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More Time to "Catch-Up"

ZACHARY ISENHOUR
and ROBERT GOWER

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On August 25, 2023, the Internal Revenue Service (IRS) released [Notice 2023-62](#) (the "Notice"), providing eagerly awaited relief on the implementation timeline for the catch-up contribution provisions under Section 603 of the SECURE 2.0 Act of 2022 ("SECURE 2.0").

The catch-up contribution provisions under Section 414(v) of the Internal Revenue Code (the "Code") allow plan participants in 401(k), 403(b) and governmental 457(b) plans who reach age 50 by the end of the calendar year to make elective deferrals above the annual elective deferral limit under Code section 402(g), effectively raising the contribution ceiling (by \$7,500 in 2023). Catch-up contributions are an optional plan design feature that has been widely adopted by plan sponsors looking to assist employees in maximizing retirement savings.

Section 603 of SECURE 2.0 amended Section 414(v) of the Code to require that, if a plan offers catch-up contributions, (1) catch-up eligible participants with FICA wages exceeding \$145,000 (to be adjusted in future years) in the prior plan year must designate any catch-up contributions as Roth contributions, and (2) Roth contributions must be universally available to catch-up eligible participants, regardless of prior year income. These requirements are effective January 1, 2024.

In the eight months following enactment of SECURE 2.0, recordkeepers, third-party administrators and plan sponsors have been working against the



clock to update benefit, payroll and HR systems, running into numerous hurdles and challenges — including how to separately track FICA wages from regular plan compensation, how to address routine inadvertent compensation tracking errors, and whether a plan sponsor may unilaterally change an impacted participant's existing pre-tax catch-up election to Roth. These challenges and unanswered questions left many plan sponsors considering whether to simply eliminate catch-up contributions in 2024 in order to avoid compliance errors.

Administrative Transition Period

Recognizing these significant hurdles, the Notice provides an "administrative transition period" to facilitate an orderly transition for compliance with the new catch-up contribution requirements until tax years beginning after December 31, 2025. While the Notice does not expressly delay implementation, it does so in effect by clearly providing that any catch-up contributions not made on a Roth basis will be treated as compliant during the transition period, and plans offering catch-up contributions without a Roth contribution option will similarly be treated as compliant.

Technical Correction

The Notice also addresses a significant drafting error in SECURE 2.0 — the inadvertent deletion of language in 414(v) that seemingly banned all catch-up contributions beginning January 1, 2024. Acknowledging that this was a drafting error, the Notice makes it clear that catch-up contributions remain permissible on and after January 1, 2024.

Future Guidance and Public Comment

Beyond the welcome relief and clarifications, the Notice contemplates future compliance guidance to address several questions on the application of Section 603 of SECURE 2.0, including:

- How to apply the \$145,000 threshold to an eligible participant who does not have income from the plan sponsor subject to FICA in the prior year. Currently, the IRS anticipates guidance will clarify that the threshold does not apply to participants without FICA wages.
- Whether, in the context of a multiemployer plan, participating employers are required to aggregate an employee's prior year compensation with another participating employer in order to determine whether any catch-up contributions must be Roth designated. Currently, the IRS anticipates such guidance will not require aggregation.
- Whether a plan administrator may treat an existing participant's pre-tax catch-up contribution election as a deemed election to make catch-up contributions as designated Roth contributions where such contributions are required to be Roth designated. Currently, the IRS anticipates such guidance will allow for such deemed elections. We are hopeful that this guidance will also address whether a plan sponsor can mandate Roth-only catch-up contributions for all participants (regardless of income), and whether a plan sponsor can eliminate catch-up contributions for those earning in excess of \$145,000 in the prior year.

The IRS requested public comments on these three items on or before October 24, 2023.

The Trucker ♦ Huss Benefits Report is published monthly to provide our clients and friends with information on recent legal developments and other current issues in employee benefits. Back issues of Benefits Report are posted on the Trucker ♦ Huss web site (www.truckerhuss.com).

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In response to new IRS rules of practice, we inform you that any federal tax information contained in this writing cannot be used for the purpose of avoiding tax-related penalties or promoting, marketing or recommending to another party any tax-related matters in this Benefits Report.

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