

Insights

FINAL ROTH CATCH-UP REGULATIONS: KEY TAKEAWAYS FOR PLAN SPONSORS

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The Secure 2.0 Act of 2022 gave us the Roth catch-up mandate, a revenue raiser that has caused great consternation in the retirement plan community as plan sponsors, recordkeepers and payroll providers have grappled with questions regarding how to implement this rule. It quickly became apparent that there were many complex questions and additional guidance was needed. Earlier this year, proposed regulations provided some helpful insights, but left some questions unanswered (described in our prior article). On September 16, 2025, the Department of Treasury and the Internal Revenue Service issued final regulations providing more certainty regarding the applicable rules. Now the ball is in the court of plan sponsors to work with their providers to be ready to comply with the mandate by January 1, 2026. This post summarizes key takeaways in light of the new guidance provided in the final regulations and also outlines next steps for plan sponsors.

THE ROTH CATCH-UP MANDATE

WHAT IS THE MANDATE

Catch-up contributions made by participants with FICA wages exceeding \$145,000 (as indexed to \$150,000 for 2026) “Higher Income Participants” in the previous calendar year must be made as Roth contributions.

WHICH PLANS MUST COMPLY WITH THE MANDATE

The mandate applies to 401(k), 403(b) and governmental 457(b) plans. If such a plan offers Roth contributions, it must require Higher Income Participants to make catch-up contributions as Roth contributions. If a plan does not offer Roth contributions, the plan sponsor must amend the plan to offer Roth contributions if it wants to allow Higher Income Participants to continue to make catch-up contributions. If a plan sponsor chooses not to add Roth contributions to its plan, Higher Income Participants cannot be allowed to make catch-up contributions beginning January 1, 2026.

If a plan sponsor is part of a controlled group of corporations, it appears that all plans in the controlled group must coordinate the decision regarding whether to offer Roth contributions and

comply with the mandate or eliminate catch-up contributions for Higher Income Participants. The “universal availability rule” for Roth catch-up contributions in the final regulations provides that, if under an “applicable employer plan” any catch-up eligible participant who is subject to the Roth catch-up requirement is permitted to make catch-up contributions as designated Roth contributions for a plan year, then all catch-up eligible participants must be permitted to make catch-up contributions as designated Roth contributions for the plan year. The “employer” for purposes of determining the “applicable employer plan” is defined in the catch-up regulations as the employer and all the members of the controlled group. As a result, it appears that all plans sponsored by all members of the controlled group must allow Roth catch-up contributions if any plan does and has Higher Income Participants who are subject to the mandate.

WHICH WAGES ARE COUNTED FOR PURPOSES OF DETERMINING HIGHER INCOME PARTICIPANTS

A Higher Income Participant is a participant whose FICA wages (Social Security Wages reported in Box 3 of Form W-2) from the “employer sponsoring the plan” exceeded \$145,000 (as indexed) for the preceding year. The final regulations clarify that participants with no FICA wages, such as partners with only self-employment income, are not subject to the mandate. Only actual FICA wages are counted for purposes of the threshold, wages are not annualized if a participant was only an employee for a part of the year.

For purposes of determining a participant’s FICA wages, the term “employer” means only the common law employer of the participant. As a result, the proposed regulations provided that only FICA wages from the participant's direct common-law employer would be counted in determining whether a participant is a Higher Income Participant. Some commenters requested that final regulations provide an option to aggregate FICA wages from different employers in certain situations, to ease plan administration. In response to those comments, the final regulations added an optional aggregation rule. Under the optional aggregation rule, a plan may provide for the aggregation of wages by one or more employers using a common paymaster or by one or more employers in the same controlled group. The final regulations also provide a rule permitting aggregation of predecessor and successor employers in the year of an asset purchase and a rule requiring aggregation with respect to disregarded entities.

DEEMED ELECTIONS

Plan sponsors may choose to require Higher Income Participants to make an affirmative Roth election to make catch-up contributions as Roth contributions, or they may choose to adopt a deemed election approach. Under the deemed election approach, Higher Income Participants would automatically be deemed to have made a Roth election with respect to catch-up contributions. If a plan sponsor adopts this approach, Higher Income Participants must be provided with an effective opportunity to make a different election.

Under the final regulations, a plan must cease the deemed Roth election within a reasonable period if a participant ceases to be subject to the mandate or is later found not to be a Higher Income Participant. In that case, the catch-up contributions that were deemed to be Roth contributions do not need to be recharacterized as pre-tax contributions.

If a plan permits participants to make a separate election to treat elective deferrals as catch-up contributions during each payroll period, the plan is permitted to deem the participant to have designated those contributions as Roth contributions subject to the requirement that the participant have an effective opportunity to make a different election. If the participant does not make a different election, the plan will not be required to recharacterize as pre-tax any of the deferrals deemed to be Roth catch-up contributions, even if those amounts are ultimately determined not to be catch-up contributions.

In deciding whether to use the deemed election approach, a key consideration is that plans using this approach have greater flexibility with respect to permissible correction methods in the event of an operational failure involving the Roth catch-up mandate. (See Options for Plan Corrections below for more details).

In order to use the deemed Roth election approach, the plan must be amended to expressly provide for this approach by December 31, 2026.

CAN A PLAN REQUIRE ALL DEFERRALS MADE AFTER A HIGHER INCOME PARTICIPANT HAS EXCEEDED THE 402(G) LIMIT TO BE TREATED AS DESIGNATED ROTH CONTRIBUTIONS, EVEN IF THE HIGHER INCOME PARTICIPANT HAS ALREADY MADE ROTH CONTRIBUTIONS DURING THE YEAR

An elective deferral that is treated as a catch-up contribution at the time of deferral (if, for example, the 402(g) limit has been exceeded) is required to be a designated Roth contribution for a Higher Income Participant only to the extent the participant has not previously made elective deferrals that are designated Roth contributions during the taxable year equal to the applicable dollar catch-up limit.

In response to administrative concerns regarding this rule which is in both the proposed and final regulations, the final regulations provide that if a plan sponsor chooses to use a deemed election approach, the plan may deem all amounts contributed after reaching the 402(g) limit to be Roth contributions by applying the deemed Roth election when a participant's total salary deferrals (pre-tax and Roth) reach the 402(g) limit, regardless of whether a portion of the salary deferrals were made as Roth contributions. However, a plan using this approach must permit a participant to make a new election that is different from the deemed election. In that case, the participant may affirmatively elect to make pre-tax catch-up deferrals to the extent of designated Roth contributions made earlier in the year up to the catch-up dollar limit. In the absence of such an affirmative

election by the participant, a plan using this approach is not required to take the prior Roth deferrals into account.

In the alternative, a plan using the deemed Roth election approach can choose to apply the deemed Roth election only when pre-tax salary deferrals reach the 402(g) limit. In that case, designated Roth contributions made throughout the year would automatically be counted toward the Roth catch-up requirement.

OPTIONS FOR PLAN CORRECTIONS

If a Higher Income Participant makes pre-tax catch-up contributions that should have been designated Roth contributions under the mandate, a plan sponsor may always correct this error by distributing the impermissible pre-tax catch-up contributions.

The final regulations provide for two additional potential options for correcting failures that are available only for plans using the deemed election approach. Under the Form W-2 Correction Method, if the Higher Income Participant's W-2 has not yet been filed or provided to the participant, the excess pre-tax contribution, adjusted for earnings, can be transferred from the participant's pre-tax account to the Roth account and the contribution (not adjusted for earnings) is reported on the participant's W-2 as a Roth contribution for the year in which the elective deferral was originally treated as a pre-tax deferral. Under the In-Plan Roth Rollover Correction Method, a plan sponsor may instead correct the failure by directly rolling over the impermissible pre-tax deferrals, adjusted for earnings, to the participant's Roth account and reporting the direct rollover on Form 1099-R for the year of the rollover.

The final regulations provide that if the impermissible pre-tax catch-up contribution does not exceed \$250, the failure to treat the catch-up contribution as a Roth contribution is disregarded and does not need to be corrected.

IMPLEMENTATION AND NEXT STEPS FOR PLAN SPONSORS

WHEN MUST PLANS COMPLY WITH THE MANDATE

While the final regulations do not formally take effect until 2027, beginning on January 1, 2026, plans must comply with a reasonable, good faith interpretation of the statute. This means that plan sponsors will need to consider the available options for compliance, make necessary plan design decisions such as whether to use a separate election and/or deemed election approach and whether to aggregate FICA wages if the employer is part of a controlled group or uses a common paymaster arrangement, and begin operating the plan in accordance with those decisions by January 1, 2026.

COORDINATION WITH PAYROLL PROVIDERS AND PLAN RECORDKEEPERS

Plan sponsors should contact their payroll provider, recordkeeper and legal counsel to discuss the new rules and the possible approaches to compliance. Given the complexity of this rule, a coordinated effort will be required to ensure that an appropriate infrastructure is in place to track FICA wages, identify Higher Income Participants and to administer contributions and elections.

PLAN AMENDMENTS

Plan amendments consistent with the design decisions and operation of the plan must be adopted by December 31, 2026.

COMMUNICATING WITH PARTICIPANTS

Plan sponsors will need to develop and implement an employee communication strategy in coordination with their recordkeeper, to provide information regarding the mandate prior to January 1, 2026. It will be important to notify Higher Income Participants regarding how they will be impacted by the new rules.

This article provides a high-level overview of the final regulations, as published on September 16, 2025, as they pertain to the mandatory Roth catch-up rule, and it is intended for general informational purposes only. The regulations contain numerous technical considerations and nuances that may significantly impact your specific circumstances. Please contact a member of the BCLP Employee Benefits & Executive Compensation Practice or your BCLP relationship attorney to assess how these requirements apply to you.

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