

## IRS to Focus on Catch-Up Contributions in 403(b) and 457(b) Plans

**PUBLISHED:** May 20, 2020

Recent announcements from the IRS indicate the potential for increased audits of section 403(b) and 457(b) plans, specifically relating to catch-up contributions under such plans. The IRS recently published an issue snapshot discussing the rules for catch-up contributions under 403(b) plans and released Publication 5313, containing the Fiscal Year 2020 Program Letter for the Tax Exempt & Government Entities division ("Program Letter"), which provides for a focus on such contributions.

### Issue Snapshot

The issue snapshot describes the rules for catch-up contributions for section 403(b) plans, laying out the rules for age 50 catch-up contributions under Code section 414(v), special catch-up contributions under Code section 402(g)(7), and the interaction between the two types.

Importantly, the snapshot also provides a list of audit focus points:

- Review of employee Forms W-2 to determine if an employee exceeded the Code section 402(g) limit.
- Review of the plan document to see if age 50 and/or special catch-up contributions are permitted, and where both types are permitted, ensuring the special catch-up contribution is applied first.
- Review of records to ensure the qualified organization (an organization that is permitted to offer special catch-up contributions) is properly calculating special catch-up contributions and retaining the records necessary to make such calculations (e.g., records of prior deferrals made and employment records showing years of service).

If you have any questions, please do not hesitate to contact your regular Groom attorney or the authors listed below:

**Kimberly Boberg**  
[kboberg@groom.com](mailto:kboberg@groom.com)  
(202) 861-2606

**David Levine**  
[dlevine@groom.com](mailto:dlevine@groom.com)  
(202) 861-5436

**Louis Mazawey**  
[lmazawey@groom.com](mailto:lmazawey@groom.com)  
(202) 861-6608

**David Powell**  
[dpowell@groom.com](mailto:dpowell@groom.com)  
(202) 861-6600

## Program Letter

The Program Letter announces areas of focus for the IRS for the 2020 fiscal year, and includes the review of excessive and catch-up contributions under both section 403(b) and 457(b) plans. Consistent with the issue snapshot discussed above, in the case of governmental plans, this review will likely cover special catch-up contributions and their interaction with age 50 catch-up contributions.

## Takeaways

In light of these publications, section 403(b) and 457(b) plans that provide for special catch-up contributions should be aware of the IRS focus on this area. Taking the time to prepare by ensuring plan documents reflect operations and that any underlying support regarding eligibility for and calculation of such contributions is retained could help protect your plan.

---

If you have any questions about these contributions or 403(b)/457(b) plans in general, please call your regular Groom lawyer.

GROOM