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IRS Issues Proposed Regulations on SECURE 2.0 Catch-Up Changes

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On January 10, 2025, the IRS and Treasury announced proposed regulations addressing catch-up contribution provisions under the SECURE 2.0 Act of 2022 (SECURE 2.0) for 401(k) plans, 403(b) plans and governmental 457(b) plans. Participants who attain age 50 or older by the end of a plan year have higher contribution limits for elective deferrals, known as "catch-up contributions." SECURE 2.0 modified the catch-up contribution rules in two important ways:

- "Super" Catch-Up Contributions : A higher catch-up contribution limit applies to employees who attain ages 60-63 during a plan year, which is first effective for plan years beginning in 2025.
- Roth Catch-Up Contributions 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 beginning in 2026.

The proposed regulations address both of these catch-up provisions. While the proposed regulations will not be effective until six months after they are issued as final regulations, plans are permitted to apply them beginning in 2025.

Super Catch-Up Contributions for Employees Ages 60-63

While the 2025 catch-up contribution limit for employees who will attain age 50 or older by the end of the plan year is $7,500 (in addition to the $23,500 deferral limit), employees who attain ages 60, 61, 62, or 63 are eligible for super catch-up contributions for up to $11,250 (inflation indexed in future years).

The super catch-up limit is an optional feature first effective January 1, 2025. Plans are not required to allow for super catch-up contributions or to provide for catch-up contributions at all.

Catch-up contributions are subject to a "universal availability" requirement, under which all catch-up eligible employees must be permitted to make the same dollar amount of catch-up contributions. The universal availability requirement applies to all plans maintained by an employer and its affiliates on a controlled group basis.

The proposed regulations clarify that the universal availability requirement would not be violated merely because a plan offers super catch-up contributions. However, the universal availability rule would require that all plans in the controlled group be consistent in offering or not offering super catch-up contributions.

Further, the proposed regulations recognize that the Puerto Rico tax code imposes a lower limit for catch-up contributions ($1,500 for tax years beginning in 2025). Accordingly, a plan that is dual-qualified

in the US and Puerto Rico may limit catch-up contributions for Puerto Rico employees to the Puerto Rico catch-up limit without violating the universal availability requirement.

Roth Catch-Up Contributions for High Wage Employees

SECURE 2.0 requires that any catch-up contributions made by high wage employees may only be made on a Roth (after-tax) basis.This requirement was initially effective January 1, 2024, but in recognition of administrative difficulties in implementing this provision, the IRS provided an "administrative transition period" that effectively delayed the requirement until January 1, 2026. (See our earlier blog post on the delay in the SECURE 2.0 Roth catch-up requirement.) The proposed regulations clarify the Roth catch-up contribution requirements for high-wage employees as follows:

- High Wage Employees: The Roth catch-up contribution rule applies to employees who had $145,000 (indexed for inflation in future years) or more in FICA wages from the employer in the prior year.
  - Employees cannot be subject to this requirement in their first year of employment with an employer because they do not have prior year wages from the employer.
  - Business owners and partners with only self-employment income (i.e., not Form W-2 employees) are not subject to this rule because they have no FICA wages.
  - Only wages paid by the common law employer are counted for this purpose.If an employee is a common law employee of more than one entity, wages paid by the entities are not aggregated even if the entities are in the same controlled group.

- Plans without Roth Features: Plans without a Roth contribution feature may either add a Roth contribution feature to allow catch-up contributions for high wage employees or exclude high wage employees from making catch-up contributions.
  - Excluding high wage employees from making catch-up contributions would not violate the universal availability requirement for catch-up contributions.
  - If the plan permits high wage employees to make catch-up contributions on a Roth basis, then all catch-up eligible participants must be permitted to make catch-up contributions on a Roth basis.

- US and Puerto Rico Dual-Qualified Plans: Because the Puerto Rico tax code does not provide for Roth contributions, Puerto Rico high wage earners may be permitted to make catch-up contributions on an after-tax (non-Roth) basis as permitted by the Puerto Rico tax code.

- Deemed Roth Elections: A plan may provide that participants who elect to make catch-up elections on a pre-tax basis may automatically be deemed to have elected to make catch-up contributions on a Roth basis if they are determined to be high wage employees subject to the Roth requirement. However, employees must be permitted to have an effective opportunity make a new election to cease making additional elective deferrals.

- Reclassifying Roth Contributions as Catch-Up: If a high wage employee who is eligible for catch-up contributions has contributed Roth contributions, the Roth contributions may be classified as catch-up contributions to satisfy the Roth catch-up contribution, even if the Roth contributions were made before the Section 402(g) elective deferral limit was exceeded. For example, if a high wage employee contributed $7,500 as elective Roth deferrals before reaching the elective deferral limit under Section 402(g) (i.e., $23,500 for 2025), the Roth deferrals could be taken into account for purposes of satisfying the Roth contribution requirement for catch-up contributions, so that the participant would still be permitted to make other elective deferrals on a pre-tax or Roth basis up to the Section 402(g) limit.

- Correcting Violations: If a plan does not provide for a deemed Roth election, then any pre-tax catch-up contributions made by high wage employees may only be corrected by distributing the catch-up contributions to the employee under the rules permitting excess contributions to be refunded by April 15 of the following year. However, if the plan provides for a deemed Roth election, the catch-up contributions can be corrected under one of the following methods, which must be applied consistently for all affected participants in a plan year:
    - Form W-2 Correction: The catch-up contributions can be transferred to a Roth account and reported on the Form W-2 for the year. This correction is not permitted after the Form W-2 has been filed, so it would generally not be available in cases where elective deferrals were reclassified as catch-up contributions under the ADP test because the ADP test is typically not performed before the Form W-2 due date.
    - Roth In-Plan Conversion: Pre-tax catch-up contributions can be converted to Roth contributions under a Roth in-plan conversion feature and reported on Form 1099-R.
    - Practices and Procedures: To use the correction procedures, a plan must have practices and procedures in place to comply with the Roth catch-up contribution requirement at the time that the deferral is made. However, a plan would not fail to have reasonable practices and procedures in place merely because the identification of high wage employees is not made until the timely filing of a Form W-2 for the prior year.
    - Correction Deadlines: The deadline for correcting pre-tax catch-up contributions of high wage employees is April 15 of the following year when elective deferrals are subject to the Section 402(g) limit ($23,500 for 2025).However, when there is a lower plan-imposed dollar limit or elective deferrals are limited by the ADP test, the deadline for correcting elective deferrals is within 2½ months of the end of the year, or 6 months for plans with an eligible automatic contribution arrangement, which is based on the timing requirements for correcting a failed ADP test by distributing excess deferrals.