

Details of the SECURE 2.0 Act: Provisions Related to Catch-Up Contributions and Additional Roth Options



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Finally, Some Guidance

The Treasury Department and the Internal Revenue Service (IRS) released proposed regulations relating to SECURE 2.0 provisions for retirement plan catch-up contributions in the *Federal Register* on Jan. 13 that generally go into effect in 2026.

Roth and Higher Catch-Up Contribution Guidance:

These proposed regulations would amend the regulations under IRC Section 414(v) to reflect changes to the catch-up contribution requirements for certain catch-up eligible participants under Sections 109, 117, and 603 of the SECURE 2.0 Act.

Included in this proposed regulation are rules related to a provision requiring that catch-up contributions made by certain higher-income participants be designated as after-tax Roth contributions and guidance for plan administrators to implement and comply with the new Roth catch-up rule.

As we expected the proposed regulations addressed the increased catch-up contribution limit under Section 109 of the SECURE 2.0 Act for participants between the ages of 60-63. In general, for a taxable year beginning after 2024, with respect to a catch-up eligible participant who would attain age 60, 61, 62, or 63 during the taxable year, the applicable dollar catch-up limit for the taxable year under an applicable employer plan is \$11,250 (which is 150% of the applicable dollar catch-up limit), as adjusted for changes in the cost of living. Section 117 of SECURE 2.0 addresses the contribution limit for SIMPLE plans. The proposals clarify that it is optional to allow this increased amount and you could choose to leave your catch-up limit the same for all.

The proposal clarified that if an employer plan does not include a qualified Roth contribution provision, then a participant who is subject to the Roth catch-up requirement would be prohibited from making catch-up contributions under the plan. The proposed regulations do not require a qualified plan to add ROTH provisions.

The proposed guidance also addresses the nondiscrimination requirements with respect to the “universal availability requirements” concerning catch-up contributions, as well as correcting violations of the Roth catch-up requirements.

Most importantly, the IRS will not permit retirement plan sponsors to require that all participants make catch-up contributions on a Roth basis to simplify plan administration. Plan participants earning \$145,000 or less must still have the option of making pre-tax catch-up contributions (i.e., you can’t require that all catch-ups have to be Roth).

Lastly, the proposed regulations provide two methods for correcting:

- 1) Adjusting W-2’s to reflect a Roth contribution and include in gross income. This option is not allowed once W-2s have been furnished to participants or filed with the IRS. This is only available for catch-up contributions over the 402(g) limit.
- 2) In-Plan Roth Conversion with a corresponding 1099-R reflecting amount as taxable income. This is allowable for all types of correction including those for failed 415 testing or ADP/ACP testing. The timing for conversion is the due date for the testing correction, generally.



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SECURE 2.0 Act: Catch-Up Contributions

On December 29, 2022, the SECURE 2.0 Act was included as part of a larger omnibus spending package, the Consolidated Appropriations Act, 2023. The legislation contains 92 provisions which are retirement plan related. Plan amendments made pursuant to SECURE 2.0 are to be made by the end of 2025 (2027 in the case of governmental plans) as long as the plan operates in accordance with such amendments as of the effective date of a bill requirement or amendment. It also extended SECURE 1.0 and CARES amendment deadlines to December 31, 2025.

Section 603 of the Secure 2.0 Act increases the Catch-Up contribution limit for employees who are age 60-63.

Under current provisions, the maximum catch-up contribution limit for participants over age 50 or at least age 50 by the end of the calendar year, applicable to 401(k) plans, 403(b) plans, governmental 457(b) plans, and SARSEPs for 2023 is \$7,500. This amount is indexed each year. The participant determined if the catch-up contribution was contributed pre-tax or ROTH. Catch-up contributions are intended to give older employees the opportunity to defer additional amounts on a tax-favored basis as they get closer to retirement age.

Section 603 of the Secure 2.0 Act increases the maximum catch-up contribution limit for eligible participants who will attain ages 60, 61, 62, or 63 (but not age 64) during the year. The increased limit is the greater of \$10,000 or 150% of the age 50 catch-up limit in effect for the year as adjusted for cost-of-living increases. While the intention of this change is to improve retirement readiness for employees who are closest to attaining retirement age, it adds a new layer of administrative complexity for plans.

This will require plan providers to not only track participants that are age 50 or older but also participants that will attain ages 60, 61, 62, or 63 during the calendar year to ensure that the applicable limit is properly applied. Plans will need to track participants that reach age 64 during the calendar year who “age out” of the higher catch-up limit and will again be subject to the age 50 catch-up limit. Along with the required participant notices, plans will want to send additional communication to participants that will reach age 60 or pass age 63 to help them understand the limit that will apply for a particular year. Receiving accurate dates of birth will be critical to properly administering this provision.

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EFFECTIVE DATE: This section of the Act is effective for catch-up contributions made after December 31, 2023.

Section 603 of the Secure 2.0 Act requires certain Highly Compensated participants to make their catch-up contribution as ROTH.

Under current regulations, participants make the decision to contribute elective deferrals either on a pre-tax basis or as Roth contributions. Pre-tax contributions are deducted from a participant's pay before the amounts are included in a participant's taxable income, but both the contributions and any earnings there on are taxable to the participant at the time of distribution. Roth contributions are deducted from a participant's pay after first being included in a participant's taxable income, but the Roth contributions and any related earnings are not taxed at the time of distribution as long as certain requirements are met.

Section 603 of the Secure 2.0 Act requires that any qualified plan (except a SARSEP or SIMPLE IRA plan) that allows catch-up contributions has to treat any catch-up contributions made by certain highly compensated participants as Roth contributions. For catch-up contribution purposes, a highly compensated participant is defined as an employee whose wages from the employer sponsoring the plan, during the preceding calendar year exceeds \$145,000, as adjusted for cost-of-living increases each year. This will require plans to allow ROTH contributions or not allow catch-up contributions in the plan. This will add to the overall administrative burden with the additional monitoring of participants that move in and out of highly compensated status for catch-up purposes as well as increasing the number of times a contribution election can be changed. For example, if the plan only allows changes to deferral elections twice a year, if the participant does not realize they are in the highly compensated group until after they have already made deferral contributions there may be an issue.

EFFECTIVE DATE: This section of the Act is effective for catch-up contributions made after December 31, 2023.

Section 603 of the Secure 2.0 Act allows an option to allow fully vested employer contributions to be designated as ROTH.

Under current regulations, all employer contributions are contributed to a plan as a pre-tax amount.

Section 603 of the Secure 2.0 Act allows plans to offer employees the option to elect all or a portion of their employer contributions be contributed as Roth contributions, provided that such contributions are fully vested when made to the plan. Employees electing to take advantage of



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this optional feature would have the value of the employer matching or nonelective contributions added into taxable income immediately, but future earnings on the designated Roth contributions would not be taxed if distributed through a qualified distribution. This provision will require further guidance for plans with vesting schedules. Plan sponsors will need to consider how and when to offer the Roth election or whether to make changes in the plan's vesting schedule to allow such elections.

EFFECTIVE DATE: This section of the Act is effective for contributions made after December 31, 2022. It is an optional provision.

This section of the SECURE 2.0 Act is intended to increase retirement readiness. There are many questions on how to administer the changes which will require additional guidance and clarification to implement all new provisions.



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