SECURE 2.0 Roth Catch-Up Delay: More IRS Guidance to Come

While news of a two-year pause for the Roth catch-up contribution requirement provided welcome relief from a looming 2024 deadline, more questions about Section 603 remain

by **Brian Anderson, Editor-in-Chief** · August 31, 2023 · 3 minute read

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The retirement plan industry breathed a collective sigh of relief on Aug. 25 when the Internal Revenue Service announced that there would be a two-year delay for the Roth catch-up contribution requirement for employees making $145,000 or more in the prior calendar year that would have applied in 2024.

As a result of last Friday's much-anticipated IRS Guidance in Notice 2023-62, the Roth catch-up contribution requirement under Section 603 of SECURE 2.0 will now be effective for taxable years beginning after December 31, 2025.

The guidance also addressed a technical error—first identified by the American Retirement Association—that would have eliminated all catch-up contributions (pre-tax or Roth) beginning in 2024. Under the notice, catch-up contributions can continue to be made after 2023.

The relief provided by the two-year delay will give human resources departments, payroll companies and plan custodians adequate time to devise procedures to implement the new rules. Prior to the guidance, there was great concern among plan administrators that there was no practical way for many plans to update their systems and implement the changes by the end of the year. On July 14, 2023, approximately 200 organizations wrote a letter to Congress, urgently asking for a delay.

While last week's guidance from the IRS was intended to provide guidance on particular issues to assist in the implementation of Section 603 and to facilitate an orderly transition for compliance with that requirement, the IRS and the Treasury Department also acknowledged that further guidance is needed to address open questions and will be forthcoming to assist with full implementation.

After taking into account any comments received, the Treasury Department and the IRS said future guidance is expected to address the following:

1. Guidance clarifying that the new Roth catch-up contribution rule does not apply to eligible participants who have non-FICA wages for the preceding calendar year above the dollar limit, such as a partner or self-employed individual receiving self-employment income.

2. Guidance providing that an eligible participant will not have to make an affirmative election to make catch-up contributions on a Roth basis; the plan administrator and employer may treat an election to make catch-up contributions on a pre-tax basis as an election to make catch-up contributions that are designated Roth contributions.

3. Guidance that in the case of a plan maintained by more than one employer, an eligible employee's FICA wages from more than one participating employer are not aggregated or taken into account by another participating employer when determining if the employee is an eligible participant whose catch-up contributions must be made on a Roth basis. For example, if an eligible participant's wages for a calendar year were: (1) $100,000 from one participating employer; and (2) $125,0000 from another participating employer, then the participant's catch-up contributions under the plan for the next year are not required to be made as Roth contributions. Catch-up contributions would not be required to be designated as Roth contributions unless the participant's wages for the preceding calendar year from that other employer also exceed $145,000.

As pointed out in an Aug. 31 Law Alert from Boston-based Wagner Law Group, additional questions not addressed in the notice include:

• What happens if a sponsor incorrectly categorizes a participant due to an error in determining wages?

• How should a sponsor address amounts that are recharacterized as catch-up contributions to correct nondiscrimination testing?

IRS requesting comments

Notice 2023-62 also requested comments with respect to whether the intended guidance should address a plan that permits eligible participants to make catch-up contributions under section 414(v) but does not include a qualified Roth contribution program.

"In particular, should the guidance provide that such a plan will not fail to satisfy section 414(v)(4) (which provides that all eligible participants must be allowed to make the same election with respect to catch-up contributions) or section 414(v)(7)(B), merely because the plan provides that eligible participants who are not subject to section 414(v)(7)(A) are permitted to make catch-up contributions while eligible participants who are subject to section 414(v)(7)(A) are prohibited from making catch-up contributions," Notice 2023-62 states.

Comments should be submitted in writing by October 24, 2023, and may be submitted electronically via the Federal eRulemaking Portal at www.regulations.gov (type "IRS-2023-0039" in the search field on the Regulations.gov home page to find this notice and submit comments).

Comments may also be submitted by mail to: Internal Revenue Service, Attn: CC:PA:LPD:PR (Notice 2023-62), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20044.

SEE ALSO:

• IRS Comes Through with Roth Catch-Up Contribution Deadline Extension

• 401(k) Industry Still Pleading for Delay in SECURE 2.0 Catch-Up Contribution Requirement

• Leading Organizations Request Roth Catch-Up Contribution Delay

- [Glitch-Fixing: How 2024 Catch-Up Contributions Could Be Restored in SECURE 2.0]

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