Emergency Savings Accounts are a step in the right direction to Financial Wellness!

Effective for plan years beginning after December 31, 2023, 401(k), 403(b), and government 457(b) plans may offer new in-plan **emergency savings accounts** to participants who are not highly compensated employees.

This new feature would allow eligible employees to make Roth after-tax contributions to an eligible plan up to a specified amount (currently $2,500 but indexed for cost-of-living increases in future years) and then readily withdraw the amounts without needing to satisfy any particular rules or requirements.

Under current rules, in-service distributions of elective deferrals or Roth contributions from a plan are restricted by age (e.g., not available before age 59½) or the need for a participant to demonstrate the existence of a specified hardship event (e.g., expenses resulting from a federally declared disaster, medical expenses, expenses to prevent foreclosure/eviction).

As such, employees currently do not have ready access to in-plan savings to address common short-term emergencies that may arise on a day-to-day basis (e.g., unexpected car repairs, difficulty in paying for groceries or other living expenses following a spouse's job loss), but do not fit within the narrow range of specified hardship events.

The new ESA provides eligible employees with a convenient in-plan savings feature that will encourage savings while also providing immediate access to funds to address emergency needs that may arise.

ESAs must satisfy certain rules and requirements, as follows:

- Only Available to Eligible Participants Who Are Not HCEs. ESAs can only be made available to employees who satisfy the plan's age and service eligibility requirements and who are not highly compensated employees (HCEs). In general, an HCE is an employee who is a 5% or more owner of a company or has compensation in the preceding year that exceeds an indexed limit (e.g., an employee with $150,000 or more of compensation in 2023 will be treated as an HCE for 2024).
- Roth Contributions Only. All contributions to the ESA must be Roth after-tax contributions; pretax contributions or employer contributions are not permitted.
- Automatic Contribution Features Permitted. Plan sponsors may choose to implement an ESA with an automatic enrollment feature, but the automatic enrollment percentage must be at a rate of 3% or less.

- Contribution Rules and Limit. An employee's contributions to an ESA may not cause the account balance to exceed the $2,500 (as indexed) contribution limit. However, earnings on contributions may cause the account to exceed the limit. In addition, contributions to a ESA count toward the Code Section 402(g) limit on elective deferrals ($22,500 for 2023), and an ESA may not impose a minimum contribution or other account balance requirement. However, a plan sponsor could establish an ESA contribution limit that is less than $2,500.
- Matching Contributions. For plans that provide a matching contribution, an employee's contributions to an ESA must be eligible for matching contributions at the same matching rate established under the plan as for non-ESA elective deferrals. Any such matching contribution will be contributed to the retirement savings portion of the plan and not the ESA.
- Investment Requirements. An ESA must be invested in an interest-bearing deposit account, or an investment product offered by a state or federally regulated financial institution that is designed to preserve capital and generate a reasonable rate (e.g., a stable value or money market fund). Participants who contribute to an ESA will be treated as exercising investment control over their accounts for purposes of fiduciary relief for participant-directed investments.
- Withdrawal/Distribution Rights. Balances in an ESA must be available for distribution at least once per month, and a distribution must be made as soon as practicable following a participant's request. Participants do not have to provide a reason for the withdrawal and must not be charged any withdrawal fees or charges for the first four withdrawals made from the account in a year.

  In general, distributions from an ESA are (1) treated as qualified Roth contributions (which means earnings are not subject to taxation), (2) not eligible for rollover, and (3) not subject to the 10% early distribution penalty tax.

  However, distributions from an ESA upon an employee's termination of employment or termination of the ESA feature would be treated as an eligible rollover distribution in most instances.

- Participant Notice Requirements. Participants must receive an initial notice at least 30, but not more than 90, days before the effective date of their first contribution to the ESA and annually thereafter. The notices must contain detailed information describing the terms and features of the ESA, contribution rules and limits, investments, withdrawal procedures and limits, etc. The notice may be consolidated with other notices such as notices relating to a plan's qualified default investment alternative or safe harbor status.