

CLIENT ALERT

IRS Announces Two-Year Transition Period for Mandatory Roth Catch-Up Contributions

August 30, 2023

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On August 25, 2023, the Internal Revenue Service (IRS) released [Notice 2023-62](#) (Notice), announcing a two-year administrative transition period with respect to the requirement under the SECURE Act of 2022 (SECURE 2.0) that catch-up contributions made on behalf of high wage earners be designated as Roth contributions. The Notice also corrected a technical error in SECURE 2.0 that could have eliminated all catch-up contributions. More guidance is expected from the IRS which, together with the transition period, should be viewed as welcome news for plan sponsors.

Background

Many 401(k) and 403(b) plans offer catch-up contributions to participants who will reach age 50 by the end of the year. Catch-up contributions allow eligible participants the opportunity to contribute additional deferrals that exceed an otherwise applicable legal, plan or non-discrimination testing limit. The amount of catch-up contributions permitted to be made is currently \$7,500, and is regularly adjusted to reflect cost-of-living increases. Catch-up contributions may be made on a pre-tax basis or, if the plan permits Roth contributions, on a Roth basis.

Section 603 of SECURE 2.0 amends the rules governing catch-up contributions. It provides that catch-up contributions for participants whose wages from the employer sponsoring the plan exceeded \$145,000 (as adjusted) in the preceding calendar year must be designated as Roth contributions. Wages for these purposes include compensation taken into account for FICA/FUTA purposes. If Roth catch-up contributions are made available for participants making in excess of the threshold amount under Section 603, then Roth catch-up contributions must also be available to all other participants, regardless of their compensation.

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While seemingly simple in words, the provision has resulted in confusion and implementation concerns among plan sponsors and recordkeepers in advance of the original January 1, 2024 effective date. More so, for plans that do not currently offer Roth contributions, plan sponsors were facing a decision between eliminating catch-up contributions for all participants and adding a Roth feature.

Transition Guidance

The Notice provides an administrative transition period until December 31, 2025. Until tax years beginning on and after January 1, 2026, (i) catch-up contributions will be treated as satisfying the requirements of Section 603, even if the contributions are not designated as Roth contributions for high wage earnings, and (ii) a plan that does not provide for designated Roth contributions will be treated as satisfying the requirements of Section 603.

The transition period provides plan sponsors an additional two-year period to implement the changes under Section 603, based on forthcoming guidance from the IRS.

Additional Guidance and Next Steps

In addition to providing the two-year administrative period to facilitate an orderly transition for compliance, the IRS announced:

- **Resolution to Technical Glitch:** SECURE 2.0 mistakenly left out certain language which could have had the effect of eliminating catch-up contributions altogether. The IRS confirmed that eligible participants can continue to make catch-up contributions after 2023.
- **Expected Guidance:** Although the IRS has requested comments on the Roth catch-up mandate, it announced that future guidance is *expected* to include:
 - Participants without FICA wages, such as self-employed individuals, would be excluded for purposes of the mandatory Roth catch-up because they do not meet the applicable wage threshold. This means that partners or other self-employed individuals who do not have any wages for FICA purposes would not be required to contribute their catch-up contributions on a Roth basis.
 - Plans would be permitted to treat a covered participant's election to make catch-up contributions on a pre-tax basis as an election to make catch-up contributions that are designated as Roth contributions. If finalized, this should allow plan sponsors to implement the mandatory Roth catch-up contributions for participants with a catch-up contribution election on file, without seeking new elections.

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- For plans maintained by more than one employer (e.g., a multiemployer or multiple employer plan), each participating employer would be permitted to look solely to the wages it paid for purposes of compliance. Employers would not be required to aggregate wages with any other participating employer.

Remember that this guidance is not final. Notwithstanding the expectation announced by the IRS, it is possible that this guidance will change and plan sponsors should continue to monitor IRS updates on this matter.

- **Employer Action:** While the two-year administrative period is welcome news, employers should continue to plan for the future changes. As the original effective date approached, it became clear that the implementation and communication of Section 603 will take time and require coordination between plan sponsors, payroll teams, and recordkeepers. Employers should use this time to continue planning, for example, how and when affected participants will be identified for each year; whether participants will be requested to make new elections or whether existing amounts are to be used; and how participants will be notified if they are affected.

For plans that do not offer Roth contributions, further consideration should be given to whether to implement a Roth program. Although the Notice requests guidance on the application of the law to plans that permit catch-up contributions, but do not permit Roth contributions, there is no indication of how the IRS will ultimately view this point. Plan sponsors may need to make a Roth feature available in order to offer catch-up contributions after the transition period ends.

Further guidance is expected and employers should stay tuned.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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