SECURE 2.0 Catch-Up Contribution Final Regulations Are Here!

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Recently, the Department of the Treasury and the IRS issued the long-awaited final regulations regarding the provisions of SECURE 2.0 relating to catch-up contributions made by participants in qualified defined contribution plans (including 401(k), 403(b), and governmental 457(b) plans) (the "***Final Regulation***s"). In general, the Final Regulations followed the proposed regulations that were published in January. However, the IRS did make some key changes in the Final Regulations in response to comments submitted after the proposed regulations were published.

Notably, despite pressure from plan sponsors and service providers, the IRS did not extend the administrative transition period with respect to required Roth catch-up contributions for certain higher paid catch-up eligible employees. Accordingly, the required Roth catch-up rules become mandatory effective January 1, 2026, for plans with calendar year plan years. However, the Final Regulations do provide some relief for reasonable good faith compliance through January 1, 2027.

The Roth catch-up requirement generally applies to an employee with prior-year FICA wages exceeding $145,000 (as adjusted) from the employee's common law employer, without regard to wages from any other employer within the controlled group. The Final Regulations clarify that a plan is permitted, but not required, to aggregate wages received from the employee's common law employer and other employers in the same controlled group or under a common paymaster. Similar aggregation rules are available in the context of an asset acquisition, allowing a successor employer to take into account wages paid by the predecessor employer.

Other points clarified in the Final Regulations include:

- Plans that provide for separate catch-up contribution elections can apply the deemed Roth catch-up election rules to those designated catch-up contributions at the time they are made. Additionally, plans that include a spillover feature may provide that the deemed Roth catch-up election will be implemented once the employee's deferrals reach the annual deferral limit.
- In order to use the Form W-2 or in-plan Roth rollover methods of correction for errors under the required Roth catch-up rules, the plan must provide for deemed Roth catch-up elections.
- If a plan does not permit Roth contributions, then a catch-up eligible participant who is subject to the Roth catch-up requirement must not be permitted to make catch-up contributions.
- If an employer decides to adopt the increased catch-up contribution limit to employees attaining age 60 through 63 during a calendar year, this choice must be made clear in the plan document. In addition, if an employer in a controlled group adopts the increased catch-up limit for one plan, then all other plans maintained by all employers in the same controlled group must do the same. There is an exception for plans covering collectively bargained employees.

In general, plans on a calendar year plan year must be amended to comply with the Final Regulations by December 31, 2026. Plan sponsors should consult with counsel as well as their payroll providers and plan recordkeepers to ensure that the catch-up contribution requirements as

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clarified by the Final Regulations are properly implemented. It is also important that participant communications be clearly drafted so that participants can understand the catch-up opportunities available to them.

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