

IRS Issues SECURE 2.0 Act Proposed Regulations on Catch-up Contributions

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PRACTICES Employee Benefits and Executive Compensation

The IRS issued proposed regulations that, among other things, address certain ambiguities related to the SECURE 2.0 Act provisions regarding catch-up contributions and add new correction methods if participants with wages at or above a certain threshold in the preceding year (“**Highly-Paid Individuals**”) inadvertently make catch-up contributions on a pre-tax basis.

Provisions in the SECURE 2.0 Act permitting higher catch-up contributions for participants attaining age 60 through 63 and permitting Highly-Paid Individuals to only make Roth catch-up contributions (and not pre-tax catch-up contributions) appear to violate the current universal availability requirements that apply to catch-up contributions.

To address these issues, the proposed regulations provide that:

- The higher catch-up limit for participants attaining age 60 through 63 is an optional feature. A plan may be designed to incorporate the higher limit for qualifying participants or limit those participants to the same catch-up limit that applies for all other catch-up eligible participants. In either case, the plan will not be deemed to violate the universal availability rule.
- Prior year wages from other employers (outside the controlled group) in a multiemployer or multiple employer plan do not count toward determining whether a participant is a Highly-Paid Individual.
- A plan that offers catch-up contributions but that does not permit Roth contributions is not required to add a Roth feature merely to comply with the SECURE 2.0 Act. Such a plan may continue to offer pre-tax catch-up contributions to only those participants who are not Highly-Paid Individuals. Such a plan will not be considered to violate the universal availability requirement merely because it excludes Highly-Paid Individuals from making catch-up contributions.
- With respect to Highly-Paid Individuals, if the total elective deferrals that are designated Roth contributions over the course of the year equal or exceed the total elective deferrals that are determined to be catch-up contributions, then the participant satisfies the Roth catch-up requirement. This means that a Highly-Paid Individual can front-load the Roth contributions and then make later elective deferrals that are determined to be catch-up contributions (after the applicable statutory contribution limit is reached) as pre-tax contributions.

The IRS also added two new permissible correction methods if a Highly-Paid Individual inadvertently makes catch-up contributions as pre-tax catch-up contributions (“**Improper Contributions**”). The existing correction method allows Improper Contributions to be treated as excess contributions and distributed back to the participant. The new correction methods, which are available only if the plan provides for deemed Roth catch-up contributions by Highly-Paid Individuals, allow plan sponsors to either:

- Transfer the Improper Contributions (adjusted for allocable gain or loss) from the participant’s pre-tax account to the participant’s designated Roth account and then adjust the participant’s

Form W-2 for the year of Improper Contributions accordingly. This method can be used only if the participant's Form W-2 for that year has not already been filed or furnished to the participant.

- Transfer the Improper Contributions (adjusted for allocable gain or loss) directly from the participant's pre-tax account to the participant's designated Roth account through an in-plan Roth rollover and report the amount of the in-plan Roth rollover on Form 1099-R for the year of rollover.

Finally, the proposed regulations extend the deadline to apply the Highly-Paid Individual rule to union plans until the later of (1) six months after the date that final regulations are issued, or (2) the first taxable year beginning after the date on which the last collective bargaining agreement related to the plan that is in effect on December 31, 2025 terminates.

The proposed regulations can be found [here](#).