

January 15, 2025

IRS Issues Proposed Regulations Regarding Catch-up Contributions in Qualified Retirement Plans

On January 10, 2025, the Internal Revenue Service (IRS) issued proposed regulations (Proposed Regulations) addressing the following three provisions of the SECURE 2.0 Act of 2022 (SECURE 2.0) that impact catch-up contributions to employer-sponsored retirement plans:

- The Roth mandate of Section 603, which provides that 401(k), 403(b), and governmental 457(b) plan participants with FICA wages over \$145,000 (as adjusted for inflation) in the prior year can only make Age 50+ catch-up contributions on a Roth basis and not on a pre-tax basis.
- The enhanced catch-up contributions of Section 109, which allows for additional catch-up contributions to 401(k), 403(b), governmental 457(b), SARSEP, SIMPLE IRA, and SIMPLE 401(k) plans for employees who attain age 60, 61, 62, or 63 during the calendar year.
- Section 117, which increases the contribution limits for SIMPLE IRA and SIMPLE 401(k) plans sponsored by an employer with 25 or fewer employees to 110 percent of the limits that would otherwise apply with respect to such plans for 2024 (as adjusted for inflation).

The full text of the Proposed Regulations can be found on the Federal Register at:

<https://www.federalregister.gov/documents/2025/01/13/2025-00350/catch-up-contributions>

BACKGROUND – NOTICE 2023-62:

Section 603 of SECURE 2.0 mandated that, effective in the 2024 calendar year, participants who received prior year FICA wages (as further defined below) from the employer sponsoring the plan in excess of \$145,000 (as adjusted for inflation) must make any catch-up contributions on a Roth basis. The IRS recognized concerns raised by plan sponsors and service providers about implementing this provision in timely manner. As a result, they released IRS Notice 2023-62, which established a two-year administrative relief period for 2024 and 2025, during which plans are deemed to be in compliance with the mandate even if applicable participants continue to make pre-tax catch-up contributions.

PROPOSED REGULATIONS:

Roth Catch-up Mandate

Deemed Election. The Proposed Regulations allow a plan to implement an administrative policy to determine that a participant subject to the Roth catch-up mandate is deemed to have irrevocably designated any catch-up contributions as designated Roth contributions, regardless of whether the plan requires separate elections for regular elective deferrals and catch-up contributions or utilizes a spillover design. The Proposed Regulations further clarify that a participant must still be given an effective opportunity to make a different election, based on all relevant facts and circumstances.

FICA Wages. The Proposed Regulations provide that applicable wages are determined specifically by reference to the Social Security FICA tax, and not by reference to the Medicare tax. This means that an individual who did not receive FICA wages from the employer sponsoring the plan in the preceding calendar year that exceeded the applicable threshold is not subject to the Roth catch-up mandate. This exclusion includes individuals with only self-employment income, and State or local government employees whose wages are not subject to Social Security taxes. Additionally, the FICA wage threshold is not pro-rated for individuals employed less than the full calendar year.

Determination of Employer. The Proposed Regulations state that the individual's common law employer is the entity from which the individual's FICA wages will be measured. Further, if the individual received wages from two employers who both have adopted the plan, the wages would not be aggregated. This is true for 1) a multiemployer plan, 2) a multiple employer plan (MEP), 3) a pooled employer plan (PEP), 4) professional employer organizations (PEO) or third-party payroll providers engaged by two or more entities that employed the individual, and 5) related employers in a controlled group or affiliated service group with the individual's common law employer that are treated as a single employer under Internal Revenue Code (Code) sections 414(b), (c), (m), or (o). Finally, the IRS confirmed that wages from an employer other than an employer sponsoring the plan are ignored.

Roth is Optional. The Proposed Regulations confirm that a plan is not required to offer Roth contributions, but if it does not, employees subject to the Roth catch-up mandate cannot make any catch-up contributions. Additionally, the Proposed Regulations confirm that if a plan does not offer Roth contributions but permits employees who are not subject to the Roth catch-up mandate to make pre-tax catch-up contributions, the plan would not violate the universal availability rule. However, the foregoing plan design would still be subject to the benefits, rights, and features (BRF) nondiscrimination test, which generally requires all plan features be available on a nondiscriminatory basis to non-highly compensated employees (non-HCEs).

Timing of Roth Contributions. For simplicity, the Proposed Regulations stipulate that an individual subject to the Roth catch-up mandate may deposit both pre-tax and Roth contributions in any order throughout the year so long as the total of all pre-tax contributions, in aggregate at year-end, do not exceed the regulatory deferral limit.

Correction of Roth Catch-up Operational Failures. The IRS recognizes that errors may occur in applying the Roth catch-up mandate. Thus, the Proposed Regulations include two additional self-correction options:

- 1) **Adjusting W-2's to Reflect a Roth Contribution.** The plan would transfer the pre-tax catch-up contribution, adjusted for gain or loss, to the participant's designated Roth account. The employer would only report the contribution amount (*not* adjusted for gain or loss) as a designated Roth contribution on the participant's Form W-2. As a result, only the contribution amount being included in gross income. This correction option is not permitted once the Form W-2 has been filed with the IRS or furnished to the participant, and as such, would not likely be available if pre-tax deferral contributions are recharacterized as catch-up contributions to satisfy the actual deferral percentage (ADP) test or the Code section 415 limit.
- 2) **In-Plan Roth Conversion.** The plan would process an in-plan Roth conversion of the pre-tax amount (adjusted for gain or loss) and report the amount on Form 1099-R, which would result in both the contribution and gains or losses being reflected in the amount of taxable income reported. Generally, the deadline to use this option is April 15 of the calendar year after the year of improper pre-tax deferral. However, in the case of a contribution being characterized as catch-up because of the Code section 415 limit or the ADP test, the deadline is generally the same deadline to make 415 corrections or ADP corrections, respectively.

Important Note: Consistent with IRS correction procedures, plans utilizing these self-correction methods must have policies and procedures designed to result in compliance. In addition, the plan must have in place the administrative policy to determine that a participant subject to the Roth catch-up mandate is deemed to have irrevocably designated any catch-up contributions as designated Roth contributions, as described earlier.

Enhanced Catch-up Rule

Provision is Optional. The IRS confirmed that a plan may be designed to limit all participants to the same catch-up contribution amount. Thus, a plan could choose to permit catch-up contributions for participants who are age 50 and older but not offer enhanced catch-up contributions for participants who are age 60-63. Further, the Proposed Regulations confirm that a plan does not fail the universal availability rule merely because participants age 60-63 can make higher catch-up contributions than everyone else. However, it would violate the universal availability requirement for a plan to only allow catch-up contributions by those age 60-63.

Puerto Rico. The Proposed Regulations include special rules for dual-qualified plans that must also satisfy the Puerto Rico Internal Revenue Code, which has different rules for catch-up contributions.

SIMPLE Plans

The Proposed Regulations set forth the increased applicable dollar catch-up limit that applies under a SIMPLE IRA or SIMPLE 401(k) plan pursuant to section 117 of SECURE 2.0. The increased catch-up limit is 110 percent of the applicable dollar catch-up limit that applies during a taxable year beginning in 2024, or \$3,850, which will be adjusted for inflation for tax years beginning after 2024.

Effective Date

Generally, the IRS proposes to make these regulations applicable for years beginning after six months after publication of the final rules; however, a plan is permitted to apply the regulations early. Note that although the regulations are not proposed to be applicable until after the final regulations are published, they do not include a further delay in the enforcement of the Roth catch-up mandate. Thus, plan sponsors should be prepared to implement this mandate in 2026 after the two-year administrative relief period provided for in Notice 2023-62 expires.

Finally, note that in the case of a collectively bargained plan, the Roth catch-up mandate regulations will apply beginning on the first taxable year beginning after the later of 1) six months after publication of the final rules, or 2) the termination date of the last collective bargaining agreement that was in effect on December 31, 2025, without regard to extensions.

This publication is meant only as a high-level summary of some of the key points contained in the Proposed Regulations. Plan sponsors should review the final regulations with the plan's attorney to determine impact of these changes on the sponsor's retirement plan. Voya will continue to monitor and communicate future developments.

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