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Employee Benefits Corner

Catch-Up Contributions Get Anticipated Proposed Regulations

By Elizabeth Thomas Dold and David N. Levine

Setting Every Community Up for Retirement Enhancement (SECURE) 2.0 has brought two important changes to the much-beloved plan feature—catch-up contributions—that allows participants aged 50 years and older to save more for retirement. The Internal Revenue Service (IRS) recently issued proposed regulations[1] to explain the scope and implementation of these rules.

The first change mandated that certain higher-paid employees make their catch-up contributions as Roth contributions—resulting in taxable income in the year of deferral. This change was effective January 1, 2024, but generous transition relief (*via* Notice 2023-62) allowed plan sponsors to defer implementation of this rule until January 1, 2026. The second change was to permit participants aged 60–63 years to defer even more (50% more) as catch-up contributions, effective January 1, 2025. A number of operational issues raised with these rules (and other Savings Incentive Match Plan for Employees (SIMPLE) plan catch-up changes) are described in the 2025 proposed regulations, which are to be effective the first plan year that begins at least six months after issuance of the final regulations. A summary of the key issues addressed in the proposed regulations is set forth below.

Roth Catch-Up Contributions

The Internal Revenue Code requires plan sponsors that offer catch-up contributions within their 401(k), 403(b), or governmental 457(b) plan to only offer Roth catch-up contributions to those employees who have $145,000 (indexed) of Social Security wages[2] in the preceding calendar year.

When are Roth catch-up contributions required? January 1, 2026. Although the Code required this provision to be effective January 1, 2024, following Notice 2023-62, we have until next year—January 1, 2026 to comply (and depending on when the final regulations are issued, we may have even longer to comply with the final regulations).

Can we simply offer only Roth catch-up contributions? No. As the operation of these rules is burdensome, some plan sponsors have considered just offering Roth catch-up contributions for all participants. In a footnote to the proposed regulations, the IRS made clear that such an approach is not permissible.

Do plan sponsors have to add a Roth program to continue to offer catch-up contributions? Thankfully, no. However, impacted participants' catch-up limit will be $0 if there is no qualified Roth contribution program, and for plans subject to Code Sec. 401(a)(4) nondiscrimination rules, the plan will need to pass benefit, right, and feature (BRF) testing for the catch-up contributions. To pass testing, it is permissible to exclude additional highly compensated employees (HCEs) from making catch-up contributions.

Can a pre-tax catch-up election be deemed a Roth catch-up election? Yes. Regardless of whether a separate election or a spillover election is used, a participant's pre-tax catch-up election[3] can be deemed to be a Roth catch-up election, provided that the participant has a reasonable opportunity to elect to stop catch-up contributions.

What counts as Federal Insurance Contributions Act (FICA) wages? For this purpose, FICA wages are defined as wages subject to Social Security taxes[4] and not Medicare taxes[5] from the employer sponsoring the plan for the preceding calendar year, and are taken into account the same time the wages are taken into account for FICA tax purposes. This excludes: (1) a partner who had only self-employment income, (2) an individual who had wages under Code Sec. 3231(e) that are subject to tax under the Railroad Retirement Tax Act, (3) a state or local government employee covered under Code Sec. 3121(b)(7) without regard to Code Sec. 3121(u), and (4) compensation that was taxed earlier under Code Sec. 3121(v)(2). The regulations also clarify that the FICA wages are from the participant's common law employer contributing to the plan (which also applies to multiemployer plans). It does not include wages from the controlled group. (Note there is an extended effective date for these regulations for collectively bargained plans.)

Is the FICA limit prorated for the first year of hire? No, the limit is not prorated for the first year of hire.

Are all participants required to be eligible to make Roth catch-up contributions? Yes, if the plan has at least one participant subject to the Roth catch-up requirement (and the plan has a Roth deferral program), then all participants must be provided the right to make Roth catch-up contributions. There is an exception for a dual-qualified plan, where Puerto Rico participants can be offered after-tax catch-up contributions to meet this rule.

What Roth contributions are counted for this Roth catch-up mandate? All of a participant's Roth deferrals during the year count towards the Roth catch-up limit (regardless of when made). Deferrals that are converted to catch-up contributions to pass ADP nondiscrimination testing are also taken into account.

Are there pre-approved correction approaches for failure to comply? Yes, the proposed regulations have detailed correction procedures to either distribute the pre-tax catch-up or convert the pre-tax to Roth catch-up contributions, including recharacterized contributions to pass the actual deferral percentage (ADP) test. To retain the catch-up contributions, either a Form W-2 correction or a Form 1099-R (in-plan Roth rollover) may be available if the same approach applies to all impacted participants for the plan year and certain other requirements are met (including correction deadlines depending on the situation).

Super Catch-up Contributions (Age 60–63 Years)

Are super catch-up contributions optional? Yes, the proposed regulations confirm that super catch-up contributions are optional.

Is there relief from the universal availability rule? There is some relief in that a plan can offer a super catch-up without violating the universal availability rule. However, it appears that there is no relief for plans within the same controlled group to make a different election. Note that there is relief for Puerto Rico plans that do not have these same rules.

Next Steps

For Roth catch-ups, plan sponsors should work with their payroll provider and recordkeeper to be in a position to comply with the Roth catch-up mandate for 2026—from the proposed regulations, we can see there will be a number of administrative changes needed to make this all work. And those who are not adding a Roth program will need to track the impacted participants to ensure they are not able to make catch-up contributions (and check on discrimination testing if not a governmental plan). For the super catch-up, it is optional but if someone in the controlled group is offering it, check on the other plans within the group for compliance. For the plan document, no worries for now as we generally have until December 31, 2026 for amendment language for these changes.

ENDNOTES

1 90 FR 2645 (Jan. 13, 2025).
2 Code Sec. 3121(a).
3 Code Sec. 401(k) or 403(b).
4 Code Secs. 3101(a) and 3111(a).
5 Code Sec. 3101(b) and 3111(b).