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IRS RELEASES PROPOSED REGULATIONS ON SECURE 2.0 CATCH-UP PROVISIONS

The Internal Revenue Service (IRS) has issued [proposed regulations](#) providing guidance for employers regarding new provisions on catch-up contributions as permitted by the SECURE 2.0 Act of 2022 ([SECURE 2.0](#)).

The SECURE 2.0 provisions addressed in the proposed regulations require Roth treatment of catch-up contributions for certain employees (Section 603), an optional enhanced catch-up limit for employees ages 60–63 (Section 109), and increased contribution limits for employees age 50 or older for certain SIMPLE IRA plans and SIMPLE 401(k) plans (Section 117). The proposed regulations would also amend the current regulations to align these SECURE 2.0 provisions with the general rules for catch-up contributions under the applicable Internal Revenue Code sections.

Mandatory Roth Catch-Up Contributions

Currently, employees age 50 or older may elect to make catch-up contributions to 401(k), 403(b), or governmental 457(b) plans with either pretax or Roth elective deferral contributions. Section 603 of SECURE 2.0 changes the rules to require that all catch-up contributions be made on a Roth basis for an employee age 50 or older whose prior-year Federal Insurance Contributions Act (FICA) wages exceed \$145,000 (indexed beginning in 2025). Although this rule was effective on January 1, 2024, the IRS announced a two-year transition period in August 2023 that permits catch-up contributions to be treated as satisfying the mandatory Roth catch-up rules outlined in SECURE 2.0 until 2026—even if the contributions are designated as pretax rather than Roth elective deferrals. Mandatory Roth catch-up contributions do not apply to SEPs or SIMPLEs.

The proposed regulations add Treasury Regulation (Treas. Reg.) 1.414(v)-2, which describes the general rules for administering mandatory Roth catch-up contributions as provided by SECURE 2.0.

- Universal Availability Rule.** The proposed regulations state that a plan without a designated Roth contribution program will satisfy the universal availability rule for catch-up contributions even if the plan does not permit employees who are subject to the Roth catch-up requirement the ability to make catch-up contributions. But a plan could fail the nondiscriminatory availability of benefits, rights, and features as described in Internal Revenue Code Section ([IRC Sec.](#)) 401(a)(4) if at least one highly compensated employee (HCE) is allowed to make pretax catch-up contributions but a non-highly compensated employee (NHCE) is not. The proposed regulations suggest that the solution to this issue may be to preclude enough HCEs that are not subject to the mandatory Roth catch-up contribution requirement from making catch-up contributions in order to pass nondiscrimination testing.
- Determination of Annual Wage Threshold.** For taxable years that start on or after January 1, 2024, employees must have earned more than \$145,000 (indexed) in FICA wages in the previous calendar year to be required to make Roth catch-up contributions. The annual FICA wages for an employee's first year of employment will not be adjusted or prorated when determining if he meets the mandatory Roth catch-up

contribution threshold. In 2025 and later years, cost-of-living adjustments to the wage threshold will be made in \$5,000 increments.

- **Determination of Catch-Up Contributions as Roth.** If an employee chooses to make a catch-up contribution and is subject to the mandatory Roth catch-up requirement, any additional contributions that she makes (e.g., excess deferral contributions) must generally be treated as designated Roth contributions. This rule applies unless the employee has already made enough designated Roth contributions for the year to meet the catch-up contribution amount that must be treated as Roth.

In addition, elective deferrals that are determined to be catch-up contributions as a result of a failed actual deferral percentage (ADP) test must be treated as designated Roth contributions for employees subject to the mandatory Roth catch-up requirement.

An employee who chooses to make a catch-up contribution can make after-tax contributions in order to meet the mandatory Roth catch-up contribution requirement if she is subject to the Puerto Rico tax rules (i.e., the retirement plan is a dual qualified plan).

- **Determination of Employer.** An employer is the common law employer that provides an employee's FICA wages and contributions to a plan that it sponsors (including multiemployer plans). When determining if an employee's catch-up contributions must be Roth, the employer sponsoring the plan does not include other entities that are generally treated as a single employer (e.g., controlled groups or affiliated service groups).
- **Multiemployer Plans and Multiple Employer Plans (MEPs).** Wages are not aggregated between employers that participate in a multiemployer plan or a MEP when determining if an employee's FICA wages exceed the minimum catch-up amount that must be treated as designated Roth contributions. Also, catch-up contributions made by an employee are not required to be treated as designated Roth contributions in any other plan that the employee participates in other than the plan sponsored by the employer under which he exceeds the FICA wage limit.
- **Correction Methods for "Section 414(v)(7) Failure".** The failure to make a catch-up contribution as a designated Roth contribution for employees subject to the mandatory Roth catch-up contribution requirement is called a "section 414(v)(7) failure". The proposed regulations provide two corrective methods that treat amounts originally contributed as pretax deferrals as designated Roth contributions for employees subject to the mandatory Roth catch-up contribution requirements. But during each plan year, the employer will be required to apply the same correction method for all employees with elective deferrals that exceed the same applicable limit.
 - **IRS Form W-2 Method.** This method is available only if [Form W-2, Wage and Tax Statement](#), has not been provided to the employee. The employer may use this method to correct a Section 414(v)(7) failure by
 - transferring the catch-up contribution (adjusted for earnings) from a pretax deferral account to a designated Roth deferral account, and
 - reporting the catch-up contribution (not adjusted for earnings) as a designated Roth deferral on Form W-2 for the year the contribution was withheld.
 - **In-Plan Roth Rollover (IRR) Method.** This corrective method involves
 - directly rolling over a catch-up contribution (adjusted for earnings) from a pretax deferral account to a designated Roth deferral account, and
 - reporting the IRR for the year that the rollover was completed on [Form 1099R, Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.](#)

The corrective methods are available only to employers that have compliance procedures in place at the time an elective deferral is made—except when the deferral amount exceeds a limit imposed by the employer or is classified as a catch-up contribution in order to pass ADP testing. The compliance procedures must state that elective deferrals will automatically be treated as designated Roth contributions when limits under IRC Secs. 401(a)(30) or [415\(c\)](#) are exceeded for an employee subject to the mandatory Roth catch-up contribution requirement.

An employer can be treated as having established practices and procedures if it relies on a timely filed Form W-2 to determine FICA wages. But if an employee's timely filed Form W-2 reported an incorrect FICA wage amount for the preceding calendar year, the employer would have to correct any pretax catch-up contributions

that should have been reported as designated Roth contributions based on the adjusted FICA wages for the preceding calendar year.

The deadlines to correct section 414(v)(7) failures are shown below.

| Reason for 414(v)(7) Failure | Correction Deadline |
|---|--|
| IRC Sec. 401(a)(30) Elective Deferral Limit | April 15 |
| IRC Sec. 415(c) Annual Additions Limit | 30 days after the employer's tax return due date, plus extensions for the taxable year with or within which the plan's limitation year ends. |
| Exceed Deferral Limit Provided by Employer | • 2½ months* after the close of the plan year |
| Deferral Classified as Catch-Up in Order to Pass ADP Test | • 2½ months* after the close of the plan year |
| | * 6 months after the close of the plan year if plan has an eligible automatic contribution arrangement (EACA) provision |

- **Deemed Roth Catch-Up Election.** The current regulations state that employees age 50 or older must make an affirmative election in order to make Roth catch-up contributions. The proposed regulations amend [Treasury Reg. 1.401\(k\)-1](#) to permit the election by an employee subject to mandatory Roth catch-up contributions to be deemed to irrevocably designate all catch-up contributions as Roth if the following criteria are met.
 - Deemed Roth catch-up contributions are not excludable from compensation.
 - Deemed Roth catch-up contributions are maintained in a designated Roth account.
 - An employee must have the option to make a new deferral election that is different than the deemed Roth election (e.g., to stop making catch-up contributions).

The determination of whether an election is considered a “deemed Roth election” is based on relevant facts and circumstances.

- **403(b) Plans.** The proposed regulations amend [Treas. Reg. 1.403\(b\)-3\(c\)\(1\)](#) to provide sponsors of 403(b) plans the ability to accommodate the deemed Roth catch-up election.

Increased Catch-Up Limits

The proposed regulations amend [Treas. Reg. 1.414\(v\)-1](#) to align with Sections 109 and 117 of SECURE 2.0. Section 109 provides for the enhanced catch-up contribution for employees who attain ages 60–63 by the end of the calendar year, while Section 117 provides for increases to catch-up contribution limits for employees age 50 or older who contribute to [certain SIMPLE 401\(k\) and SIMPLE IRA plans](#). Note that Section 117 provides for increased regular deferral limits as well, but this is not addressed in the proposed regulations. The proposed regulations confirm the increased catch-up limits available for certain plans as shown below.

| | Enhanced Catch-Up Limit 2025 | Calculation Method |
|---|-------------------------------|---------------------------------------|
| 401(k), 403(b), and Governmental 457(b) Plans | \$11,250 | 150% of \$7,500 (2024 limit, indexed) |
| SIMPLE 401(k) and SIMPLE IRA Plans | \$5,250 | 150% of \$3,500 (2025 limit, indexed) |
| | Increased Catch-Up Limit 2025 | Calculation Method |
| Certain SIMPLE Plans | \$3,850 | 110% of \$3,500 (2024 limit, indexed) |

- **Enhanced Catch-Up is Optional.** The proposed regulations state that employers are not required to offer enhanced catch-up contributions for employees who attain ages 60–63. Instead, employers can choose to limit catch-up contributions to the same amount as available for other catch-up eligible employees.
- **Universal Availability Rule.** The universal availability rule requires employers that allow employees to make catch-up contributions to offer all eligible employees the opportunity to make catch-up contributions up to the same dollar amount. The proposed regulations amend Treas. Reg. 1.414(v)-1 to permit employers the ability to provide employees the opportunity to make catch-up contributions up to the maximum amount available—even if the dollar amounts are different for each employee. Thus, employers may permit different dollar amounts as limits for catch-up contributions for employees ages 60–63 (if an employer elects to permit this provision).

Effective Dates

- **Mandatory Roth Contributions.** The proposed mandatory Roth catch-up regulations apply to contributions in taxable years beginning after December 31, 2023. While employers can apply the proposed mandatory Roth catch-up rules in any taxable year beginning after December 31, 2023, the proposed regulations will go into effect six months after the date that the final regulations are published.

For collectively bargained plans, the regulations will apply the later of

- the first taxable year that is six months after the date that the final regulations are published, or
 - the first taxable year beginning after the date on which the last collective bargaining agreement is in effect on December 31, 2025 (not including extensions) terminates.
- **Increased Catch-Up Contributions.** The proposed amendments will generally apply to enhanced catch-up contributions (Section 109) and increased catch-up contributions to SIMPLE plans (Section 117) for taxable years that begin six months after the date that the final regulations are published.

Next Steps

The IRS is accepting written comments on the proposed regulations until March 14, 2025. Specifically, the IRS invites comments explaining how the proposed regulations may affect small businesses. The IRS has also scheduled a public hearing on April 7, 2025.

Visit futureplan.com for the latest developments on SECURE 2.0 provisions.

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