
# Shaping the Future of Restaurant Industry Retirement Planning

*June 20, 2023*

# Presenters

**Kristin Romaker, CPA**
*Assurance Senior Manager*
GBQ
614.947.5274
KRomaker@gbq.com

**Tyler Deck**
*Retirement Plan Consultant*
Oswald Financial
380.799.5331
Tdeck@oswaldfinancial.com

**Sarah Colotto**
*Retirement Plan* Client Executive
Oswald Financial
216.359.3663
SColotto@oswaldfinancial.com

oswaldfinancial GBQ

# Agenda

- Plan audit requirements for:
  - 2022 plan year
  - 2023 and beyond plan years
- Common pitfalls found during the audit
- Tips and best practices for a successful audit
- Secure Act 2.0 - how to prepare
- Common restaurant provisions

# GBQ - EBP Practice

- GBQ has national expertise as a member of the AICPA Employee Benefit Plan Audit Quality Center
- GBQ conducts close to 200 plan audits including defined contribution, defined benefit, and health and welfare
- GBQ performs tax compliance preparation
- GBQ has a dedicated employee benefit plan group

# What is a 401(k) Audit?

- A 401(k) audit is an annual assessment of your company's 401(k) plan by a third-party independent accounting firm to ensure that the plan is within the guidelines and regulations set by both the IRS and the Department of Labor.

- During the audit, the accountant could identify any errors in the plan, which provides an opportunity for you to correct the issues right away.

- Not all businesses need to undergo an annual 401(k) audit, though. The requirements for auditing are set by the Employee Retirement Income Security Act (ERISA).

# 2022 Audit Determination

- If your business has 100 or more eligible participants at the beginning of the plan year, you must undergo a 401(k) audit. The “keyword” in this situation is “eligible,” so even if some of your employees choose not to participate, they still count toward the audit requirement. Additionally, terminated participants that maintain a balance in the plan are also counted in this determination.

**80 – 120 Rule Exception**

- If the number of eligible employees is between 80 and 120, your audit requirement will stay the same as the previous year. For example, if you had 86 eligible participants in the first year and 114 in the second year, you will not need an audit for either year. This can continue indefinitely as long as the number of eligible participants stays under 120. When you have more than 120 eligible employees, you’ll always need an annual audit.

# 2023 Audit Determination Rules

In February 2023, the DOL updated the Form 5500, which included a change to the participant-counting methodology.

Audits will be required for plans with 100 participant accounts (includes beneficiaries) at the beginning of the Plan Year 1/1/2023.

DOL estimates just over 8,000 employee benefit plans will no longer require an annual audit.

# Audit Due Dates

- Audits are due with the Form 5500 Filing each Plan year.
- Form 5500 is due the last day of the seventh month after the plan year ends (July 31 for a calendar year plan)
- An employer may extend this deadline by two and one-half months (until Oct. 16, 2023) by filing IRS Form 5558 by July 31, 2023.

# Common Plan Mistakes

- Inaccurate and Untimely Deferrals
- Improper definition of Compensation
- Insufficient or Non-Existent Documentation
- Plan Provision Compliance Violations (i.e. eligibility, loan policy, IRS guidelines)
- Improper calculation of eligibility
- Not following the plan document provisions- i.e.
  Letting employees into the plan at the wrong time, not letting eligible enrollees get in the plan, non-resident aliens, and other categories of workers
- Stopping or starting loan payments at the wrong time
- Not following IRS guidelines for compensation and deferral limits

# Tips and Best Practices

- Partner with experienced 401(k) professionals such as Fiduciary Advisors, Third Party Administrators, Trustees, Custodians, and Auditors
- Have checks and balances during the plan year. Keep records of incidents or issues as they come up throughout the year. Correct them as they happen
- Get your census information and discrimination testing done early in the following year before the auditors show up
- Strive to conduct administration online to avoid providing paper documentation

# Plan Compensation- Tips

Frequently Asked Questions:

- Do I need to include tipped wages? It is important to understand the definition of compensation under your Adoption Agreement. Typical Plans define compensation as W-2 Wages, which includes Tips. Plans can make an election to exclude tip wages as eligible compensation; however, there is could be an issue with the nondiscrimination testing results
- If tips are not included do we have to withhold/match based on gross paid or based on minimum wage? And if minimum wage is it Federal or State minimum? N/A – match would be based on compensation including tips and employee contributions made.
- If a tipped employee elects to partake in the 401k plan, are they required to have enough tips paid through payroll to have their election amount withheld? No, if they don't get paid enough to have their full election amount withheld, then the amount they would have withheld would be whatever pay is available either before or after taxes depending on their contribution election.
- And are we required to match if they DON'T have enough net pay to withhold their 401k? – No, the match would only be on actual contributions made. So, if say their gross pay was $500, but after taxes, deductions, etc. they only had enough left to contribute $10, the match would be $10 versus $15 (3% of comp) or $25 (max 5% of comp depending on the employee deferral election). The determination period is on a pay period by pay period basis as well so if they didn't work one pay period but then worked overtime the next period, there wouldn't be any requirement to catch up the employer match.

# OFI AT A GLANCE

oswald*financial*

Assist with the development and monitoring of the investment policy, lineup and make changes when needed

Offer information and consulting on financial wellness initiatives

Inform and provide education about industry, legislative, and fiduciary issues

Analyze and address plan metrics including participation and deferral rates and participant asset allocation

**You and Your Organization**

Deliver information and education about plan design, testing, and other aspects of plan administration

Offer guidance about employee communications and education strategies

Assist with individual retirement planning needs for employees

Assist in identifying plan fees and fiduciary disclosures

Provide day-to-day support and troubleshooting

350 Plans*
*as of December 2022

$4.5B AUM*
*as of December 2022

Industry Leverage

ERISA Expertise

Complete Independence

Depth of Service

Insightful Solutions

FT FINANCIAL TIMES Top Financial Advisers

Repeatedly named among the Top 100 Retirement Plan Advisors by PlanAdviser Magazine


planadviser's TOP 100 RETIREMENT PLAN ADVISERS

PLANSPONSOR RETIREMENT PLAN ADVISER OF THE YEAR FINALIST 2019

One of the Top 20 advisors in the country by Plan Sponsor magazine


PLANSPONSOR®

NAPA TOP DC ADVISOR TEAMS

Voted as a Top 10 Retirement Plan Advisor by DCP/Boston Research*

ASPPA®

*Nominated for ASPPA Leadership Award**

FINANCIAL SERVICES INSTITUTE

Top advisor & one of the most influential people in defined contributions by 401k Wire*

GBQ oswald financial

# Secure Act 2.0

# Retirement Planning & Tax

Key provisions effective now and changes coming soon

# What we're doing now to **help provide information and resources:**

**Carefully reviewing** each provision

**Identifying impacts** to clients and systems

**Prioritizing** provisions

**Communicating decisions and details** with financial professionals and clients

**Implementing** provisions



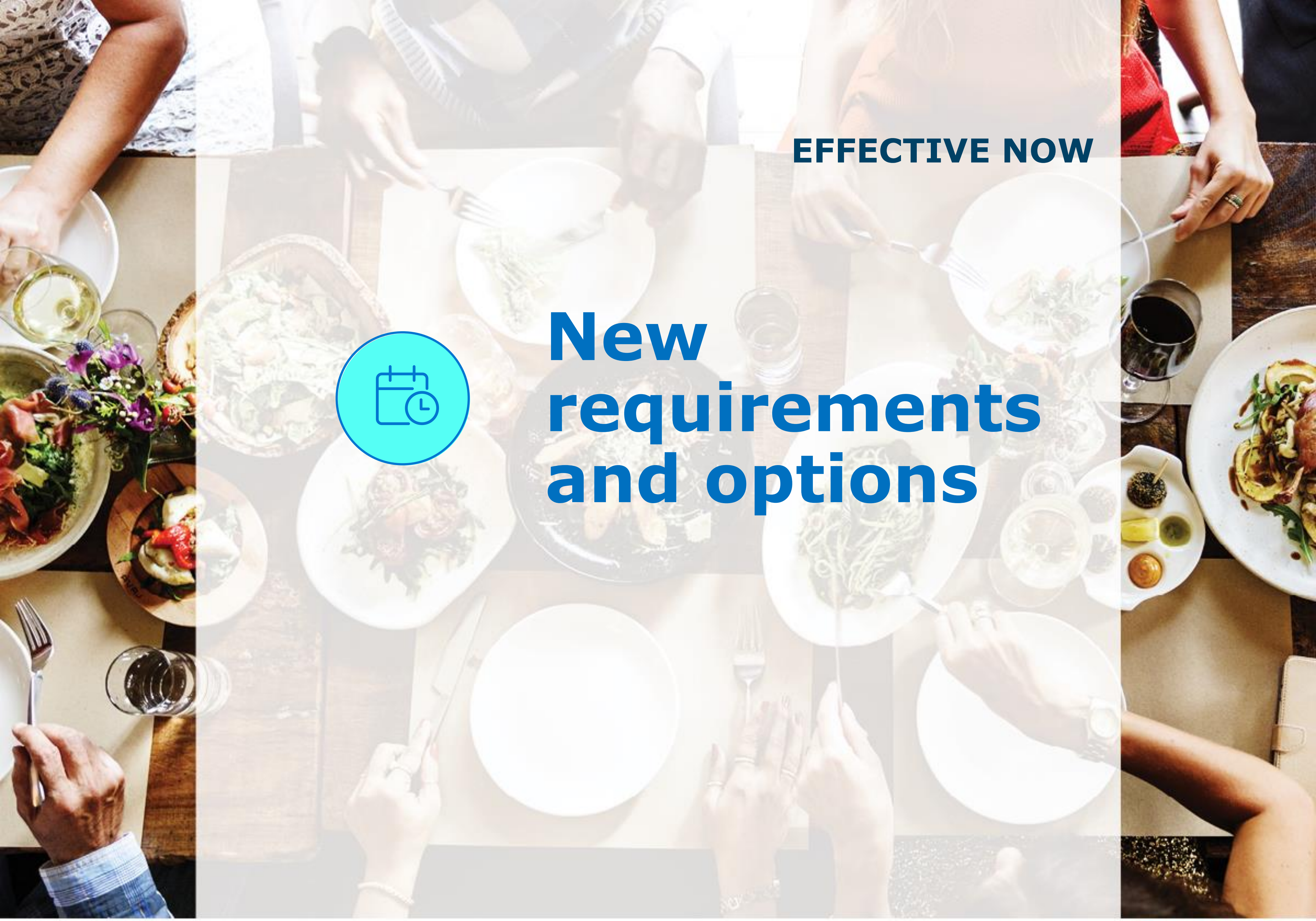
PQ13432-01 | 2772016-022023 | 02/2023

# Our focus

**Provisions effective now**

**Provisions to watch for**

Intended for financial professional and plan sponsor use.



EFFECTIVE NOW

# New requirements and options

REQUIREMENT

# What's new in 2023

EFFECTIVE DATE:
Jan. 1, 2023

## Increase in age for RMDs

- **Description:** Increase in age for RMDs to age 73 for those turning 72 on or after Jan. 1, 2023; increased to age 75 for those turning age 74 on or after Jan. 1, 2033.
- **Plan types:** DC* and DB plans, IRAs

**DC typically refers to ESOP unless otherwise noted.*

# What's new in 2023

**EFFECTIVE DATE:**
On or after Dec. 30, 2022

## Employer matching and nonelective contributions on a Roth basis.

- **Description:** Plans may choose to allow participants to elect to receive employer matching and nonelective contributions as Roth contributions.
- **Considerations/limitations:**
  - Only applies to vested employees.
  - Error in the language of the statute would inadvertently collect FICA taxes from contributions. A regulatory or legislative fix is needed prior to adoption.
- **Plan types:** DC plans, governmental 457(b) plans

# **What's new** for certain retirement plans

**EFFECTIVE DATE:**
Plan years beginning on or after Jan. 1, 2023

## Employee self-certification of hardship withdrawals

- **Description:** Plan sponsors may rely on employee certification that deemed hardship withdrawal conditions have been met.
- **Plan types:** DC plans



PQ13432-01 | 2772016-022023 | 02/2023

# What's new in 2023

**EFFECTIVE DATE:**
Applies to disasters occurring on or after Jan. 26, 2021

## Streamlined rules for withdrawals from retirement funds for disaster relief

- **Description:** Federal disaster withdrawals permitted following federal declaration. (Distributions may be repaid to retirement plan or IRA within three years.)
- **Considerations/limitations:**
  - Up to $22,000 may be withdrawn without the 10% early distribution penalty from an employer retirement plan or IRA for individuals affected by a qualified federal disaster.
  - Distributed amounts may be treated as gross income over three years.

  **Note:** Plans are permitted to provide for larger loan amounts and additional time for loan repayment for affected individuals.
- **Plan types:** DC plans, IRAs

# What's new in 2023

**EFFECTIVE DATE:**
Plan years beginning on or after Jan. 1, 2023

## Eliminating unnecessary plan requirements related to unenrolled participants

- **Description:** Plans are permitted to exclude unenrolled participants from certain ongoing required notices.
- **Considerations/limitations:** What am I required to send to unenrolled participants?
  - An annual reminder notice of the participant's eligibility to participate in the plan and any applicable election deadlines.
  - Any otherwise required document requested at any time by the participant.
- **Plan types**: DC plans

# What's new in 2023

**EFFECTIVE DATE:**
Plan years beginning on or after Jan. 1, 2023

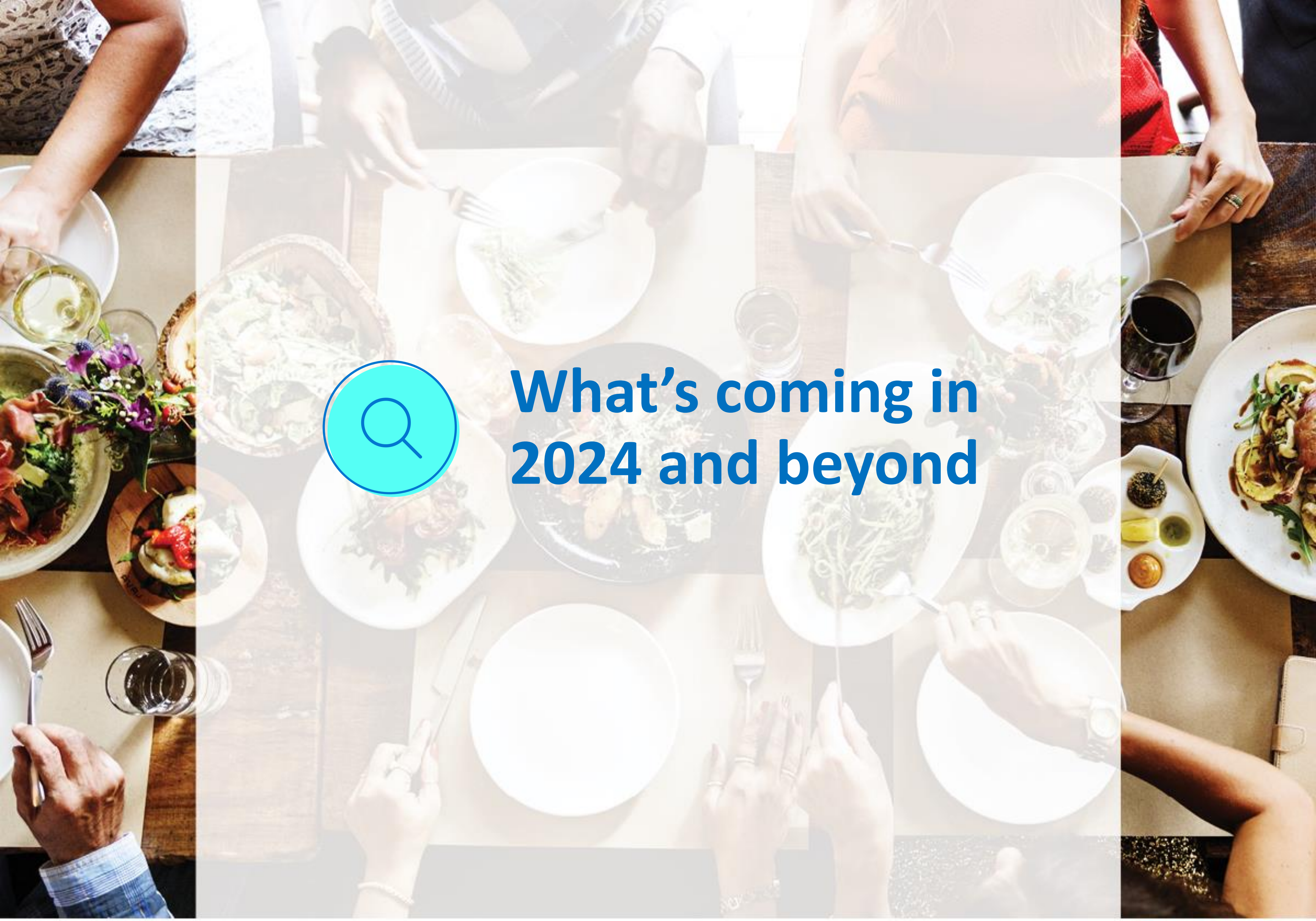
## Tax credits for new retirement plans

- **Description:** Companies with up to 50 employees can count up to 100% of the start-up costs (max $5,000 a year), toward the tax credit formula for the first three years.*

  For employees making < $100,000, DC plan employers can also receive a tax credit for five years up to $1,000 a year per person for employer contributions made.**

*Employers with 51-100 employees can utilize the tax credit under the SECURE Act of 2019, which is 50% of qualifying start-up costs for new employee retirement plan (maximum $5,000 a year)

**The credit is 100% of the contribution up to the $1,000 per person maximum for the first 2 years with a 25% reduction each year, and credit can't also be counted for the start-up tax credit.



# What’s coming in 2024 and beyond


PQ13432-01 | 2772016-022023 | 02/2023

# **What's coming soon** for retirement plans

Matching student loan debt repayments – *Optional*

**EFFECTIVE DATE:**
Plan years beginning on or after Jan. 1, 2024

Emergency savings accounts linked to individual account plans – *Optional*

**EFFECTIVE DATE:**
Plan years beginning on or after Jan. 1, 2024

New safe harbor for auto-enroll errors – *Available*

**EFFECTIVE DATE:**
For errors occurring on and after Jan. 1, 2024



PQ13432-01 | 2772016-022023 | 02/2023

# **What's coming soon** for retirement plans

Withdrawal updates for personal or family emergency withdrawals – *Optional*

**EFFECTIVE DATE:**
On or after Jan. 1, 2024

Update of the dollar threshold for small amount force-out distributions from $5,000 to $7,000 – *Optional, but suggested*

**EFFECTIVE DATE:**
On or after Jan. 1, 2024

Catch-ups for those with compensation in excess of $145,000 must be Roth – *Required*

**EFFECTIVE DATE:**
Taxable years on or after Jan. 1, 2024



PQ13432-01 | 2772016-022023 | 02/2023

# Restaurant Industry: Trends and Provisions

Current State of Industry

Retirement Plan Report Card and Trends

# Provision Comparison

| Category | Restaurant and food service plans | Average among all plan sizes |
|---|---|---|
| Immediate eligibility to participate | 7.3% | 35.2% |
| Immediate vesting | 38.7% | 34.6% |
| Matching contributions | 86.4% | 74.6% |

# Opportunities

| Category | Average among all plan sizes | Industry rank (out of 48) |
|---|---|---|
| Participation rate | 44.5% | 43rd |
| Average account balance | $64,635 | 41st |
| Average deferral rate | 5.6% | 45th |

Source: PLANSPONSOR Defined Contribution (DC) Survey, 2023

# Plan Design Considerations: Automation

| Category | Why it Matters |
|---|---|
| The average deferral rate of 5.6% is below average, and yet 50% of plans do not offer auto escalations to their participants. | Lower account balances may not only keep employees from reaching their retirement goals but may also lead to plan compliance issues. And that’s not good for anyone. |
| 63.2% of plans do not offer automatic enrollment. | In a service-focused industry, you want to remember that your employees are consumers too. Making things as easy as possible for them can go a long way to building loyalty. |

Source: PLANSPONSOR Defined Contribution (DC) Survey, 2023

# Plan Design Considerations: Participation

| Category | Why it Matters |
| --- | --- |
| The restaurant and food service industry has only 44.5%participation on average, which is the lowest of all industries covered. | Your retirement plan is one of the most important benefits you offer to your employees. In addition to this being a potential compliance issue, employees who do not participate are missing out on tax advantages now and may not be able to retire successfully later. |
| While 87.7% of plans offer a match, only 23.4% of plans say all of their participants defer enough to take full advantage of the match. Perhaps this is not surprising as the average account balance for participants is $64,635 which is one of the lowest of any industry. | Failing to contribute enough for a match is like "leaving free money on the table" and with retirement, every little bit helps. Additionally, lower account balances may not only be keeping employees from reaching their retirement goals but may also be contributing to plan compliance issues. |

Source: PLANSPONSOR Defined Contribution (DC) Survey, 2023

# Education and Financial Wellness

| Category | Why it Matters |
|---|---|
| 46.7% of plans do not offer formal education/guidance on any financial topics. | Providing employees with education about the plan not only helps you meet your fiduciary requirements, but also helps educate employees about the plan, helps encourage participation, and provides the information they want and need to make better informed decisions. |
| 65.5% of plans believe they are responsible for helping with financial wellness, but on average, less than 50% of plans do not offer participants education on financial wellness topics like budgeting, credit/ debt management, student loan debt, home buying, college saving, tax/estate planning, healthcare costs, and Social Security withdrawal strategies. | Food service can be a very high-stress and low-paying career. Employees can struggle with paying daily bills, debt, saving for a rainy day and a number of other financial issues unrelated to investments. |

Source: PLANSPONSOR Defined Contribution (DC) Survey, 2023

# Red Flags to Consider

| Category | Why it Matters |
|---|---|
| 34.0% of restaurant plans still have funds that pay 12b-1 or sub-TA fees, and another 36.2% of plans don't know if they do or not. | Plan sponsors have a fiduciary responsibility to look out for their employees' best interests. Arguments can be made that funds with these types of fees are not in the participants' best Interests which can add to your fiduciary risk. |
| 77.8% of plans use a retirement plan advisor or institutional investment consultant, but:<br>• Only 25% are 3(38) fiduciaries while 40.6% are 3(21) fiduciaries<br>• On average, only 46.9% of advisors offer any individual or group investment advice to participants. | You have a fiduciary responsibility to act in the best interests of your participants, conduct due diligence on investments, and provide participants with information on the investment options available. |

Source: PLANSPONSOR Defined Contribution (DC) Survey, 2023

# Questions

oswald*financial* GBQ

# Save The Date

- July 18th: Navigating Cyber Considerations Beyond PCI Compliance Webinar
- August 15th: Mastering Lease Accounting - A Recipe for Restaurant Success Webinar
- November 9th: Unveiling Data-Driven Insights for Success Webinar

We'll keep you informed on the latest accounting and tax guidance impacting the restaurant industry and provide solutions and tools to ease the challenges you face.

Subscribe to our Table Talk newsletter today.

# We Want to Hear from You!

Share your feedback from today's presentation here:

# Presenters

**Kristin Romaker, CPA**
*Assurance Senior Manager*
GBQ
614.947.5274
KRomaker@gbq.com

**Tyler Deck**
*Retirement Plan Consultant*
Oswald Financial
380.799.5331
Tdeck@oswaldfinancial.com

**Sarah Colotto**
*Retirement Plan* Client Executive
Oswald Financial
216.359.3663
SColotto@oswaldfinancial.com