

## Insights

# PREPARE NOW FOR MANDATORY ROTH CATCH-UP

May 02, 2025

## SUMMARY

Proposed Treasury regulations relating to catch-up contributions were issued in January of 2025 that include guidance for the mandatory Roth catch-up requirement, which was first provided under section 603 of Division T of the SECURE 2.0 Act of 2022. The mandatory Roth catch-up rule requires that age 50 (and higher) catch-up contributions to affected plans be made on a Roth-basis for participants whose prior calendar year wages exceeded \$145,000 (as indexed). The rule applies to 401(k), 403(b) and governmental 457(b) plans. This post addresses the mandatory Roth catch-up rule with respect to 401(k) plans.

## ADMINISTRATIVE TRANSITION PERIOD

Under Notice 2023-62, the IRS provided an administrative transition period that basically delayed the rule's effective date until January 1, 2026. As of the date of this post, it appears that the possibility of a further extension from the IRS is unlikely. Because the rule is a revenue-raising provision, we believe it is also unlikely that a solution in the form of a repeal of the rule by Congress will materialize. Plan sponsors ideally should be in the process making preparations to deal with the new mandatory Roth catch-up rule that is scheduled to go into effect January 1, 2026.

## PAYROLL SYSTEM CHANGES

It appears that a significant portion of the heavy lift needed to adopt the Roth catch-up rule will be with changes to the payroll systems of the plan sponsor, particularly in terms of identifying who is subject to the rule because the impacted group of participants is defined by the new dollar threshold, i.e., \$150,000 for the 2026 calendar year, which is a lower threshold than the dollar threshold for identifying highly compensated employees. Given that the rule seems to present a bigger challenge for plan sponsors than their recordkeepers, there should be a sense of urgency for plan sponsors on preparations to comply with this new SECURE 2.0 rule.

## RECORDKEEPING ELEMENT

Apart from the payroll side of compliance with the rule, there appears to be a recordkeeping element even for those plans that already allow Roth contributions because the deferral election process will most likely need to contemplate allowing an impacted participant to opt out of any deemed election to be making Roth catch-up contributions. In addition, the IRS takes the position in the proposed regulations that a plan sponsor cannot simplify its administration by requiring that all catch-up contributions be made as Roth contributions.

## **SPILOVER FEATURE**

Assuming that a plan sponsor will continue to offer the opportunity for all eligible participants to make catch-up contributions, the proposed regulations will allow the sponsor to operate the catch-up opportunity as a spillover feature, meaning that a separate catch-up election would not need to be provided by the plan. Plan sponsors desiring to implement a spillover feature should confirm that the terms of the plan permit, or at least do not preclude, use of a spillover feature. The proposed regulations also make clear that participants age 50 and older who are not subject to the mandatory Roth rule be eligible, but not required, to make their catch-up contributions as Roth contributions.

## **DEEMED ELECTION APPROACH**

We believe a plan sponsor should strongly consider, in consultation with its recordkeeper, designing its plan to treat any catch-up contributions by a participant subject to the mandatory Roth catch-up rule as having made a deemed election to make those contributions as Roth contributions. This approach will afford a plan sponsor greater correction alternatives in the event of an operational failure involving the mandatory Roth rule. The deemed election approach will require that a participant subject to the mandatory Roth catch-up rule has an effective opportunity to make a different election. However, the only apparent different election that such a participant would seem to be able to make (and the only example offered by the proposed regulations) would be an election to cease making deferrals of pay.

## **OPERATIONAL CONSIDERATIONS**

Many plans already permit participants to change their deferral elections at any time. Additional operational considerations will be to identify those participants subject to the mandatory Roth catch-up rule, to treat their catch-up contributions as Roth contributions, and to communicate to participants the spillover nature of the catch-up feature (if applicable), the Roth election they will be deemed to have made, and their opportunity to cease making deferrals of pay. Such content may be included in an SPD; however, similar disclosures should also be included in a recordkeeper's online materials or other annual enrollment materials.

## **TIMING CONSIDERATIONS**

Although we doubt most plan sponsors will address compliance by removing the catch-up feature from the plan altogether, if a plan is not likely to be able to comply with the rule by January 1, 2026, a plan sponsor might choose to remove the catch-up feature until compliance with the mandatory Roth catch-up rule is in place. For example, if compliance with the rule could not be met until the beginning of the second quarter in 2026, the catch-up feature could be eliminated during the first quarter.

## **IDENTIFYING EMPLOYEES SUBJECT TO MANDATORY RULE**

In working with payroll to identify those eligible employees/participants who are subject to the mandatory Roth catch-up rule, the single criterion is whether the amount of Social Security wages reported for the participant in the immediately preceding calendar year exceeds the specified dollar threshold, which is subject to cost-of-living adjustments (which are to be made in increments of \$5,000). (Note: The proposed regulations limit the reference to FICA wages to those applicable to the Social Security tax and exclude wages subject to the Medicare tax.) For the 2026 calendar year, the applicable dollar threshold is \$150,000. Therefore, a participant with Social Security wages over \$150,000 in 2025 is subject to the mandatory Roth catch-up rule. The applicable threshold is not required to be annualized, which makes administration of the rule somewhat simpler because new hire and employment terminations occurring during the plan year do not trigger the need to annualize pay. Also, in determining the amount of Social Security wages paid, only the Social Security wages paid by the common law employer sponsoring the plan is counted. Therefore, a plan sponsor and other participating affiliates are not to take into consideration Social Security wages paid by affiliates not participating in the plan, which simplifies the determination. However, the rule has its complicated side. If a participant transfers employment from one participating common law employer to another participating common law employer during the same plan year, that employee could be considered subject to the mandatory rule for one of the employers, but not the other.

## **REGULAR ROTH DEFERRALS AS CATCH-UP CONTRIBUTIONS**

The proposed regulations also provide that a plan with a participant who is making “regular” deferrals as Roth contributions may treat those contributions as satisfying the mandatory Roth catch-up rule applicable to catch-up contributions. For example, if a participant has made “regular” Roth contributions at least equal to the catch-up limit, in theory, that participant could be allowed to make pre-tax catch-up contributions. However, a recordkeeper may not have the administrative processes in place to take advantage of this flexibility provided by the proposed regulations. If incorporating that flexibility is possible from an administrative perspective, plan sponsors will need to decide whether to take advantage of this apparently elective design feature. However, if such feature is implemented, the plan and participant communications should reflect that provision.

## **CORRECTION ALTERNATIVES**

Anticipating that operational errors may occur in the administration of the mandatory Roth catch-up rule, the proposed regulations acknowledge that corrections may be made by distributing any impermissibly made pre-tax catch-up contributions from the plan. Corrective distributions of this sort are already recognized by existing IRS correction guidance. However, the proposed regulations also allow for two new correction alternatives (if certain practices and procedures are in place): (i) adjusting W-2s (before they are distributed to employees generally) to designate any pre-tax catch-up as Roth catch-up or (ii) effecting a Roth in-plan conversion. The proposed regulations do not expressly provide as much, but we assume that the Roth in-plan conversion approach is available only if a corresponding Form 1099-R is timely filed. If either of the new correction methods is to be used, the plan document must provide for it and the method of correction must be applied uniformly. Also, the correction method should be described in participant communications.

## **EXTENDED COMPLIANCE DEADLINE FOR COLLECTIVELY BARGAINED GROUPS**

Another consideration for certain plan sponsors concerns the permitted extended compliance deadline for collectively bargained groups. Applicable plan sponsors will need to consider whether they want – or need – to take advantage of the later implementation date for the rule as applied to union groups.

## **APPLICABILITY DATE**

The proposed regulations are to apply with respect to contributions in taxable years beginning more than 6 months after the date of publication of the final rule. However, for a plan that is maintained pursuant to one or more collective bargaining agreements, the proposed regulations are to apply with respect to contributions in taxable years beginning after the later of such first taxable year (under the general applicability date) or the first taxable year that begins after the date on 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).

---

This article was co-authored by Jonathan Hull, Paralegal.

## **RELATED CAPABILITIES**

- ERISA & ESOP
- ERISA & Employee Benefits Litigation

## MEET THE TEAM



### **Richard L. Arenburg**

Atlanta

[richard.arenburg@bclplaw.com](mailto:richard.arenburg@bclplaw.com)

+1 404 572 6765

---

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be "Attorney Advertising" under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP's principal office and Kathrine Dixon ([kathrine.dixon@bclplaw.com](mailto:kathrine.dixon@bclplaw.com)) as the responsible attorney.

