

SECURE 2.0 ACT

Roth catch-up contribution requirements

Welcome relief and guidance from the Internal Revenue Service (IRS)

On August 25, 2023, the Internal Revenue Service issued Notice 2023-62, providing eagerly anticipated relief and guidance relative to the SECURE 2.0 requirement that participants with wages exceeding \$145,000 must make catch-up deferrals as (after-tax) Roth catch-up deferrals. The relief came in the form of a two-year administrative transition period, meaning that **plan sponsors, recordkeepers and payroll providers now have until 2026 to get systems in place to administer this change** that was scheduled to take effect in 2024.

In Notice 2023-62, the IRS addressed several issues concerning plan sponsors and practitioners, including the following:

Ignore Congress' drafting error

As noted in a prior [USICG Market & Legal Update](#), when enacting SECURE 2.0, Congress inadvertently deleted Code Section 402(g)(1)(C) and thereby technically eliminated catch-up deferral contributions effective for taxable years beginning after December 31, 2023. The IRS made it clear that, despite this unintentional drafting error, catch-up contributions would continue to be allowed.

IRS announces two-year administrative transition period

Section 603(c) of SECURE 2.0 provided that mandatory Roth characterization of the catch-up deferrals of high-wage earners take effect for taxable years beginning after December 31, 2023. Also as noted in a prior [Market Legal Update](#), many retirement plan providers, practitioners, and industry groups had written the Department of Treasury requesting a delay in the effective date for required Roth treatment of catch-up deferrals of certain high-wage earners, given the lack of guidance and the many administration and implementation challenges associated with this change retirement plan sponsors begin planning for implementing this mandatory provision.

In Notice 2023-62, the IRS announced that it will regard the first two taxable years beginning after December 31, 2023, as an administrative transition period with respect to the requirement that plan administrators designate catch-up contributions made on behalf of certain eligible participants as Roth contributions. Accordingly, for 2024 and 2025, for certain eligible high-wage earners, plan administrators need not characterize catch-up deferral contributions as Roth contributions. Further the IRS will treat a plan that does not provide for designated Roth contributions as satisfying SECURE 2.0 during the administrative transition period.

Future IRS guidance under consideration

There remain many unanswered questions about the implementation of mandatory Roth treatment of catch-up deferrals of certain high wage earners. Notice 2023-62 raises four further topics about which the IRS eventually intends to issue guidance.

- Mandatory Roth treatment would not apply to the catch-up deferral contributions of individuals who do not receive FICA wages in the prior year (e.g., partners, other self-employed individuals or State or local government employees whose services are excluded from Social Security).
- A plan administrator and employer would be permitted to treat an election by an affected participant to make catch-up contributions on a pre-tax basis as an election to make the same contribution as a designated Roth contribution. This override election would be permitted even if the plan provided for what is often referred to as a “spillover” election, where excess deferral contributions or discrimination test failures were automatically recharacterized as a catch-up contribution by option of the plan terms. This guidance is necessary because the law currently requires that a participant designate a contribution as a Roth contribution at the time the election is made.
- With respect to multiple employer plans (including multiemployer plans), that a plan administrator should not aggregate eligible participant’s FICA wages with one employer with the FICA wages of another participating employer when applying the \$145,000 limitation (as adjusted after 2023).
- The IRS asked without suggesting an answer whether to require plans with affected participants to offer Roth deferrals and whether a plan could deny affected participants catch-up deferrals and not offer Roth.

The IRS has asked for practitioner comments on these issues as well as regarding other potential questions or problems raised by this SECURE 2.0 provision.

How USI Consulting Group can help

Our knowledgeable team helps guide clients through all SECURE 2.0 changes, as well as legal and regulatory updates in the industry. We are here to support you and your plan so that your employees feel confident in their retirement program.

If your current financial professional is not educating you on how the new SECURE 2.0 provisions can impact your employees, please allow us an opportunity to discuss how we can help you, as well as provide a complimentary review of your plan to see where we can add meaningful value. To learn more, please reach out to us at information@usicg.com.

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