IRS Answers Calls for Additional SECURE 2.0 Guidance

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Taxpayers received additional implementation guidance from the IRS and Treasury January 10 on SECURE 2.0 Act provisions regarding automatic enrollment and catch-up contributions.

One set of proposed regulations (REG-101268-24) addressed the new catch-up contribution rules in the major retirement legislation, enacted as part of the Consolidated Appropriations Act, 2023, particularly a requirement that contributions from high-income earners be designated as after-tax Roth contributions.

"The guidance makes it clear that we cannot simply bypass these rules and just offer Roth catch-ups for all," Elizabeth Thomas Dold of Groom Law Group told *Tax Notes*.

Under the regs, plans can continue to offer catch-up contributions to eligible employees, even if they don't include a Roth program. Dold explained that the proposed regs provide important guidance for those employer plans still looking to offer catch-up contributions for non-high-income earners, but said "there is a bit of complexity for plans subject to nondiscrimination testing as the catch-up feature will need to pass testing."

The proposed regs require contributions to be designated as after-tax Roth contributions for taxpayers whose prior-year Social Security wages exceeded $145,000. High-income employees subject to the Roth catch-up requirement won't be able to make any catch-up contributions if their employer doesn't incorporate a Roth program.

"I see this as an employer-friendly rule, even if some grumbling from affected participants results, potentially including requests to adopt a Roth feature," Ronald G. Cluett of Caplin & Drysdale said.

The proposed regs provide that the Roth catch-up requirement doesn't apply to employees who don't have FICA wages from the employer sponsoring the plan for the preceding calendar year.

Cluett said that this was an expected approach that he thinks "was the correct regulatory outcome given the statutory language."

Dold added that the guidance provides "helpful flexibility for determining what Roth deferrals can be used to meet the Roth catch-up limit, and how to make corrections to comply with these Roth rules."

In August 2023 the IRS gave employer retirement plans a two-year administrative transition period ending December 31, 2025, to comply with the new Roth designation rule.

The proposed regs also clarify the application of the "super catch-up" contribution enacted by SECURE 2.0, which provides a higher contribution limit for employees ages 60 to 63 beginning in

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2025. The super catch-up contribution rule is optional for employers to incorporate into their plans, according to the IRS's interpretation in the proposal.

This was a "key thing" that benefits industry professionals were waiting to have confirmed, according to Michael L. Hadley of Davis & Harman LLP, who said that "a number of plans have not yet implemented it for 2025, although I expect over time most plans will."

Cluett explained that some employers had expressed concerns over the implementation timeline of the "super catch-up" contribution provision, but its optional design feature "will afford them the flexibility to adopt the enhanced catch-up on a discretionary basis, if and when they choose to do."

The IRS has scheduled a public hearing on the proposed regs for April 7.

Automatic Enrollment

Concurrently issued proposed regulations (REG-100669-24) provide guidance on the new automatic enrollment requirements under section 414A for cash or deferred arrangements and salary reduction agreements enacted in SECURE 2.0.

"The guidance provides a number of important clarifications regarding the scope of these rules and which plans are required to offer automatic enrollment," Dold explained.

SECURE 2.0 provides that employers with at least 10 employees and section 401(k) and 403(b) plans are required to automatically enroll employees in plans beginning in 2025 — employees do have the option to opt out of the plans.

Under the proposed regs, the determination of whether a cash or deferred arrangement fails to satisfy the automatic enrollment requirements would be made on a year-by-year basis, and a cash or deferred arrangement will only be considered a qualified cash or deferred arrangement if the employer satisfies the automatic enrollment requirements in section 414A.

Dold welcomed a clarification providing that employers with pre-enactment plans can adopt a multiple employer plan or a pooled employer plan regardless of the establishment date of the plan being adopted and retain their grandfathered exempt status.

SIMPLE 401(k) plans, governmental and church plans, plans at businesses in existence for less than 3 years, and plans for businesses with fewer than 10 employees would be exempt from the automatic enrollment requirements. Plans that were established before the enactment of section 414A would also be exempt from the requirements.

The proposed rules would also allow employer plans to maintain their grandfathered exempt status when they adopt plan amendments not related to merger and acquisition activity.

Treasury and the IRS requested comments on whether guidance is needed to define the term "predecessor employer" as it is used in section 414A and what criteria should apply for a taxpayer to

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be considered an unenrolled participant under section 414.

Taxpayers can use a reasonable, good-faith interpretation of section 414A until the regs are finalized and applicable. Dold said that flexibility “is always welcomed as these rules apply now.”

The IRS has scheduled a public hearing on the proposed regs for April 8.

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