

# **SECURE 2.0 Act**

## **Discussion of Selected Provisions**



# SECURE 2.0

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# SECURE 2.0

## Effective Date Chart (Selected Provisions)

2023	2024	2025	2026	2027
Increase in RMD age (M)	Pre-death RMD elimination from Roth accounts (M)	Automatic enrollment for plans established after 12/29/22 (M)	Roth catch-up for highly compensated employees (M)	Savers Match (O)
Roth employer contributions allowed (O)	Surviving Spouse RMD election (O)	Long-term/part-time eligibility (M)	Qualified long-term care distributions (O)	
Hardship/unforeseeable emergency withdrawal self-certification (O)	Student loan matching contributions (O)	Increased age 60-63 catch-up limit (O)		
Federally declared disaster withdrawal/loan provisions (O)	Emergency Savings Accounts (O)			
Terminal illness early withdrawal penalty waiver (O)	Penalty-free emergency expense withdrawal (O)			
	Penalty-free domestic abuse victim withdrawal (O)			
	Increase in mandatory distribution limit (\$7,000) (O)			

M = Mandatory; O = Optional

# Agenda

- **Catch-Up Contributions**
  - Roth Catch-Up Requirement
  - Super Catch-Up
- **In-Plan Roth Conversions**
- **Plan Correction Changes**
- **SECURE 2.0 Amendments**
- **Cycle 4 Plan Restatements**

# Roth Catch-Up Requirement

## Statement of Requirement

- All Catch-up contributions for a Highly Paid Individual (“HPI”) must be made in the form of Roth contributions.
- Applies to Age 50/Super Catch-Up contributions made to 401(k), 403(b) and governmental 457(b) plans.
  - Note: The Roth Catch-Up Requirement does not apply to the additional special catch-up opportunities available to 403(b) and governmental 457(b) plans.
- Effective Date: January 1, 2026.

# Roth Catch-Up Requirement

## Definitions

**Highly Paid Individual (“HPI”):** A catch-up eligible participant whose FICA wages for the preceding calendar year from the employer sponsoring the plan exceed \$145,000 (subject to cost-of-living adjustments).

**FICA Wages:** Social Security Wages reported in Box 3 of Form W-2.

- Participants who do not receive FICA Wages are not subject to the Roth Catch-Up Requirement
- Controlled group Issues

# Roth Catch-Up Requirement

## Important Considerations

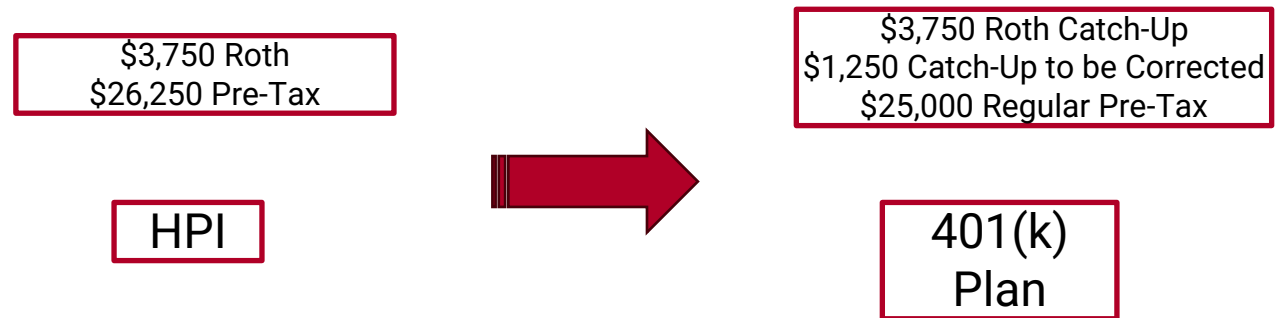
- HPIs will not be able to make any catch-up contributions if a plan does not permit Roth deferral elections.
- Plans are allowed to “deem” that a HPI has made an election to make any catch-up contributions as Roth contributions, rather than requiring a formal election of such.
  - Deemed election process is pre-requisite for using safe harbor correction methods
- Plans may not require that all catch-up eligible plan participants may only make catch-up contributions in the form of Roth contributions.

# Roth Catch-Up Requirement

## Important Considerations

- Plans may provide that HPIs will be allowed to consider regular Roth deferrals made during the year toward the Roth Catch-Up Requirement.

**Example:** HPI has made \$30,000 of elective deferrals (\$3,750 as Roth and \$26,250 as pre-tax) throughout the year. Assuming the total IRS regular deferral limit for the year is \$25,000, \$5,000 of HPI's total elective deferrals made must be treated as catch-up contributions. HPI is allowed to treat the first \$3,750 of this \$5,000 as already meeting HPI's Roth Catch-Up Requirement and not subject to correction. The remaining \$1,250 will be subject to correction





# Roth Catch-Up Requirement

## Corrections

**If the deemed Roth Catch-Up election method is in place:**

**1. Form W-2 Correction Method:**

Recharacterize pretax catch-up contributions (and earnings) as Roth and reporting the contribution (but not earnings) on Form W-2 for the year of the contribution. This correction is not available after the Form W-2 is filed or issued (i.e. an already filed W-2 may not be amended for this correction method).

**2. Form 1099-R Correction Method:**

Convert pre-tax catch-up contributions (and earnings) to Roth and report the total amount as taxable on Form 1099-R, similar to an in-plan Roth conversion, for the year of the correction. Under this correction method, plans have until the end of the plan year following the plan year in which the catch-up contributions were originally made to correct a failure.

**If the deemed Roth Catch-Up election method is not in place:**

The only correction option available is to distribute the excess contributions in accordance with current EPCRS procedures based on the plan limit that gave rise to the catch-up opportunity.

**No corrections required if the amount involved is less than \$250, or the failure is due to a change in the employee's FICA wages based on an amended W-2 filed after the correction deadline.**

# Roth Catch-Up Requirement

## Responsibilities

Even though correction methods are available, the regulations require that procedures must be in place that are design to prevent the need for a correction. As a result, the contribution limits and switch to Roth must primarily be monitored and facilitated by payroll.

Task	Payroll	Plan Sponsor	Recordkeeper/TPA
HPI Identification	Facilitate identification of HPI based on prior-year FICA wages	Where applicable, transmit payroll data to recordkeeper	Receive and maintain HPI indicators
Contribution Deductions/ Monitoring	Monitor pre-tax deferrals separately up to the 402(g) limit; flip to Roth when appropriate	Where applicable, transmit payroll data to recordkeeper	Post contributions as transmitted
Contribution Deductions	Maintain participant's original election and revert at least annually	Facilitate rate changes as needed	Offer "effective opportunity" for rate changes
Corrections	Notify sponsor of failures; when appropriate, facilitate W-2 corrections and coordinate with other parties to ensure records align	Coordinate W-2 corrections between providers	Perform year-end testing to identify failures and utilize 1099-R correction method as well as update records to reflect W-2 corrections

# Super Catch-Up Opportunity

- Individuals who turn 60 through 63 years old during the year may be allowed to make catch-up contributions above the normal age 50 catch-up limitations.

The additional catch-up limit is the greater of:

- \$10,000, or
- 150% of the regular age 50 catch-up limit in place for the preceding year.

For 2025, the overall catch-up limit for these individuals is \$11,250.

- Applies to 401(k) plans, 403(b) plans and governmental 457(b) plans.
- Payroll systems will need to be adjusted to accommodate this additional limit.
- For plans that have adopted our BOKF pre-approved documents, the default in the document is that these additional catch-up contributions **will** be allowed. Plans that do not wish to allow these additional contributions will need to contact us for an alternative plan amendment.

# In-Plan Roth Conversions

## ➤ What is it?

Process that allows participants to elect to convert **any** pre-tax sources (including earnings) to Roth within the plan.

## ➤ Why offer it?

Enables future tax-free growth if Roth withdrawal requirements are met as a trade-off for current taxation of the conversion amount.

## ➤ Anything else?

Initially understood that this feature had to be allowed as a plan feature in order to be available as a correction method for Roth Catch-Up Requirement failures. Final regulations clarified that it is not necessary to include this option as a plan feature available to participants. It could be triggered by the plan administrator only as a Roth correction method.

## - HOWEVER -

This feature can be offered as an alternative to allowing Roth elections for employer contributions.

# Plan Error Corrections

## Expansion of EPCRS Self-Correction Program (“SCP”)

### Pre – SECURE:

- Insignificant Operational Errors – can correct at any time
- Significant Operational Errors – can only correct by the last day of the third plan year following the plan year in which the failure began, and only if:
  - The plan or plan sponsor is not under IRS examination
  - The plan has a favorable determination letter
- Insignificant Error v. Significant Error
  - Determination of “significance” is based on facts and circumstances
    - Reason for the failure/occurrence of other failures
    - Relative amount of plan assets and/or contributions involved
    - Duration of the failure and timing of correction
    - Relative number of participants actually affected
    - Relative number of participants who could have been affected

# Plan Error Corrections

## Expansion of EPCRS Self-Correction Program (“SCP”)

### SECURE 2.0:

- Established concept of “eligible inadvertent failure”.
  - Failure that occurs despite the existence of practices/procedures that are reasonably designed to promote and facilitate compliance with applicable Code requirements
    - Does not include failures that are egregious, relate to the diversion/misuse of plan assets, or are related to an abusive tax avoidance transaction
- Correction timing – no deadline, provided failure is corrected before it is identified by the IRS and it is corrected with a reasonable period of time after it is discovered.
- Also appears to now include plan errors that were not previously allowed to be corrected under SCP.

# Plan Error Corrections

## Overpayments

### Pre – SECURE:

- EPCRS does not always require fiduciaries to take affirmative steps to recoup overpayments.
  - Under ERISA, fiduciaries are still expected to take reasonable steps to recoup in proportion to the overpayments at issue.
  - Under the Code, the above still applies and there is a requirement to notice affected participants that the overpayment is not eligible for favorable tax treatment (i.e. rollover).
  - De minimis exception - \$250 or less.

# Plan Error Corrections

## Overpayments

### SECURE 2.0:

- New rules and overpayment recovery relief for both ERISA's fiduciary rules and Code tax compliance.
- ERISA: Not considered a fiduciary breach if the fiduciary exercises discretion to not seek recovery of overpayment.
  - Only extends to individual account plans if there is no impermissible forfeiture.
  - Only extends to DB plans if the minimum funding rules continue to be satisfied and there is no material impact on plan's ability to pay benefits to other participants
- Code: Not considered to violate applicable Code sections if the plan sponsor exercises discretion to not seek recovery or amends the plan (including retroactively) to increase a past benefit to adjust.
- If repayment is not sought, there is no notice requirement and rollovers are allowed to stay in place.
- Must have procedures in place that are designed to prevent/minimize overpayments.



# Plan Error Corrections

## Overpayments

### SECURE 2.0:

If recovery of overpayment is sought, the plan sponsor:

- **may** consider the hardship that recoupment would impose on the participant/beneficiary;
- **may not** seek to recoup interest or other additional amounts other than the actual overpayment;
- **may not** seek to recover past overpayments to a participant from any beneficiary of the participant (including a spouse, former spouse or other beneficiary);
- **may not** seek to recover past overpayments from a participant or beneficiary if the first overpayment occurred more than three years before the participant or beneficiary is first notified of the error in writing;
- **may not** undertake efforts to recoup overpayments through threats of litigation (unless the amounts recovered are reasonably likely to exceed the litigation costs) or through the use of a collection agency or other similar third party (unless a legal judgment or settlement agreement is ignored/rejected);
- in situations where the recoupment of overpayments is undertaken by reducing annuity benefit payments, **may not** (1) continue the reduction after the plan has recovered the full dollar amount of the overpayment, (2) recoup more than 10% of the full dollar amount of the overpayment in a calendar year, and (3) reduce future benefit payments below 90% of the periodic benefit payment amount otherwise payable under the terms of the plan; and
- **must** provide the overpayment recipient the opportunity to contest recoupment through the plan's claims and appeals procedure.



# **Review of Selected Optional Provisions**

# 2023 Optional Provisions Revisited

Provision	Description	Applicable To	Pros/Cons	BOKF Comments
<b>Penalty-Free Terminal Illness Withdrawals</b>	<p>Not a new plan withdrawal option and plans are not required to recognize this status.</p> <p><u>Terminal Illness</u>: Illness or physical condition certified by physician that can reasonably be expected to result in death in 84 months or less after the date of the certification. The certification must meet certain requirements.</p> <p>If status is recognized by the plan, participant must furnish the plan administrator the physician's certification with their distribution request. They do not need to provide underlying support for certification; however, they should retain this along with the certification for their own tax records.</p> <p>If the status is not recognized by the plan, participant can claim status after date of certification for any distribution/withdrawal otherwise available to them under the plan on their individual income tax return and without plan involvement.</p> <p>Withdrawal can be repaid within 3 years.</p>	<p>401(a) profit sharing plans, money purchase plans, 401(k) plans, and 403(b) plans.</p> <p>Does not apply to governmental 457(b) plans.</p>	<p><u>Pros:</u></p> <p>Allows affected participants to avoid early withdrawal penalty.</p> <p><u>Cons:</u></p> <p>If plan elects to recognize/track this status, processing will require additional verification steps and document retention.</p>	<p>Although IRS guidance has been received, requests have been made to make this a new plan withdrawal option. Consider delaying plan-level recognition of the status until response to request has been received. In the interim, participants can independently claim this benefit on their individual tax returns.</p>

## 2023 Optional Provisions Revisited (cont'd)

Provision	Description	Applicable To	Pros/Cons	BOKF Comments
<b>Employer Roth Contributions</b>	<p>Participants may be allowed to elect to treat employer match or non-elective contributions as Roth contributions when such contributions are made to the plan.</p> <p><b>Requirements:</b></p> <ul style="list-style-type: none"> <li>• Election must be made no later than the time the contribution is allocated to the employee's account.</li> <li>• Election must be irrevocable.</li> <li>• Employee must have effective opportunity to make (or change) the election at least once each plan year.</li> <li>• Employee must be fully vested in the employer contribution at the time it is made to the plan.</li> <li>• Roth employer contributions must be accounted for separately from non-Roth employer contributions.</li> </ul> <p>These are not subject to income tax withholding, FICA or FUTA taxes through payroll. Federal and state income taxation is reported annually to participant on Form 1099-R with taxes required to be paid with the individual's income tax returns for the taxable year in which the Roth contribution is allocated to the participant's account. Special rules apply to governmental employees.</p>	401(a) profit sharing plans, money purchase plans, 401(k) plans, 403(b) plans, and governmental 457(b) plans.	<p><u>Pros:</u> Extends favorable Roth treatment to employer contributions.</p> <p><u>Cons:</u> No participant opportunity to offset annual taxation with periodic income tax withholding on contributions through payroll.</p> <p>As elections must be in place before contributions are credited to plan accounts, employers (or their payroll providers) will need to be able to track these elections and separately report Roth employer contributions to plan recordkeepers for proper crediting.</p>	Although IRS guidance has been received, we are strongly encouraging clients to include in their plan the ability for a participant to request an in-plan Roth conversion of any pre-tax dollars in their plan account in place of this SECURE 2.0 option. This conversion feature will accomplish the same objective as the new SECURE 2.0 provision without the need for additional administrative processes for the employer.

## 2023 Optional Provisions Revisited (cont'd)

Provision	Description	Applicable To	Pros/Cons	BOKF Comments
<b>Employee Certification for Hardships or Unforeseeable Emergencies</b>	<p>Plan administrators are permitted * to rely on an employee's written certification that a hardship withdrawal is being made on account of one of the seven safe harbor hardship events (or applicable unforeseeable emergency requirements) described in IRS regulations.</p> <p><b>* Unless they have knowledge to the contrary</b></p>	401(k) plans, 403(b) plans, and governmental 457(b) plans.	<p><u>Pros:</u></p> <p>Eases withdrawal process by eliminating need to provide source documents for substantiation.</p> <p><u>Cons:</u></p> <p>Easing oversight may tempt improper use of withdrawal feature.</p>	We are strongly encouraging plan sponsors to <u>not</u> allow full self-certification until guidance is issued
<b>Federally Declared Disaster Withdrawal/Loan Provisions</b>	<p>Similar to the options that were available during the COVID disaster although with a reduced allowable withdrawal amount (\$22,000). Plan sponsors are allowed to offer these provisions to any qualifying disaster event at their discretion.</p> <p>Withdrawals are not subject to 10% early withdrawal penalty and may be repaid within 3 years.</p>	401(a) profit sharing plans, money purchase plans, 401(k) plans, 403(b) plans, and governmental 457(b) plans.	<p><u>Pros:</u></p> <p>Provides permanent rules related to penalty-free use of retirement funds for qualified disasters.</p> <p><u>Cons:</u></p> <p>Loan suspension/extension provisions impose additional significant administrative processes for both the employer and recordkeeper for a feature that, based on COVID disaster activity, is not anticipated to be widely used.</p>	We are strongly encouraging employers to not implement the loan provisions for any disaster due to the additional administrative burdens associated with these provisions and the low anticipated usage.

# 2024 Optional Provisions Revisited

Provision	Description	Applicable To	Pros/Cons	BOKF Comments
<b>Matching Contributions for Student Loan Payments</b>	<p>Payments made by an employee on qualified education loan debt incurred for qualified higher education expenses by the employee, their spouse or dependents may be treated as if they were elective deferrals to a qualified plan for purposes of receiving any employer matching contributions under the plan.</p> <ul style="list-style-type: none"> <li>• The employee must have a legal obligation to make payments under the loan terms.</li> <li>• The plan cannot limit match to only payments made for an employee's own education, for a particular degree program or attendance at a particular school.</li> <li>• The employee must certify at least annually that payments have been made.</li> </ul> <p>Payments will only be considered up to the annual IRS elective deferral limit, minus any regular elective deferrals the employee may also make to the plan.</p> <p>Matching contributions must meet the same plan rules that would apply if the employee had made regular elective deferrals to the plan (i.e., same eligibility, formula, vesting).</p> <ul style="list-style-type: none"> <li>• Can exclude union employees.</li> <li>• Timing can vary (i.e. annual v. pay period)</li> </ul> <p>Participants who make QSLPs can be tested separately for ADP/ACP purposes.</p>	<p>401(k) plans, 403(b) plans and governmental 457(b) plans.</p>	<p><u>Pros:</u> Assists employees who may not be able to save for retirement because they are overwhelmed with student debt and thus are missing out on available matching contributions for retirement plans.</p> <p><u>Cons:</u>  Payroll systems may need to be modified to be able to calculate matching contributions where no corresponding deferral contributions are being made.</p>	<p>Employers will be required to accurately calculate applicable matching contributions and to maintain annual employee certifications.</p>

## 2024 Optional Provisions Revisited (cont'd)

Provision	Description	Applicable To	Pros/Cons	BOKF Comments
<b>Penalty-Free Withdrawals for Domestic Abuse Victims</b>	<p>Within one year of the date on which a participant becomes a victim of domestic abuse, a participant may withdraw penalty-free the lesser of \$10,000, (indexed for inflation), or 50 % of their vested balance.</p> <p>Abuse includes physical, psychological, sexual, emotional, or economic abuse, including efforts to control, isolate, humiliate, or intimidate the victim or to undermine the victim's ability to reason independently. This includes attempts to do any of the above actions through means of the victim's child or another household family member</p> <p>Plans may rely on participant's self-certification of abuse.</p> <p>These withdrawals, when issued, are not eligible for rollover to another qualified plan or IRA and are not subject to mandatory tax withholding.</p> <p>Participants have the option to repay the withdrawal within three years. Repayments are deemed to be eligible rollover distributions that are also deemed to have met the 60-day rollover requirement.</p> <p>If the status is not recognized by the plan, participant can claim status after date of certification for any distribution/withdrawal otherwise available to them under the plan on their individual income tax return.</p>	<p>401(a) profit sharing plans, 401(k) plans, 403(b) plans, and governmental 457(b) plans.</p> <p>Not available to plans subject to QJSA requirements.</p>	<p><u>Pros:</u> Assists participants who have a need to access available resources to overcome a difficult life event.</p>	

## 2024 Optional Provisions Revisited (cont'd)

Provision	Description	Applicable To	Pros/Cons	BOKF Comments
<b>Penalty-Free Withdrawals for Certain Emergency Expenses</b>	<p>Allows for one withdrawal per year for personal or family emergency expenses which are unforeseeable or create an immediate financial need.</p> <p>The maximum distribution is the lesser of \$1,000, or the participant's vested account balance reduced by \$1,000.</p> <p>Additional withdrawals are not allowed within three years from the last such withdrawal unless the participant repays the last withdrawal or has made additional salary deferrals equal to the last withdrawal.</p> <p>These withdrawals, when issued, are not eligible for rollover to another qualified plan or IRA and are not subject to mandatory tax withholding.</p> <p>Participants have the option to repay the withdrawal within three years. Repayments are deemed to be eligible rollover distributions that are also deemed to have met the 60-day rollover requirement.</p> <p>If the status is not recognized by the plan, participant can claim status after date of certification for any distribution/withdrawal otherwise available to them under the plan on their individual income tax return.</p>	401(a) profit sharing plans, 401(k) plans, 403(b) plans, and governmental 457(b) plans.	<p><u>Pros:</u> Assists participants who experience an emergency need outside of the scope of regular plan hardship withdrawal rules.</p> <p><u>Cons:</u> Easing oversight may tempt improper use of withdrawal feature. Benefit level is very small when compared to the additional administrative tracking needed for the 1-year/3-year withdrawal requirement.</p>	BOKF is strongly discouraging the addition of this withdrawal option, particularly if the plan already allows hardship withdrawals. We do not view this new option as a valuable benefit to plan participants when compared to the Cons presented in the Pros/Cons column.



## 2024 Optional Provisions Revisited (cont'd)

Provision	Description	Applicable To	Pros/Cons	BOKF Comments
<b>In-Plan Emergency Savings Accounts</b>	<p>Non-highly compensated employees may be allowed to contribute up to \$2,500 as employee Roth contributions to an Emergency Savings Account under the Plan.</p> <p>The contributions must be considered as employer match eligible at the same rate as other regular elective deferrals; however, regular elective deferrals will be matched first.</p> <p>These accounts must allow at least one withdrawal per month and may not assess any fees/charges on the first four withdrawals.</p> <p>Withdrawals are not subject to the 10% early withdrawal penalty.</p> <p>The accounts may only be invested in cash, interest bearing accounts or investments designed to preserve principal.</p>	<p>401(a) profit sharing plans, money purchase plans, 401(k) plans, and 403(b) plans.</p> <p>Without requested guidance, it appears that non-ERISA plans may <b>not</b> offer this option.</p>	<p><u>Pros:</u> Legislators believe that presenting these savings accounts alongside a participant's long-term retirement assets will encourage them to recognize that they should utilize the short-term PLESA funds rather than tap into their long-term retirement funds via a hardship withdrawal.</p> <p><u>Cons:</u> <b>Contributions may reduce the amount employees are willing to contribute toward their retirement.</b></p> <p><b>Employer matching on funds that are not intended to remain in the plan for retirement.</b></p> <p><b>Added administrative complexities and notice requirement for a relatively small employee benefit.</b></p> <p><b>Inability to charge certain withdrawal fees to participants. These will most likely need to be paid by the employer.</b></p> <p><b>Fiduciary considerations of timely deposits and selecting/monitoring an investment type that meets the requirements (not standard QDIA).</b></p>	<p>BOKF is strongly discouraging the addition of these accounts to any retirement plan.</p> <p>While both the IRS and DOL have issued some preliminary and very limited guidance, additional guidance is still needed regarding these accounts.</p> <p>In addition, we have significant concerns as to whether these accounts are appropriate options to include in plans whose primary purpose should be providing future retirement benefits. Consider:</p> <ul style="list-style-type: none"> <li>• Inclusion of this option in a retirement plan creates additional administrative burdens as well as extends <u>fiduciary responsibilities</u> to funds that are intended to be withdrawn from the plan.</li> <li>• There is a potential for <u>match abuse activity</u> where participants get match each time a contribution is made but continually withdraw their contributions on a regular basis. While the IRS has issued limited guidance intended to address these concerns, that guidance did not eliminate this exposure completely.</li> </ul>

# SECURE 2.0 Amendments

- Amendments are not required until the last day of the first plan year beginning on or after January 1, 2025 (December 31, 2026 for calendar year plans).
- Governmental plans have until the last day of the first plan year beginning on or after January 1, 2027 (December 31, 2028 for calendar year plans).

# Plan Restatements

## It is that time again!!

- 403(b) Cycle 2 Restatement Deadline: December 31, 2026
- Defined Contribution Plan Cycle 4 Restatements
  - The IRS is currently reviewing submitted documents for pre-approval.
  - It is expected that letters will be issued sometime in 2025 and that actual restatements can begin in 2026.

# Questions?



# Legal and Compliance

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