IRS Proposes Regulations on SECURE 2.0 Act Catch-Up Provisions

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Notice of Proposed Rulemaking: Catch-Up Contributions, 26 CFR Part 1, 90 Fed. Reg. 2645 (Jan. 13, 2025)

Available at https://www.govinfo.gov/content/pkg/FR-2025-01-13/pdf/2025-00350.pdf

The IRS has issued proposed regulations addressing SECURE 2.0 Act changes relating to retirement plan catch-up contributions. These include increased catch-up contribution limits for participants between the ages of 60 and 63 (beginning in 2025) and mandatory Roth tax treatment for catch-up contributions made by 401(k) plan participants whose wages for the preceding calendar year exceed $145,000 (as indexed). The mandatory Roth rule was to apply beginning in 2024, but under transition relief, plans may continue to allow all participants (including those with incomes above the threshold) to make pre-tax catch-up contributions until 2026 and will be treated as satisfying the new requirements even if they do not provide for designated Roth contributions. Here are highlights of the proposal:

- *Increased Catch-Up Limit for Certain Participants.* The proposed regulations would modify existing regulations on catch-up contribution limits to reflect the new dollar amounts for individuals reaching ages 60 through 63 and related provisions on cost-of-living adjustments. In addition, a plan would not fail to satisfy the universal availability requirement merely by permitting participants in this age range to make catch-up contributions up to the higher limit while other participants are limited to a lower amount. In general, the regulatory provisions are proposed to take effect for contributions in taxable years beginning after six months after publication of a final rule, but plans may elect to apply them for taxable years beginning after December 31, 2024.
- *Mandatory Roth Treatment.* The proposed regulations reflect the statutory requirements and provide general rules for mandatory Roth treatment of catch-up contributions, such as specifying that FICA wages would be used for purposes of determining the income threshold. The proposal would also establish operational rules for determining what portion of a deferral is a catch-up required to be designated for Roth treatment and for correcting pre-tax contributions that should have been treated as Roth contributions. The proposed regulations would not require prorating the Roth catch-up wage threshold for a participant's first year of hire, so a participant who worked part of the previous calendar year would only be subject to the Roth catch-up requirement in the current year if their wages exceeded the full threshold for the previous year. Also included are rules for determining the employer sponsoring the plan (for controlled groups or multiple employer or multiemployer plans). Plans are not required to establish Roth programs, but the catch-up amount for participants subject to mandatory Roth treatment in a plan without a Roth program would be $0, precluding these individuals from making catch-up contributions. The proposed regulations include examples and guidance on nondiscrimination rules and universal availability requirements. The regulatory provisions are proposed to take effect for contributions in taxable years beginning after six months after publication of a final rule, but plans may apply them to contributions in any taxable year beginning after December 31, 2023. In addition, for taxable

years after 2023, the proposed regulations would allow plans to provide that participants subject to the Roth catch-up requirement may be deemed to have designated any catch-up contributions as Roth contributions, so long as they were offered an effective opportunity to make a different election (such as to cease making deferrals).

EBIA Comment: These proposed regulations generally may be relied on at this time, so plan sponsors and administrators will want to review them promptly for guidance on the new rules. Interested parties may wish to submit comments on outstanding issues; the related news release notes that comments are welcome. For more information, see EBIA's 401(k) Plans manual at Sections VIII.B.3 ("Special Types of Elective Deferrals: Roth and Catch-Up") and VIII.F.8 ("Catch-Up Contributions Made by Certain Higher-Income Participants").

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