

New IRS proposal offers clarity on Roth catch-up mandate



In the Spotlight

Key Insights

- Newly proposed regulations give guidance on SECURE 2.0 catch-up requirements, including the 2026 Roth mandate for higher-earning participants.
- Participants age 50+ who hit the regular deferral limit may be deemed to have elected that their pretax catch-up contributions auto switch to Roth.
- For violations of the Roth requirements, the proposal provides correction methods that avoid the need to distribute elective deferrals.



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The Treasury Department and the Internal Revenue Service (collectively, IRS) recently proposed regulations giving guidance for 401(k)s and similar plans, namely those that permit participants age 50 or older to make additional elective deferrals as catch-up contributions. While they are not yet final, the regulations address questions raised by plan sponsors and other stakeholders over how to interpret and implement changes made by the

SECURE 2.0 Act of 2022 (SECURE 2.0), including Roth requirements for catch-up contributions from certain participants.

Quick rewind

SECURE 2.0 stipulates that catch-up contributions from participants with preceding calendar year FICA wages of more than \$145,000 (indexed for inflation)¹ must be designated

Roth contributions (Roth catch-up requirement). Additionally, it provides that if any participants in a plan are subject to the Roth catch-up requirement, then the plan must allow any catch-up-eligible participant—regardless of wage level—to make catch-up contributions on a Roth basis.

These changes were initially effective for 2024 (taxable years beginning after December 31, 2023). But the IRS later

¹ The wage threshold relates solely to wages from the employer sponsoring the plan.

granted a two-year transition period,² meaning plans must comply with the changes beginning in 2026.

Deemed Roth catch-up election

The proposed regulations would permit plans to deem participants subject to the Roth catch-up requirement as having *irrevocably* designated any catch-up contributions as Roth contributions. This would allow a plan, for instance, to automatically switch a participant's contribution election from pretax to Roth once the regular deferral limit is reached. The additional deferrals, in excess of the limit, are required to be treated as Roth catch-up contributions. A deemed Roth catch-up election is permitted regardless of whether the plan uses a spillover design or requires separate elections for catch-up contributions.

But plans should also be aware that the deemed Roth catch-up election is applicable on the condition that, based on all of the relevant facts and circumstances, the participant has had an effective opportunity to make a new election that is different than the deemed election. For example, a plan would need to permit a participant subject to a deemed Roth catch-up election to stop making additional elective deferrals.

Availability of Roth catch-up contributions

The proposed regulations provide that if any catch-up-eligible participant subject to the Roth requirement is permitted to make catch-up contributions as designated Roth contributions, then the plan must also allow all other catch-up-eligible participants to make catch-up contributions on a Roth basis (availability requirement).

By contrast, if the participants subject to the Roth catch-up requirements are not permitted to make catch-up contributions, then the availability requirement will not apply.

Key takeaway

This means that a plan with catch-up contributions is not required to include a qualified Roth contribution program so long as participants subject to the Roth mandate are prohibited from making catch-up contributions (see the "universal availability requirements" section for considerations relating to nondiscrimination requirements).

Dual-qualified plans may need to offer after-tax contributions

The proposed regulations may have special implications for plans that cover employees in both the United States and Puerto Rico—i.e., dual-qualified plans. For such plans that allow U.S. participants to make Roth catch-up contributions, the availability requirement will be deemed satisfied if their catch-up-eligible Puerto Rico employees are permitted to make catch-up contributions on an after-tax basis.³ Thus, dual-qualified plans that do not currently have an after-tax feature may effectively be required to include one.

Universal availability requirements

Existing regulations provide that a plan offering catch-up contributions will not satisfy the requirements of Internal Revenue Code (Code) Section 401(a)(4) unless all catch-up-eligible participants are provided with an effective opportunity to make the same dollar amount of catch-up contributions (universal availability requirement).

Notably:

- The proposed regulations would provide an exception to these requirements for plans that offer so-called super catch-up contributions—the increased contribution limit for catch-up-eligible participants attaining age 60, 61, 62, or 63 in taxable years after 2024.
- Similarly, a dual-qualified plan would not fail to satisfy the requirements of Code Section 401(a)(4) because the plan allows participants subject to the limits of the Puerto Rico Internal Revenue Code (PR Code) to make catch-up contributions but only to those limits.⁴

Plans with catch-up contributions not required to offer Roth: In somewhat of a surprise, the proposed regulations provide that a plan that does not include a qualified Roth option does not fail to satisfy the universal availability requirement merely because the plan does not permit participants subject to the Roth catch-up requirement to make catch-up contributions.⁵

However, the wage threshold for determining who is subject to the Roth catch-up contribution requirement is slightly lower than the wage threshold for determining highly compensated employee status. This means that non-highly compensated employees may be affected by this exclusion, which in turn may impact the availability of catch-up contributions under Code Section 401(a)(4) nondiscrimination requirements.

Wages for determining participants subject to Roth catch-up requirements

The proposed regulations would apply the Roth catch-up requirement to participants with prior-year FICA wages exceeding \$145,000 (indexed for inflation) from

² See IRS Notice 2023-62.

³ The PR Code does not provide for designated Roth contributions, but it does allow plans to offer after-tax contributions.

⁴ For 2025, the catch-up contribution limit under the PR Code is \$1,500.

⁵ The proposed regulations reject the suggestion that a plan be allowed to avoid correcting violations of the Roth catch-up requirements by requiring that all catch-up contributions be made as designated Roth contributions.

the “employer sponsoring the plan.” For this purpose, wages are determined by reference to the Social Security tax, not by reference to the Medicare tax. It follows that a partner who had only self-employment income, or a state or local government employee who is not subject to Social Security tax, would not have any FICA wages for purposes of determining employees subject to the Roth catch-up requirement.

If there are multiple employers participating in a plan that are treated as a single employer under the controlled group rules, each employer would be a separate employer sponsoring the plan. In other words, wages would not be aggregated when determining participants subject to Roth catch-up requirements. Similarly, wages from participating employers would not be aggregated in a multiple employer plan.

For example: Let’s imagine that within 2025 and 2026, Jane works for Companies A and B, both of which sponsor the same retirement plan. Jane is employed by Company A for the first portion of 2025 and is employed by Company B for the remainder of 2025 and all of 2026. Only FICA wages from Company B during 2025 are relevant to determining whether Jane is subject to the Roth catch-up requirements during 2026.

Treatment of designated Roth contributions as Roth catch-up contributions

For purposes of determining whether the Roth catch-up requirement is satisfied, the proposed regulations would take into account designated Roth contributions made prior to an applicable limit being reached.

- For example, an elective deferral contribution that would exceed the

regular calendar year elective deferral limit would be required to be made as a designated Roth contribution only to the extent that the participant has not previously made designated Roth contributions equal to the applicable dollar catch-up limit for that year. Similar rules apply with respect to elective deferrals that are determined to be catch-up contributions because the plan would fail the actual deferral percentage (ADP) test.

Correcting violations of the Roth catch-up requirements

The proposed regulations indicate that the options currently available for correcting excess deferrals, excess annual additions, and excess contributions under the ADP test—including those specified in the IRS Employee Plans Compliance Resolution System—are also available for correcting violations of the Roth catch-up requirements. In addition, the proposed regulations would provide two helpful alternative correction methods that avoid the need to distribute elective deferrals. As a condition for relying on these alternatives with respect to a plan year, a plan would be required to apply the same correction method for all participants with elective deferrals in excess of the same applicable limit.

- **Form W-2 alternative correction method:** This method would permit the correction of a participant’s pretax catch-up contribution that was required to be a designated Roth contribution by transferring the participant’s elective deferral contribution (adjusted for gains or losses) to the participant’s designated Roth account and reporting the contribution (not adjusted for gains or losses) as a designated Roth contribution on the participant’s Form W-2 for the year of the deferral. This correction method would only be permitted if the W-2 for that year has not yet been filed or furnished to the participant. For calendar year plans, ADP test data are generally not available

until the Form W-2 has been filed, which means this correction method is unlikely to be available for elective deferrals that are recharacterized as catch-up contributions because they exceed the ADP limit.

- **In-plan Roth rollover alternative correction method:** This method would permit the correction of a participant’s pretax catch-up contribution that was required to be a designated Roth contribution through an in-plan Roth rollover. The participant’s elective deferral contribution (adjusted for gains or losses) would be rolled over directly from the participant’s pretax account to the participant’s designated Roth account and reported as an in-plan Roth rollover on Form 1099-R. The contribution (adjusted for gains or losses) would be part of the participant’s gross income for the year of the rollover.

Conditions for using alternative correction methods

Under the proposed regulations, a plan would be eligible to use the alternative correction methods for excess deferrals and excess annual additions caused by pretax catch-up contributions that should have been made as designated Roth contributions. However, this applies only if the plan has in place practices and procedures designed to comply with the Roth catch-up requirement.

A plan would not meet this requirement unless it provides for a deemed Roth catch-up election (see “Deemed Roth catch-up election” section). Since catch-up contributions that exceed these limits are not determined until after the end of the plan year, a plan would not be required to have such practices and procedures in place to correct a pretax deferral that is a catch-up contribution because it exceeds an employer-provided limit or the ADP limit.

Deadlines for alternative correction methods

(Fig. 1) Key deadlines and conditions

Applicable limit	Deadline	Applicable if
Deferral limit	April 15 following the calendar year the deferral was made	An elective deferral is a catch-up contribution because it exceeds the regular deferral limit
Annual additions limit	The employer’s tax filing deadline (including extensions)	An elective deferral is a catch-up contribution because it exceeds the Code Section 415(c) annual additions limit
ADP limit and employer-provided limits	2.5 months after the close of the plan year for which excess contributions were made, or 6 months if the plan is an eligible automatic contribution arrangement ¹	An elective deferral is a catch-up contribution because it exceeds the ADP limit or an employer-provided limit

¹ This same deadline applies in the case of a pretax catch-up contribution that was required to be a designated Roth contribution because it exceeds an employer-provided limit.

Applicability dates

For plans that are not maintained pursuant to a collective bargaining agreement, the provisions addressing the Roth catch-up requirements are proposed to apply in taxable years starting more than six months after the final regulations are issued.

For plans that are maintained pursuant to one or more collective bargaining agreements, these provisions are proposed to apply in taxable years that begin after the later of: (1) the first taxable year that begins more than

six months after the final regulations are issued or (2) the first taxable year in which the last collective bargaining agreement related to the plan that is in effect on December 31, 2025, terminates (determined without regard to any extension of those agreements).

Although the Roth catch-up requirements in the proposed regulations will not be applicable until after they are finalized, the statutory requirements of SECURE 2.0’s Roth catch-up mandate will still apply beginning in 2026. For this reason, plans would be permitted to apply the regulations sooner.

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