

Now & Next

Benefits Alert

September 24, 2025

IRS finalizes new 401(k)/403(b) catch-up contribution regulations

By Damian A. Myers, Eric Paley, Emily Pellegrini, and Christina Porras

Here's what plan sponsors need to know about the new SECURE 2.0 catch-up rules, including key 401(k)/403(b) changes, Roth requirements, and deadlines.



What's the impact?

- Starting in 2026, plan participants earning over a certain amount will only be able to make catch-up contributions as Roth.
- Final regulations also provide some clarity on the optional "super" catch-up contributions that were permitted starting on 2025.
- Plan sponsors have several design and administrative decisions to make before implementing these changes, and plan amendments reflecting these changes are due by December 31, 2026.

On September 15th the Internal Revenue Service (the IRS) published the highly anticipated final regulations addressing the Roth and "super" catch-up contribution provisions of the SECURE 2.0 Act of 2022 (SECURE 2.0) for 401(k) and 403(b) plans. These final regulations generally follow proposed regulations issued in January 2025. The mandatory Roth catch-up requirement for certain participants was set to be effective for tax years starting after December 31, 2023, but the

effective date was delayed until tax years starting after December 31, 2025 (see IRS Notice 2023-62). The optional “super” catch-up contributions became effective for tax years starting after December 31, 2024.

With the final regulations now released, plan sponsors can and should finalize implementation of these changes. Although many catch-up changes are required, there are several optional implementation/administrative decisions that need to be made. This Alert summarizes the new requirements as provided in the final regulations.

Mandatory Roth catch-up contributions

As background, SECURE 2.0 amended section 414(v) of the Internal Revenue Code (the Code) to require that any catch-up contributions made by participants earning more than \$145,000 (as adjusted for increases in the cost of living) in FICA wages¹ in the prior year be made on a Roth basis. Roth contributions are made on an after-tax basis, but distributions of the contributions and associated earnings are generally non-taxable (subject to holding period requirements and existing tax penalties on early withdrawals).

EFFECTIVE DATE

The Roth catch-up requirement for higher earning participants is effective for tax years starting on or after January 1, 2026. However, the final regulations are not effective until tax years starting on or after January 1, 2027. Nevertheless, the one-year transition period is not a non-enforcement period like that described in IRS Notice 2023-62. Rather, during the one-year transition period, plan sponsors **must** implement and administer their plans in good faith compliance with the regulations. For collectively bargained plans, the regulations will be deemed satisfied until the first taxable year after the date on which the last collective bargaining agreement related to the plan that is in effect on November 17, 2025 terminates.

DETERMINATION OF FICA WAGES

Whether a participant is subject to the Roth requirement is based on FICA wages earned from the “employer sponsoring the plan” in the prior year. FICA wages are essentially the amount of FICA wages disclosed in Box 3 of Form W-2. The final regulations clarify that where multiple employers within a controlled group participate in a plan, the plan sponsor is not required to aggregate FICA wages if an employee has FICA wages from multiple controlled group employers. However, plan sponsors are permitted to aggregate FICA wages for some or all controlled group members, or if other employers are using a common paymaster for payroll purposes. If a plan sponsor elects to aggregate FICA wages, this must be set forth in the plan document. Further, if

¹ “FICA wages” is defined in Code § 3121(a), which sets forth the definition of wages for purposes of the Federal Insurance Contributions Act (FICA), dealing with Social Security and Medicare.

only some controlled group member FICA wages will be aggregated, the specific employers subject to aggregation must be listed in the plan.

DETERMINING THE EMPLOYER SPONSORING THE PLAN

The SECURE 2.0 provision providing for mandatory Roth catch-up contributions states that the applicable dollar threshold is based on FICA wages from the “employer sponsoring the plan.” The regulations confirm that the “employer sponsoring the plan” is the common law employer (i.e., generally, the employer for which the employee is providing services). In cases where there is more than one sponsoring employer, i.e., where an employee works for two related employers, FICA wages earned by a participant at multiple sponsoring employers will not be aggregated.

DEEMED ROTH CONTRIBUTIONS

The proposed regulations provided that a participant subject to the mandatory Roth catch-up requirement can be deemed to have elected that any catch-up contributions will be made as Roth. For example, if a mandatory Roth catch-up participant elects only pre-tax contributions and exceeds the Code section 402(g) dollar limit (e.g., \$23,500 in 2025), any further elective contributions will be automatically made as Roth contributions. To use deemed Roth elections for catch-up contributions, the plan must provide participants with an opportunity to make a new election (which, for practical purposes, would be to cease elective deferrals for the remainder of the year). The final regulations provided several clarifying changes with respect to deemed Roth elections:

- / For plans that provide for a single deferral election and provide for catch-up contributions only once the Code section 402(g) limit is exceeded, the deemed Roth election will apply when the pre-tax contributions reach the limit, or when any combination of pre-tax and Roth contributions reach the limit.
- / For plans that provide for separate elections for pre-limit deferrals and catch-up contributions, plans can deem the separate election for catch-up contributions to be an election to make Roth contributions. In the event that pre-limit deferral elections result in contributions below the Code section 402(g) limit, plans are not required to reverse the deemed election.

RECLASSIFYING PRE-LIMIT ROTH CONTRIBUTIONS AS CATCH-UP CONTRIBUTIONS

In cases where a participant has made designated Roth contributions prior to reaching the Code section 402(g) limit, a plan is not required to treat catch-up contributions as Roth to the extent of the prior Roth contributions. For example, in 2026, a participant reaches the Code section 402(g) limit with \$16,000 in pre-tax deferrals and \$7,500 in Roth deferrals (note, this assumes 2025 limits as the 2026 limits have not been released yet). The plan could allow the full remaining \$7,500

catch-up contribution to be made as pre-tax or Roth or a mix of both. The previous \$7,500 in Roth contributions can be counted as satisfying the mandatory Roth catch-up requirement.

AVAILABILITY OF CATCH-UP CONTRIBUTIONS AND APPLICATION TO PLANS THAT DO NOT OFFER ROTH CONTRIBUTIONS

Except in the case of a plan that does not offer Roth contributions (discussed below), if a plan makes catch-up contributions available, it must make catch-up contributions available to everyone. A plan cannot limit catch-up contributions to individuals below the FICA wage threshold, and a plan cannot require that every participant (regardless of compensation) make catch-up contributions as Roth. For plans that do not currently have a Roth contribution feature, the regulations do not require that Roth contributions be added. However, if a plan does not offer an elective Roth contribution feature, a plan cannot allow participants above the FICA wage threshold in the prior year to make catch-up contributions. The regulations provide nondiscrimination testing relief for this particular situation.

SPECIAL 403(B) CATCH-UP CONTRIBUTIONS

The final regulations clarify that special 403(b) catch-up contributions (e.g., up to \$15,000 for employees with at least 15 years of service) are not required to be made on a Roth basis, even if the participant was above the FICA wage threshold in the prior year.

ERROR CORRECTION METHODS

The proposed and final regulations provide for various correction methods in the event that a participant required to make Roth catch-up contributions actually makes pre-tax catch-up contributions. One clear correction method is to distribute the improper pre-tax contributions to the participant as excess contributions. However, the regulations provide for two additional correction methods: W-2 correction and In-Plan Roth Rollover correction.

- / Under the W-2 correction method, a participant's Form W-2 would be adjusted to report improper pre-tax contributions as Roth contributions. This method is only available for participants whose Form W-2s have not been filed or furnished. Given that many errors may not be discovered for several months after the end of the year, this correction may be of limited utility.
- / Under the In-Plan Roth Rollover correction method, an improper pre-tax contribution (as adjusted for earnings/losses) would be converted to a Roth contribution via a direct in-plan rollover. Like other in-plan Roth rollover conversions, the participant would receive a Form 1099 for the year of the conversion.

There are several requirements that plans must satisfy when making corrections. First, if a plan is using deemed Roth elections, both the W-2 and In-Plan Roth Rollover correction methods must

be available. Second, an employer is permitted to use both election methods in a given year, provided that the same method is used for similarly situated participants. This would enable employers to use the Form W-2 method for participants who have not received their Form W-2 and the In-Plan Roth Conversion method for others. Third, to use the In-Plan Roth Conversion method, a plan does not otherwise need to permit Roth conversions. Fourth, corrections using these two methods must be made no later than the end of the tax year following the year in which the improper contribution was made. This does not extend the correction period for other plan failures (e.g., ADP test failures or Code section 402(g) limit failures). Fifth, the regulations have established a \$250 de minimis threshold whereby erroneous pre-tax contributions do not need to be corrected.

AMENDMENT DEADLINE

Plan amendments to reflect mandatory Roth contributions, including all of the optional features (e.g., aggregation, deemed elections, correction methods, etc.), are due no later than December 31, 2026 (later for collectively bargained plans). Safe harbor plans may be amended to provide for these rules mid-year without jeopardizing safe harbor status.

Super catch-up contributions

SECURE 2.0 also amended Code section 414(v) to increase the catch-up contribution limit for a participant who attains age 60, 61, 62, and 63. The limit is increased to the greater of \$10,000 or 150% of the catch-up limit for the year (e.g., for 2025, the catch-up limit is \$7,500, so $\$7,500 \times 150\% = \$11,250$).

The proposed and final regulations only offer limited guidance with respect to this optional feature. However, the following clarifications were provided:

- / The super catch-up feature is optional; however, if any plan sponsored by a member of a controlled group adds this feature, then all plans sponsored by other employers in the controlled group must add this feature.
- / Plans must be amended to provide for this feature and that amendment must be made by December 31, 2026.
- / In plans that do not offer Roth contributions, participants who are subject to the mandatory Roth catch-up requirement can be excluded from the super catch-up feature.
- / Plans may offer this feature to non-collectively bargained employees while simultaneously excluding collectively bargained employees from using the feature.
- / A 403(b) plan participant who otherwise satisfies all requirements may be permitted to make special 403(b) contributions and “super catch-up” contributions in the same year.
- / If a 403(b) plan participant is eligible to make “super catch-up” contributions in the same

year that they are eligible to make special 403(b) catch-up contributions then any catch-up amount contributed by the participant will be treated as a special 403(b) contribution first.

- / Plans were permitted to implement this feature for tax years beginning on or after January 1, 2025, though the final regulations are not effective until tax years beginning on or after January 1, 2027. This feature must be operated in good faith in the interim.

The mandatory Roth catch-up changes and the optional super catch-up changes will require significant planning and coordination between plan sponsors and third-party recordkeepers. With the mandatory Roth catch-up change being effective in just over three months, plans sponsors should begin preparing participant communication materials explaining the changes. We recommend that plan sponsors consult with counsel when considering design alternatives, preparing participant communications, and drafting plan amendments.

For more information on the content of this alert, please contact your Nixon Peabody attorney or:

Damian A. Myers

202.585.8485

dmyers@nixonpeabody.com

Eric Paley

585.263.1012

epaley@nixonpeabody.com

Emily Pellegrini

585.263.1020

epellegrini@nixonpeabody.com

Christina Porras

202.585.8005

cporras@nixonpeabody.com