

SECURE 2.0 UPDATE: IRS ANNOUNCES TWO-YEAR DELAY FOR NEW ROTH CATCH-UP CONTRIBUTION RULE IMPLEMENTATION

Hodgson Russ Employee Benefits Alert
September 6, 2023

The end of summer is near and 2024 grows closer, which means that certain SECURE 2.0 changes for retirement plans also will soon take effect. One of the changes scheduled to take effect in 2024 is the new rule that *requires* all catch-up contributions made by participants with Social Security wages under Code Section 3121 that exceed \$145,000 during the previous year (“high wage earners”) to be treated as designated Roth contributions. For a plan that does not already have a Roth contribution feature, Roth provisions will need to be added to the plan to accommodate continued catch-up contributions by high wage earners.

To the relief of many interested parties, including plan sponsors and service providers, the IRS issued Notice 2023-62 in which it announced the two tax year period beginning after December 31, 2023, will be an administrative transition period. Until tax years beginning after 2025, catch-up contributions made by high wage earners will be treated as satisfying the new Roth catch-up contribution requirements, even if the contributions are not designated as Roth contributions. Accordingly, for plans that allow for age 50 catch-up contributions, eligible high wage earners will continue to be able to make catch-up contributions on a pre-tax basis for an additional two years.

The relief granted by the Notice is intended to allow for an orderly transition to the new Roth catch-up contribution rules. Plan sponsors and service providers have been expressing concern about having administrative processes in place in time for rolling out a January 1, 2024, implementation of the new Roth catch-up contribution rules so the relief granted by the Notice is welcomed news. Concerns had also been expressed that the relevant language of SECURE 2.0 adding the Roth catch-up contribution rules could be read to disallow catch-up contributions in their entirety beginning in 2024. The Notice helps to clarify that SECURE 2.0 did not intend to eliminate catch-up contributions after 2023.

Finally, the Notice identifies certain aspects of the new Roth catch-up contribution rules with respect to which the IRS intends to issue future guidance, including guidance –

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- Clarifying that participants who do not have any Social Security wages under Code Section 3121 (e.g., partners or other self-employed individuals) will not be subject to the new Roth catch-up contribution rules.
- Providing that in the case of an eligible participant who is subject to the new Roth catch-up contribution rules (i.e., a high wage earner), the plan administrator and the employer would be permitted to treat the participant's election to make catch-up contributions on a pre-tax basis as an election by the participant to make catch-up contributions that are designated Roth contributions.
- Addressing, in the case of an applicable employer plan that is maintained by more than one unrelated employer (including a multiemployer plan), the circumstances under which an eligible participant must be treated as a high wage earner where the participant received wages from more than one participating employer in the preceding year.

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