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Final Catch-Up Contribution Regulations under SECURE 2.0 Act

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On September 15, 2025, the Department of Treasury and Internal Revenue Service issued final regulations addressing catch-up contribution rules for 401(k) plans, 403(b) plans, and governmental 457(b) plans under the SECURE 2.0 Act of 2022 ("SECURE 2.0"). Catch-up contributions are additional deferral contributions available to participants who are or will be age 50 or older by the end of a year. The final regulations reflect the following SECURE 2.0 provisions:

- "Super" Catch-Up Contributions : A higher catch-up contribution limit applies to employees who attain ages 60-63 during a year, which was first effective for beginning in 2025.
- Mandatory Roth Catch-Up Contributions (MRCs) for High Wage Employees: Catch-up eligible employees with wages over $145,000 (indexed for inflation) in the prior calendar year will be eligible to make catch-up contributions only on a Roth (after-tax) basis. Under SECURE 2.0, this MRC rule was originally set to become effective for plan years beginning in 2024, but the IRS provided an administrative transition period (described here) that allowed for the delay of implementation until 2026.

Proposed regulations were issued for these provisions in January 2025, which we described here. The final regulations generally adopt provisions from the proposed regulations, but with a few changes that should ease the administration of the new rules for employers, including the following:

- Aggregation of employers for MRC requirement.The determination of whether an employee is a high-wage employee subject to the MRC requirement is determined based on prior year wages received from the entity that is the common law employer.This differs from most qualified retirement plan rules, which generally treat affiliated employers as a single employer.Further, under the proposed regulations, a plan was not permitted to aggregate wages for affiliated employers for purposes of MRCs because each catch-up eligible employee who was not subject to the MRC requirement must be permitted to make catch-up contributions on a pre-tax basis.

  The final regulations maintain the rule that MRC status is determined solely based on the employer and not on a controlled group basis. For example, in the event that employees subject to the MRC

requirement under one employer transfer to an affiliate for whom they do not have prior year wages, they would no longer be subject to the MRC requirement following the transfer. However, the final regulations provide plans with more flexibility for administration by allowing plans to be designed to allow for aggregation of employers that use a common paymaster or for employers within the same controlled group. As a result, a plan can be designed and administered to aggregate wages of affiliated employers, so that employees who transfer to an affiliated employer may still be subject to the MRC requirement by aggregating their prior year wages from the affiliated employers.

In addition, in the context of an asset purchase, the final regulations allow for the MRC determination to be made based on wages reported by a successor employer that issues a Form W-2 for the entire year of the transaction.

- Separate catch-up contribution elections.The proposed regulations provided that if a plan offers a separate election for catch-up contributions, and the participant elected Roth elective deferrals (as non-catch-up contributions), the Roth elective deferrals could be reclassified as catch-up contributions so that they would be taken into account for purposes of the MRC requirement.

  The final regulations provide that if a plan has a separate deferral election for catch-up contributions, the plan can provide for a deemed Roth catch-up election for a participant subject to the MRC requirement, as long as the participant has the effective opportunity to make a new election that is different than the deemed election.

- Puerto Rico employees. The MRC rules provide complications for plans that are dual-qualified in Puerto Rico because the Puerto Rico tax code limits catch-up contributions to $1,500 and does not allow for Roth contributions.The proposed regulations created an exception to the “universal availability” requirement that catch-up contributions must be provided in the same dollar amount to all participants under all plans maintained by an employer and its affiliates on a controlled group basis so that Puerto Rico employees may be limited to the Puerto Rico limit of $1,500, and Puerto Rico employees subject to the MRC requirement can make catch-up contributions on an after-tax (non-Roth) basis.

  The final regulations retain the exception to the universal availability requirement so that catch-up contributions of Puerto Rico participants can be limited by the Puerto Rico tax code. Further, the final regulations provide that until the Puerto Rico tax code is amended to allow for Roth contributions, Puerto Rico participants will be deemed to have satisfied the MRC requirement. In effect, this means that Puerto Rico participants would be permitted to make catch-up contributions on a pre-tax basis (up to the Puerto Rico catch-up limit), even if their wages exceed the MRC threshold.

Applicability Date and Amendment Deadline:

- The final regulations for MRC contributions must be followed in taxable years beginning in 2027 or later.Until that time, a reasonable, good faith interpretation standard applies to the statutory provisions of SECURE 2.0.

- The deadline for plan documents to be amended is generally December 31, 2026.

- Special applicable and amendment deadline dates apply for governmental and collectively bargained plans.