

Catch-Up Contributions Under Secure 2.0: Effective Date Relief

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On August 25, 2023, the IRS issued Notice 2023-62, which effectively delays for two years the requirement that certain catch-up contributions in 401(k), 403(b), or governmental 457(b) plans be made as Roth contributions. This requirement, added to the Internal Revenue Code (the Code) by the SECURE 2.0 Act, was to be effective for taxable years beginning after December 31, 2023. Due to concerns raised by many advocates, including the U.S. Chamber of Commerce, ERIC, and the American Benefits Council, as well as many private ERISA practitioners and retirement plan vendors, it will now be first effective for taxable years that begin after December 31, 2025.

Section 603 of SECURE 2.0 requires that any participant who earns more than \$145,000 in FICA wages make catch-up contributions in the following plan year as Roth contributions. Some of the issues raised regarding the implementation of the provision include:

- Payroll programming to calculate the amount of FICA wages (it is not a calculation otherwise required for any other benefit purposes) and the timely transmission of that information to human resources and 401(k), 403(b), or 457(b) plan vendors;
- The election process for participants who make both pre-tax and Roth contributions;
- The addition of Roth contributions to plans that otherwise did not offer Roth contributions and the general education for participants in connection with the addition of this type of contribution; and
- The determination as to whether the rule applies to participants with no FICA wages (i.e., self-employed participants).

SECURE 2.0 also contained a technical glitch that suggested that no catch-up contributions were permitted at all. This latest issuance from the IRS clarifies that catch-up contributions may in fact be made in 2024 and establishes a two-year transition period for implementing the limitations on pre-tax catch-up contributions.

The Notice also hints at the contents of guidance to come on this topic, suggesting that the IRS is prepared to take the following positions:

- The prohibition on pre-tax catch-up contributions will not apply to participants with no FICA wages, such as self-employed individuals or partners in a partnership.

- A plan sponsor may convert a pre-tax catch-up contribution election to a Roth catch-up contribution election in the event a participant's FICA wages exceed the established threshold.
- For participants in a plan sponsored by more than one employer (e.g., a multiple employer plan offered by a PEO), compensation earned at each employer will not be aggregated for purposes of determining if the participant earned more than \$145,000.

Finally, the Notice requests comments as to the treatment of a plan that does not offer, and does not plan to add, a Roth contribution feature. Under this plan design, catch-up contributions would only be offered to those who make \$145,000 or less. The IRS has questioned whether this design should be impermissible given that Section 414(v)(4) of the Code requires universal access to catch-up contributions.

If you would like additional information or have questions and/or comments regarding this *Benefits Blast*, please do not hesitate to contact me or another member of the Winston team.

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