Folks:

Quick- Take: The SECURE Act 2.0 of 2022 created significant changes to and incentives for qualified plans. The Act also made a big mistake regarding *make-up contributions* which results in the need for an immediate technical correction. Without those technical corrections from Congress, qualified plan sponsors remain in *limbo*. Some of the needed technical 'fixes' to the Tax Code from Congress include the following-

Catch-up **Contributions:** The infamous technical error made by Congress when it hurried through the SECURE Act 2.0 (the *Act*) at the end of the calendar year was its accidental removal of *pre-tax catch-up contributions* to retirement accounts. In August of 2023, the IRS announced in a Release that it would still authorize *catch-up contributions* by a plan participant aged 50 or older to a qualified retirement plan, stating:

> *An applicable employer plan is not treated as failing to meet any requirement of the Internal Revenue Code solely because the plan permits an eligible participant to make catch-up contributions under section 414(v) in any plan year.*

Required Roth *Catch-up* **Contributions:** In the same Release, the IRS provided a **two-year administrative pause through 2025** for the requirement that all *catch-up* contributions to be **on a Roth (after-tax) basis for participants earning $145,000 or more (indexed for inflation.)** In the absence of Congressional action to fix its own mistake, the IRS has had to step in and create this reprieve from the express language of the Tax Code that requires a *catch-up* contribution to be made with after-tax dollars.

New Qualified Plans: The Act also intended to tie contribution limits for

new (starter) qualified plans to the limit for IRAs. Instead, Congress tied the contribution limit to the IRA contribution limit for 2022, $6,000, but without also indexing it to inflation. Accordingly, while the IRA contribution limit will continue to slowly increase due to inflation, the 'starter' contribution limit for a qualified plan remains fixed at **$6,000.** A technical correction is thus needed to tie the two contribution limits together to reflect Congress' intent encouraging pre-tax retirement savings for new plan participants.

Sponsor's Tax Credits: The Act also provided an incentive for a small employer to establish a qualified plan for its employees. This incentive is in the form of a **tax credit up to $5,000** for 100% of the startup costs for the plan. The Act also creates a **tax credit for matching contributions for the first five years of a plan** if the employer has 100 or fewer employees, up to a per employee maximum of **$1,000.** The confusion arises whether these two separate provisions are overlapping, or if they both count towards a maximum credit of $5,000. A technical correction to the Tax Code is required to clarify that they are separate provisions, and the $5,000 limit does not apply to the tax credit on the employer's matching contributions.

Conclusion: The 'talking heads' on cable regularly point out that the current Congress has been the least productive, *ever*. One would think that these needed technical corrections could attract bipartisan support, since all they do would be to clarify what a prior Congress already intended. That said, we continue to wait for Congress to step in and 'fix' the problem that it created (deleting *catch-up* contributions) and to clarify ambiguous provisions it rushed to pass at the end of 2022. While the needed technical corrections could be attached to the continuing resolution to keep the government afloat in late September, or maybe during the *lame duck* period after the November election, it is more probable that employers will have to wait until the new Congress is seated in 2025 before they can finally get answers to their questions about their sponsored qualified plans.