

Higher Earners Must Make Catch-Ups as Roth Deferrals

Of the many SECURE 2.0 Act of 2022 (SECURE 2.0) provisions affecting retirement plans, 1 may present its fair share of challenges. Under Section 603, participants who have earned more than \$145,000 (in FICA wages, indexed) during the previous year must make current-year catch-up contributions as Roth deferrals.

Although this provision is already in effect, an administrative transition period will apply for 2024 and 2025, during which catch-up contributions will satisfy the requirements under SECURE 2.0—even if the contributions are not designated as Roth contributions. This relief also applies to plans that don't allow for designated Roth contributions.

Here, we'll look at some of the bigger concerns—and possible solutions—that have arisen as a result of this provision.*

To Roth, or Not to Roth

This new provision affects 401(k), 403(b), and governmental 457(b) plans—but *not* IRA-based plans like SEPs and SIMPLEs. While many plans offer a designated Roth deferral feature, some do not. This means that plans without a Roth deferral feature could not allow participants over the wage threshold to make catch-up contributions. Employers who don't offer Roth deferrals in their plans need to consider allowing them if they allow catch-up contributions.

Employers may ask:

- *“Can I offer Roth deferrals only to those making mandatory Roth catch-up contributions?”* At this point, the best answer is no. Such a plan design would be discriminatory in the availability of rights, benefits, or features.

- *“But can I eliminate catch-up contributions for those over the income threshold?”* It appears not, as the catch-up provision would have to be offered to all eligible participants to comply with nondiscrimination rules.
- *“Could my plan require that all catch-up contributions be made as Roth deferrals?”* While this may technically be permissible, the practical effects and administrative problems may make this an unrealistic approach.

Deferral Election Process

One practical effect of this new provision is that it authorizes the Treasury Secretary to draft regulations allowing participants to change their deferral elections if they learn that their compensation exceeds the limit after their election is made. Employers may have to relax plan restrictions on the timing to submit deferral election changes to comply with future guidance from the Internal Revenue Service (IRS).

Key Takeaways

While there are several outstanding questions surrounding the Roth catch-up contribution requirement, a few things are certain:

1. Consider the plan design that will work best for you in accommodating this new requirement because it will, in some way, affect most plans with a deferral feature. This means adding a Roth deferral feature to your plan if you don't currently have one. Alternatively, the catch-up contribution feature could be removed entirely.
2. Think about the best way to communicate any changes to your participants.
3. The IRS is expected to give further guidance, so flexibility is key as developments unfold.

*The IRS has indicated that it will release additional guidance, which should help employers, recordkeepers, third-party administrators, and payroll providers to effectively comply with this SECURE 2.0 provision.

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