

Publications

IRS Issues Much Anticipated Guidance on Catch-Up Contributions

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On January 10, 2025, the Department of the Treasury (“Treasury”) and the Internal Revenue Service (“IRS”) issued [proposed regulations](#) regarding the provisions of the SECURE 2.0 Act of 2022 (“SECURE 2.0”) that relate to catch-up contributions. The proposed regulations provide helpful and eagerly awaited guidance on a number of issues we have been working with clients to address but demonstrate the complexity of implementing these changes.

The proposed regulations focus on the requirement imposed by Section 603 of SECURE 2.0 that catch-up contributions for higher income participants in Section 401(k), 403(b), and governmental 457(b) plans be designated as Roth contributions (the “mandatory Roth catch-up” provision). They also touch on the optional design change under Section 109 of SECURE 2.0 that permits eligible catch-up participants attaining age 60 through 63 during a calendar year to make “super catch-ups”, a higher dollar amount of catch-up contributions for such calendar year (the “increased catch-up” provision).^[1]

The proposed regulations make clear that the mandatory Roth catch-up provision will entail significant administrative complexity for employers and plan administrators, whether or not the plan offers a qualified Roth contribution program. Moreover, although the increased catch-up provision is an optional design change, plan sponsors have encountered a number of important considerations regarding implementation. Both require plan sponsors to coordinate with payroll, third-party administrators, and other stakeholders, and to work with counsel to ensure compliance with the legal requirements based on their particular circumstances.

A. Background

Mandatory Roth Catch-Up. Section 603 of SECURE 2.0 added a mandatory Roth catch-up contribution requirement in Internal Revenue Code (“Code”) Section 414(v)(7) for higher income retirement plan participants. The new provision generally requires that catch-up contributions made by a participant with more than \$145,000 in prior-year FICA wages^[2] from the employer sponsoring the plan (“affected participants”) be made on a Roth basis. For calendar years beginning after

December 31, 2024, the Roth catch-up wage threshold is adjusted for changes in the cost of living. If a plan offers catch-up contributions and has affected participants subject to the new requirement, the plan must also offer all catch-up eligible participants – those who will be age 50 or older in a given year – the ability to make catch-up contributions on a Roth basis.

The Roth catch-up requirement was originally scheduled to become effective for taxable years beginning after December 31, 2023. However, [Notice 2023-62](#) announced a two-year “administrative transition period” until taxable years beginning after December 31, 2025 and previewed future guidance. To read our prior alert regarding Notice 2023-62, please [click here](#).

Increased Catch-Up Limits. Section 109 of SECURE 2.0 amends Code Section 414(v) to increase the applicable dollar catch-up limit for taxable years beginning after December 31, 2024 for a catch-up eligible participant who attains age 60 through 63 during the taxable year. For non-SIMPLE plans, the limit is increased to the greater of (i) \$10,000, or (ii) 150% of the regular catch-up amount for 2024 (\$11,250 for 2025). The increased limit is adjusted for changes in the cost of living for taxable years beginning after December 31, 2025.

B. Guidance Regarding Mandatory Roth Catch-Up

The proposed regulations would address the mandatory Roth catch-up via revisions to the existing regulations under Code Sections 401(k) and 403(b) as well as the addition of new Treasury Regulation Section 1.414(v)-2.

- **Utilization of Deemed Roth Catch-Up Contribution Elections.** As previewed in Notice 2023-62, the regulations under Code Sections 401(k) and 403(b) would be amended to permit a 401(k) or 403(b) plan to provide that a participant who is subject to the mandatory Roth catch-up requirement is deemed to have irrevocably designated any catch-up contributions as designated Roth contributions.^[3] A plan could provide for such a deemed election regardless of whether it requires separate catch-up contribution elections or utilizes a spillover design. However, a plan that provides for such a deemed election must provide the participant with an effective opportunity to make a new election that is different from the deemed election (e.g., allow the participant to elect to cease making additional deferrals).
- **Determination of FICA Wages.** Consistent with Notice 2023-62, new proposed Treasury Regulation Section 1.414(v)-2(a) would provide that, for purposes of the mandatory Roth catch-up provision, FICA wages would be defined by reference to Social Security taxes and taken into account in the same year that they are taken into account for Social Security tax purposes. An individual who did not have any FICA wages from the employer sponsoring the plan (see below) for the preceding calendar year would not be subject to the mandatory Roth catch-up requirement under the plan in the current year.

In addition, the FICA wage threshold would not be prorated for an individual’s year of hire. This means that a participant who worked for the employer sponsoring the plan for only part of the preceding calendar year would be subject to the mandatory Roth catch-up requirement under the plan in the current year only if the participant had wages exceeding the full FICA wage threshold from the employer for the preceding calendar year.

- **Availability of Roth Catch-Up Contributions.** New proposed Treasury Regulation Section 1.414(v)-2(a) would provide that if, under a plan, any catch-up eligible participant who is subject to the mandatory Roth catch-up contribution provision is permitted to make Roth catch-up contributions for a plan year, then all catch-up eligible participants in the plan must be permitted to make Roth catch-up contributions for the plan year.

A special rule applies to plans that are “dual-qualified” under U.S. and Puerto Rico law. The Puerto Rico Internal Revenue Code (“PR Code”) does not provide for designated Roth contributions, but it does allow plans to permit traditional after-tax contributions. A dual-qualified plan that allows any catch-up eligible participant who is subject to the mandatory Roth catch-up contribution provision to make Roth catch-up contributions for a plan year is treated as satisfying the preceding paragraph if, under the plan, a catch-up eligible Puerto Rico participant is permitted to make traditional after-tax catch-up contributions.

- **Identification of “Employer Sponsoring the Plan”.** The mandatory Roth catch-up provision applies to a participant if the participant has prior-year FICA wages from the “employer sponsoring the plan” in excess of \$145,000. New proposed Treasury Regulation Section 1.414(v)-2(b) would provide that the “employer sponsoring the plan” with respect to a participant is the participant’s common law employer and does not include other controlled group entities. In addition, where more than one employer sponsors a plan, a participant’s prior-year FICA wages from one employer sponsoring the plan are not aggregated with the wages from another employer sponsoring the plan for purposes of determining whether the mandatory Roth catch-up provision applies to the participant.

- Plans That Do Not Include a Qualified Roth Contribution Program. The proposed regulations would not require a plan to include a qualified Roth contribution program. However, if a plan does not include a qualified Roth contribution program, then new proposed Treasury Regulation Section 1.414(v)-2(b) would provide that a participant who is subject to the mandatory Roth catch-up provision cannot make any catch-up contributions under the plan. This means that plans that do not include a qualified Roth contribution program will nonetheless be required to track which participants are subject to the mandatory Roth catch-up provision.

The proposed regulations also address how a plan that does not offer a qualified Roth contribution plan will be treated for purposes of the Code Section 401(a)(4) nondiscrimination requirements. Among other things, the proposed regulations would provide that such a plan would not fail to satisfy the current “universal availability” requirement (*i.e.*, the requirement that all catch-up eligible participants have an effective opportunity to make the same dollar amount of catch-up contributions) merely because the plan (or another plan maintained by the employer that does not include a qualified Roth contribution program) does not permit catch-up contributions for participants who are subject to the mandatory Roth catch-up provision but does permit them for participants who are not subject to the mandatory Roth catch-up provision.

- Treatment of Designated Roth Contributions as Catch-Up Contributions. New proposed Treasury Regulation Section 1.414(v)-2(b) would allow a plan to take into account Roth contributions that are made prior to an applicable limit being reached for purposes of determining whether the mandatory Roth catch-up provision is satisfied. A deferral that is determined to be a catch-up contribution at the time of contribution (for example, on account of exceeding the Code Section 401(a)(30) limit) would be required to be made as a designated Roth contribution by a participant who is subject to the mandatory Roth catch-up provision only to the extent the participant has not previously made deferrals as designated Roth contributions during the calendar year or taxable year equal to the applicable dollar catch-up limit.
- Methods for Correcting Failures. New proposed Treasury Regulation Section 1.414(v)-2(c) describes two new methods (other than the distribution of the pre-tax contributions) that a plan could use to correct a failure of the mandatory Roth catch-up provision as it applies to deferrals that exceed an applicable limit. A plan could provide for either correction method but must use the same correction method for all participants with deferrals in excess of the same applicable limit in a plan year. In order to use these correction methods, a plan must have practices and procedures in place that are designed to result in compliance with the mandatory Roth catch-up provision. As part of such practices and procedures, a plan must provide for a deemed Roth catch-up election for participants who are subject to the mandatory Roth catch-up provision. Plans would not be permitted to avoid mistakes by categorically requiring that all catch-up contributions be made as designated Roth contributions.

Form W-2 Correction Method. Where a participant’s Form W-2 for a year has not yet been filed or furnished to the participant, a plan would be permitted to correct a participant’s pre-tax catch-up contribution that was required to be a designated Roth contribution by transferring the deferral (adjusted for allocable gain or loss) from the participant’s pre-tax account to the participant’s designated Roth account and reporting the contribution (not adjusted for allocable gain or loss) as a designated Roth contribution on the participant’s Form W-2 for the year of the deferral. The contribution would be includible in the participant’s gross income for the year of the deferral.

In-Plan Roth Rollover Correction Method. A plan would be permitted to correct a participant’s pre-tax catch-up contribution that was required to be a designated Roth contribution through an in-plan Roth rollover. Under this method, a plan would directly roll the deferral (adjusted for allocable gain or loss) from the participant’s pre-tax account to the participant’s designated Roth account and report the amount of the in-plan Roth rollover on Form 1099-R for the year of the rollover. The contribution (adjusted for allocable gain or loss) would be includible in the participant’s gross income for the year of the rollover.

- Timing for Correcting Failures. The deadline to correct a failure with respect to the mandatory Roth catch-up provision would depend on which limit is the basis for the pre-tax deferral being designated a catch-up contribution. For example, if the deferral is a catch-up contribution because it exceeds the Code Section 401(a)(30) deferral limit, then the correction deadline would be April 15 of the calendar year following the calendar year for which the deferral was made.
- Applicability Dates. For non-bargained plans, the regulations would apply with respect to contributions in taxable years that begin after the date that is six months after the final regulations are published. For bargained plans, the regulations would apply with respect to contributions in taxable years beginning after the later of the first taxable year described in the preceding sentence or the first taxable year beginning after the date on which the last collective bargaining agreement related to the plan that is in effect on December 31, 2025, terminates (determined without regard to any extension of those agreements). However, a plan could apply the regulations with respect to contributions in taxable years beginning after December 31, 2023.

C. Guidance Regarding Increased Catch-Up Limit

The proposed regulations do not provide significant substantive guidance with respect to the increased catch-up limit provision. Most notably, the proposed regulations would provide as follows in revisions to Treasury Regulation Section 1.414(v)-1:

- Application of Universal Availability Requirement. A plan would not fail to satisfy the universal availability requirements of Code Section 414(v) (*i.e.*, the requirement that all catch-up eligible participants have an effective opportunity to make the same dollar amount of catch-up contributions) merely because the plan allows catch-up eligible participants who attain ages 60 through 63 in a taxable year to make catch-up contributions up to the increased catch-up dollar limit while only allowing other catch-up eligible participants to make catch-up contributions only up to the regular catch-up dollar limit.

In addition, a plan that covers employees in both the United States and Puerto Rico would not fail to satisfy the universal availability requirements of Code Section 414(v) merely because the plan allows catch-up eligible participants whose catch-up contributions are subject to the limit set forth in the PR Code to make catch-up contributions only up to the amount of that limit.

The proposed regulations confirm that the increased catch-up limit is optional, and therefore, that a plan may apply the regular catch-up limit to all employees. However, the proposed regulations do not expressly carve out an exception to the universal availability rule that would allow some plans maintained within a controlled group to offer the increased catch-up limit where other plans do not.

- Applicability Dates. The regulations relating to the increased catch-up limit would apply with respect to contributions in taxable years that begin after the date that is six months after the final regulations are published, but a plan could apply the regulations with respect to taxable years beginning after December 31, 2024.

D. Observations and Next Steps

The proposed regulations provide helpful guidance, particularly with regard to the mandatory Roth catch-up provision. However, it is clear that this requirement will introduce significant complexity for employers and plans. Employers should immediately begin to develop processes to enable tracking of FICA wages, identification of participants subject to the requirement, and facilitation of deemed Roth catch-up elections.

With respect to both the mandatory Roth catch-up provision and the increased catch-up provision, employers should work with counsel to ensure plan documents, plan operations, and employee communications accurately reflect the often nuanced regulatory requirements for their particular circumstances.

Comments on the proposed regulations must be submitted by March 14, 2025. A public hearing is scheduled for April 7, 2025. If you have any questions, comments, or concerns, please contact your Groom attorney.