax liability is reduced or eliminated.[149] The Saver's Credit income thresholds also create credit cliffs. For example, a filer making just under a threshold could end up with after-tax income greater than someone just above the threshold with the exact same retirement contribution.[150]

Evidence of the effect of the Saver's Credit on savings is mixed. The take-up rate, even among those with enough tax liability to claim the full amount of the credit, is relatively low. Apart from lack of awareness, the non-refundability of the Saver's Credit reduces or eliminates the benefit among the filers with the lowest incomes.[151]

[146] The benefits of the Saver's Credit are generally more progressive than tax benefits available to employer-sponsored plans or IRAs—that is, lower-income individuals receive proportionally more benefits from the credit than higher income individuals do. EGTRAA originally scheduled the Saver's Credit to sunset in 2006, but it was made permanent by the Pension Protection Act of 2006. For more information on the Saver's Credit, see CRS In Focus IF11159, *The Retirement Savings Contribution Credit and the Saver's Match*.

[147] Contributions to 501(c)(18)(D) plans are also eligible for the credit. See IRS, "Retirement Savings Contributions Credit (Saver's Credit), May 3, 2023, https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-savings-contributions-savers-credit. For more information on ABLE accounts, see CRS In Focus IF10363, *Achieving a Better Life Experience (ABLE) Programs*.

[148] See J. Mark Iwry, Peter R. Orszag, and William G. Gale, "The Saver's Credit: Issues and Options," Brookings Institution, May 3, 2004, p. 600, https://www.brookings.edu/articles/the-savers-credit-issues-and-options/.

[149] See Esther Duflo et al., "Savings Incentives for Low- and Moderate-Income Families in the United States: Why Is the Saver's Credit Not More Effective?," *Journal of the European Economic Association*, vol. 5, no. 2/3 (April-May 2007), p. 650, https://www.jstor.org/stable/40005067.

[150] There is some evidence that taxpayers are more likely to contribute in order to receive the Saver's Credit if they are just under the income limit for each band of the Saver's Credit. See Duflo et al., "Savings Incentives for Low- and Moderate-Income Families," p. 654.

[151] See Duflo et al., "Savings Incentives for Low- and Moderate-Income Families," p. 654.

In 2020, the average credit was $186 and was claimed by 9.4 million filers.[152] The Joint Committee on Taxation (JCT) estimated that the Saver's Credit reduced federal government revenue by $1.5 billion in 2023.[153]

## Saver's Match

Section 103 of SECURE 2.0 is scheduled to replace the Saver's Credit with a Saver's Match starting in 2027. The Saver's Match is to be a federal match on up to $2,000 in a filer's retirement account contributions. The match is to be directly contributed to the filer's retirement account and therefore be available to filers without tax liability.[154]

The Saver's Match is to replace the cliffs in the Saver's Credit with a match of 50% for filers with AGI below a specified income limit, no match for AGI above a specified limit, and a proportional phaseout for AGI between the two. **Table 2** shows the Saver's Match income limits. JCT estimated that the Saver's Match would reduce federal revenues by $2.1 billion in FY2028 (for tax year 2027) and $9.3 billion from FY2028 to FY2032.[155]

**Table 2. Saver's Match Income Limits in 2027**

| | Single Filers | Head of Household Filers | Joint Filers |
|---|---|---|---|
| Income to Receive 50% Match | ≤ $20,500 | ≤ $30,750 | ≤ $41,000 |
| Phase-Out Range | $20,501 to $35,499 | $30,751 to $53,249 | $41,001 to $70,999 |
| Income Limit | $35,500 | $53,250 | $71,000 |

**Source:** 65 U.S.C. §6433 (b)(3).

**Note:** The match rate is reduced proportionally as AGI increases within the phase-out range. After 2027, these AGI limits will be increased annually to account for inflation (as measured by the Chained Consumer Price Index for all Urban Consumers [C-CPI-U]).

After the Saver's Credit is replaced by the Saver's Match, more filers with little to no tax liability will be able to receive the entire benefit, as tax liability will no longer serve as a benefit maximum.[156] Section 104 of SECURE 2.0 requires the Secretary of the Treasury to promote awareness of the Saver's Match.

[152] See IRS, *Statistics of Income—2021 Individual Income Tax Returns*, revised April 2024, https://www.irs.gov/pub/irs-pdf/p1304.pdf.

[153] See JCT, *Estimates of Federal Tax Expenditures for Fiscal Years 2023-2027*, December 7, 2023, p. 37, https://www.jct.gov/publications/2023/jcx-59-23/.

[154] The Saver's Match is to be applied as a tax credit when filers elect to do so or the match is less than $100. Filers with tax liability less than $100 who do not contribute enough to receive a match above $100 might be unable to fully benefit from the Saver's Match.

[155] See JCT, Estimated Revenue Effects of H.R. 2617, "The Consolidated Appropriations Act," as Passed by the House, December 22, 2022, p. 1, https://www.jct.gov/publications/2022/jcx-21-22/.

[156] However, as noted in CRS In Focus IF11159, *The Retirement Savings Contribution Credit and the Saver's Match*, the Saver's Match does not resolve certain other barriers to saving, such as lack of access to employer-sponsored accounts or lack of resources. Furthermore, one survey of individuals who would be eligible for the Saver's Match found that only one in eight knew the relevant details of their plans and could readily supply the data required to facilitate the match when filing their taxes. For more information, see Boston Research Technologies and Retirement Clearinghouse, *How the Saver's Match Could Promote Financial Inclusion*, April 2024.

# Recent Legislation

Two recent laws made a number of changes to the rules governing retirement plans, including changes that affected contributions: the SECURE Act of 2019 (now commonly referred to as SECURE 1.0) and the SECURE 2.0 Act.

## SECURE 1.0

SECURE 1.0 included many provisions that directly and indirectly related to contributions. For example, it increased the automatic escalation maximum and reformed aspects of QACA plans. It also classified difficulty of care payments to home health care workers for qualified foster individuals as compensation for the purposes of DC contribution limits.

- **Automatic contribution arrangements:** Section 102 permitted plans with automatic contribution arrangements to automatically escalate employees' contributions to 15% of income. Prior to SECURE 1.0, an automatic escalation feature could increase an employee's deferral rate to 10%. The higher automatic escalation percentage was effective starting in 2020.
- **Safe harbor plan amendments:** Section 103 removed the requirement for safe harbor plans to notify participants of safe harbor non-elective contributions. Prior to enactment, all plans making safe-harbor employer contributions would have to notify participants. After 2019, plans have to notify participants annually only if they meet the safe harbor requirements via matching employer contributions. After 2019, plans that meet the safe harbor requirement with non-elective employer contributions no longer need to notify participants.
- **Difficulty of care payments:** Section 116 allowed difficulty of care payments to be treated as compensation for the purpose of contributing to a DC plan. Difficulty of care payments are made to home health care workers caring for those in foster care with significant physical, mental, or emotional handicaps. Prior to the enactment of SECURE 1.0, DC plan participants whose income included difficulty of care payments could have been limited in their ability to make contributions because difficulty of care payments did not count toward the contribution limit. Section 116 retroactively applied this change to plan years beginning in 2016.

## SECURE 2.0

SECURE 2.0 contained several provisions regarding contributions to DC plans. These include the following:

- **Automatic enrollment and escalation:** Section 101 required new 401(k) and 403(b) plans, with some exceptions, to automatically enroll eligible participants with initial contribution levels between 3% and 10%.[157] Additionally, new plans are to be required to automatically escalate employee contributions by 1% annually until they reach at least 10% (but not more than 15%). This provision is scheduled to be effective beginning in calendar year 2025.

[157] Exceptions were provided for businesses that are small (i.e., fewer than 10 employers) or new (i.e., in operation for fewer than three years) and for church and governmental plans.

- **Saver's Match:** Section 103 replaced the Saver's Credit with a Saver's Match beginning in 2027. The Saver's Match is to provide retirement savers with AGI under specified limits (see **Table 2**) who contribute to DC plans, IRAs, and ABLE accounts with up to a 50% match on their contributions. Contributions eligible for the match are to be limited to $2,000 per individual taxpayer per year. The match is to be deposited directly into the taxpayer's retirement account. Section 104 directs Treasury to promote the Saver's Match.
- **Enhanced catch-up limits:** Section 109 increased the catch-up limit for those aged 60, 61, 62, and 63 beginning in 2025.
- **Treatment of student loan payments:** Section 110 permitted student loan payments to be treated as elective deferrals for the purpose of employer matching contributions. This provision took effect in 2024.
- **Small incentives:** Section 113 permitted employers to offer small incentives (e.g., low-dollar gift cards) to encourage eligible employees to participate in DC plans. This provision took effect upon enactment.
- **Catch-up contributions for high earners:** Section 603 required that any employee with an annual salary above $145,000 must make catch-up contributions to a designated Roth account, effective calendar year 2024. The salary limit will be adjusted annually for cost of living in increments of $5,000. IRS postponed this requirement until 2026.[158]
- **Employer contributions on a Roth basis:** Section 604 allowed employers to provide matching and non-elective contributions on a Roth after-tax basis. This provision took effect upon enactment.

# Policy Issues for Congress

The issues related to contributions to DC plans that are of concern to stakeholders include tax implications of Roth contributions and implementation of certain SECURE 2.0 provisions.

## SECURE Act 2.0 Roth Catch-up Requirements

Section 603 of SECURE 2.0 required that catch-up contributions of those who earn $145,000 or more annually be made on an after-tax basis. This provision was to be effective starting in 2024. Because not all plans offer Roth accounts, plan sponsors said they may need time to add Roth accounts. In response, IRS delayed implementation until January 1, 2026.[159] Plans currently providing catch-up contributions but not Roth accounts will need to either add after-tax Roth accounts or remove catch-up contributions for all employees. Section 603 is also in conflict with Section 402A of the IRC, which allows plans to offer after-tax Roth account contributions only if the same contributions could also be made on a pre-tax basis.[160]

Plan sponsors indicate that requiring catch-up contributions for highly compensated employees to be made on a Roth basis may be challenging to implement.[161] Plans must navigate the

[158] See IRS, "Guidance on Section 603 of the SECURE 2.0 Act with Respect to Catch-Up Contributions."

[159] See John Sullivan, "IRS Grants Two-Year Delay in Roth Catch-Up Requirements," ASPPA, August 25, 2023, https://www.asppa.org/news/irs-grants-two-year-delay-roth-catch-requirements.

[160] See 16 U.S.C. §402A.

[161] See Harris CPAs, "SECURE 2.0's Roth Catch-Up Contribution Extension," https://harriscpas.com/secure-2-0-roth-catch-up-contribution/#.

complexities of tax withholding alongside the treatment of catch-up contributions versus regular contributions.

## Tax Liability for Employer Designated Roth Contributions

Section 604 of SECURE 2.0 allowed employers to offer employees the option to direct employer contributions into designated Roth accounts. Employers were able to begin offering employees this election starting in 2023. Plan sponsors have said this provision could present frictions in the transition.[162]

Because Roth contributions are made on an after-tax basis, and therefore included in taxable income, employees may be unaware that additional income tax will have to be paid. This could lead to surprise tax bills or penalties for under-withholding. For example, if an employee has wages of $100,000 in 2024, makes no elective pre-tax contributions, takes the standard deduction, and for the first time directs a 5% employer match to a designated Roth account, then the employee's tax liability for the year would increase from $13,841 to $14,941 without an increase in pay.[163]

Employers may also be uncertain of how to withhold taxes on non-elective after-tax contributions.[164] If employers withhold federal income taxes on Roth matching and non-elective contributions, then the employee from the previous example would experience a 1.1% reduction in net pay. Without an increase in withholding, the employee would have had to make an additional $1,100 federal income tax payment in April 2024.

In 2023, the Committee on Employee Benefits and Executive Compensation of the New York City Bar Association requested guidance on the provision from Treasury and the IRS.[165]

## Unintended Consequences of Automatic Enrollment

Automatic enrollment likely affects both plan participation and overall employee contribution rates. Participation rates in Vanguard plans with automatic enrollment (93% in 2022) are higher than in plans with voluntary enrollment (70% in 2022).[166]

In plans with automatic enrollment, participants are likely to save at or near the default contribution rate, which may or may not be the rate they would have chosen on their own or the optimal savings rate. Despite higher participation rates, in 2018, plans using T. Rowe Price

[162] See Alison J. Cohen, "SECURE 2.0—So, About That Employer Roth Contribution…," ASPPA, June 5, 2023, https://www.asppa.org/news/secure-20%E2%80%94so-about-employer-roth-contribution%E2%80%A6.

[163] The standard deduction for single taxpayers in 2024 is $14,600, so if this employee is single, then they would have taxable income of $85,400 before directing the employer match to a designated Roth account. This results in tax liability of $13,841 [(10% x $11,600) + (12% x $35,550) + (22% x $38,250)]. The employer match to a designated Roth account would increase this employee's taxable income to $90,400, increasing tax liability to $14,941 [(10% x $11,600) + (12% x $35,550) + (22% x $43,250)]. For information on the 2024 tax year standard deduction and tax brackets, see IRS, "IRS Provides Tax Inflation Adjustments for Tax Year 2024," press release, November 9, 2023, https://www.irs.gov/newsroom/irs-provides-tax-inflation-adjustments-for-tax-year-2024. To avoid a penalty for under-withholding, the employee would have to increase the regular withholding amount. For further information on IRS guidance relating to Section 604 of SECURE 2.0, see IRS, "Underpayment of Estimated Tax by Individual Penalty."

[164] See Cohen, "SECURE 2.0."

[165] The New York City Bar requested clarification on a variety of aspects of implementation of the provision. See Gillian Emmett Moldowan, New York City Bar, "Comment Letter on SECURE 2.0 Guidance Priorities," letter to Carol Weiser, Benefits Tax Counsel, Department of the Treasury, and Rachel Leiser Levy, Associate Chief Counsel, IRS, July 6, 2023, https://s3.amazonaws.com/documents.nycbar.org/files/20221192_CommentLetterSecure2.0.pdf.

[166] See Vanguard, "How America Saves 2023," p. 36.

recordkeeping services with auto-enrollment had average deferral rates around three percentage points lower than plans without auto-enrollment.[167] This could be because automatic enrollment captures employees who would otherwise not contribute or participate at all, and some participants may contribute at a lower level than if they had voluntarily enrolled. Some researchers have found evidence of relatively lower contribution rates among automatically enrolled participants.[168] For example, some employees automatically enrolled at a 3% deferral rate might perceive 3% as an adequate savings rate and choose not to change their contributions. If they had enrolled themselves in the plans and chosen contribution rates on their own, some might have selected higher rates, such as 4%. Furthermore, the reduction in disposable income from contributing to a DC plan may result in increased household debt.[169]

The efficacy of automatic enrollment in ensuring adequate savings may also be of interest to Congress. For example, the potential effects of automatic enrollment may be limited by increased leakage from participants' accounts. Some research suggests that automatically enrolled cohorts have higher rates of outstanding DC loan balances and early withdrawals.[170] Automatic enrollment may also increase the number of abandoned DC plan accounts.[171] Some research suggests that DC plan accounts are more likely to be abandoned than are IRAs and that automatically enrolled participants are more likely to lose track of their DC plan accounts than are participants who actively enroll in their plans.[172] Both of these findings could indicate that automatic enrollment may not be maximally effective if not combined with other policies.

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[167] See T. Rowe Price, "Auto-Enrollment's Long-Term Effect on Retirement Saving," https://www.troweprice.com/retirement-plan-services/en/insights/savings-insights/auto-enrollment-effect.html.

[168] See Barbara A. Butrica and Nadia S. Karamcheva, "The Relationship Between Automatic Enrollment and DC Plan Contributions: Evidence from a National Survey of Older Workers," *Journal of Consumer Affairs*, vol. 53, no. 3 (Fall 2019), https://hrs.isr.umich.edu/sites/default/files/biblio/Butrica_et_al-2019-Journal_of_Consumer_Affairs.pdf.

[169] For further discussion of the potential increase in household debt, see John Beshears et al., *Does Pension Automatic Enrollment Increase Debt? Evidence from a Large-Scale Natural Experiment*, National Bureau of Economic Research, Working Paper no. 32100, February 2024, https://www.nber.org/papers/w32100.

[170] See John Beshears et al., "Potential vs. Realized Savings Under Automatic Enrollment," TIAA Institute, July 2018, http://ibhf.cornell.edu/docs/Symposium%20Papers/Beshears.pdf.

[171] Section 303 of SECURE 2.0 directed EBSA to create a national online searchable retirement account lost-and-found database by December 29, 2024. EBSA issued a notice of proposed information collection in service of this requirement on April 16, 2024. For more information, see EBSA, "US Department of Labor Announces Proposed Information Collection to Build Online Search Tool to Help Find 'Lost' Retirement Savings," press release, April 15, 2024, https://www.dol.gov/newsroom/releases/ebsa/ebsa20240415.

[172] See Lucas Goodman, Anita Mukherjee, and Shanthi Ramnath, "Set It and Forget It? Financing Retirement in an Age of Defaults," *Journal of Financial Economics*, vol. 148, no. 1 (April 2023), pp. 47-68, https://www.sciencedirect.com/science/article/abs/pii/S0304405X23000296.

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