



Mandatory Roth 401(k) and 403(b) Catch-Up Contributions Under the SECURE 2.0 Act

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The SECURE 2.0 Act of 2022 included several changes that may increase Roth treatment of retirement plan contributions. See our prior [client alert](#). One SECURE 2.0 provision mandates Roth treatment of catch-up contributions made by higher-wage employees. This provision was originally set to be effective for 2024, but the IRS announced an “administrative transition period” until 2026 via [Notice 2023-62](#). That transition period is nearly over, and [final IRS regulations](#) in September 2025 answer many questions about implementing this required change. We have found there is still some confusion about the different approaches for complying with the new rule. Key decision points for plan sponsors include the following:

- Type of catch-up contribution elections – Some plans allow employees to make catch-up contributions at the same time they make regular contributions but through a separate election. Other plans have a “spillover” design so that catch-up contributions are a continuation of the “regular” deferral election beyond a plan contribution limit such as the 402(g) limit (expected to be \$24,500 in 2026). Either approach remains permissible, but their implementation of the Roth requirement will differ:
 - Separate catch-up elections – For a plan offering a separate catch-up election, it is very possible an employee making such an election does not ultimately reach the 402(g) limit, meaning their contributions elected as catch-up are not *technically* “catch-up” under IRS rules. Nonetheless, the final regulations make clear that these plans can treat the separately elected amounts as catch-up contributions by either (i) refusing to honor pre-tax catch-up elections for the higher-wage employees subject to the Roth mandate, or (ii) deeming such an election to be a Roth election.
 - Spillover catch-up contributions and when to “deem” contributions as Roth – Many plans simply allow “regular” deferral elections to continue beyond the 402(g) limit for catch-up eligible employees. The final regulations provide some flexibility for these plans to determine when to deem these contributions as Roth. For example, assume an employee contributes \$10,000 of Roth and then switches to pre-tax. The plan could switch the employee back to Roth upon reaching the 402(g) limit. Alternatively, the plan can effectively treat those initial Roth contributions as the catch-up portion and only switch the employee’s election to Roth once the individual’s pre-tax contributions reach the 402(g) limit. Either approach is permitted. The key is that the chosen

approach should be reflected in the plan document, and the application of this deemed election rule should be clearly communicated to employees.

Plans also can choose not to “deem” an employee’s pre-tax election to be Roth. In this case, the plan would stop the employee’s pre-tax election with respect to any catch-up contributions. The final regulations unfortunately are not clear that the flexibility described above for deemed elections necessarily applies for stopping the election.

- Pay tracking – The mandatory catch-up requirement applies only to higher wage employees. The threshold for 2024 (\$145,000 in 2023 wages) will be indexed to a 2026 threshold (looking back to wages in 2025). This threshold, and the compensation used to calculate it, is different than for the definition of highly compensated employee (HCE). For purposes of the Roth catch-up requirement, the relevant compensation is the prior year’s FICA wages from the employer (Form W-2, Box 5). The final regulations fortunately provide flexibility to count wages either (i) on an EIN by EIN basis, (ii) across a common paymaster, or (iii) across common controlled group members (either the entire controlled group or specified members of the controlled group), but this choice needs to be in the plan document.

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 - Non-FICA wages (such as partner or self-employment income, railroad employee income, or certain governmental employee income) do not count.
- Not required to offer Roth contributions – Plans not currently offering Roth contributions are likely to begin offering them but strictly speaking are not required to do so. If a plan does not offer Roth contributions, catch-up contributions cannot be made by the higher-wage employees subject to the Roth mandate. Ordinarily, an employer offering catch-up contributions in one plan must offer them on the same terms to all participants in all plans within the controlled group. The final regulations make clear, however, that a plan would not violate this universal availability requirement if it simply did not offer Roth contributions.
- Coordination with non-discrimination testing – Catch-up contributions are ignored for purposes of compliance with Actual Deferral Percentage (ADP) testing. A 401(k) plan can reduce the need for distributing excess contributions by highly compensated employees (HCEs) in connection with failed ADP testing by recharacterizing HCEs’ contributions as catch-up contributions if the individual is at least age 50 and did not otherwise maximize their catch-up contributions for that year. It appears that this would require recharacterization of the amount as Roth for individuals subject to the Roth mandate.

If you have any questions about this alert or the SECURE 2.0 Act, we would be glad to hear from you. Contact any member of our [Benefits and Compensation](#) practice.
