

Proposed Catch-Up Contribution Regulations Released

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Since the SECURE 2.0 Act of 2022 (“SECURE 2.0”) was passed in late 2022, NAGDCA has been actively engaging with legislators and regulators about the unique challenges governmental plans face in implementing its features. Catch-up contribution changes, and Roth catch-up contributions in particular, have been a top priority item based on NAGDCA member feedback.

In 2023, after significant advocacy by NAGDCA, the IRS extended - until 2026 - the effective date for the requirement of Section 603 of SECURE 2.0 that catch-up contributions for higher income participants in Section 401(k), 403(b), and governmental 457(b) plans be designated as Roth contributions (the “mandatory Roth catch-up” provision) and indicated that future guidance would provide further guidance on this topic.

On January 10, 2025, the Department of the Treasury and the Internal Revenue Service (“IRS”) issued proposed regulations regarding the provisions of SECURE 2.0 that relate to catch-up contributions.

Aside from the mandatory Roth catch-up contribution provision, the proposed regulations also address the design change under Section 109 of SECURE 2.0 that permits (but does require a plan to permit) eligible catch-up participants attaining age 60 through 63 during a calendar year to make “super catch-ups”, a higher dollar amount of catch-up contributions for such calendar year, effective January 1, 2025.

A. Background

Mandatory Roth Catch-Up. Section 603 of SECURE 2.0 added a mandatory Roth catch-up contribution requirement in Code Section 414(v)(7) for higher income retirement plan participants. The new provision generally requires that catch-up contributions made by a participant with more than \$145,000 in prior-year FICA wages¹ from the employer sponsoring the plan (“affected participants”) be made on a Roth basis. This requirement extends to special catch-up contributions made to an eligible governmental 457(b) plan for the last three taxable years ending before the individual attains normal retirement age to the extent the applicable age 50 catch-up contribution limit exceeds the special catch-up contribution limit. For calendar years beginning after December 31, 2024, the Roth catch-up wage threshold is adjusted for changes in the cost of living.

Increased Catch-Up Limits. Governmental Section 457(b) plans must require that annual deferrals not exceed the basic annual limitation under Internal Revenue Code (“Code”) Section 457(b)(2) (the lesser of “applicable dollar amount” (\$23,500 in 2025) or 100% of the participant’s includible compensation). However, a governmental Section 457(b) plan may provide for deferrals in excess of the basic annual limitation in two ways:

- **Age 50 and Over Catch-up** under Code Section 414(v) allows a participant to defer an additional amount above the applicable dollar amount (\$7,500 for 2025).
- **Pre-Retirement Special Catch-up** under Code Section 457(b)(3) allows a participant to make additional contributions in the three years before the participant’s normal retirement age (as specified in the plan). The participant can contribute the lesser of twice the applicable dollar amount or the applicable dollar amount plus the amount of the applicable dollar limit not used in prior years.

¹Code Section 414(v)(7) defines wages by reference to Code Section 3121(a), which defines wages for purposes of the Federal Insurance Contributions Act (“FICA”).

The age 50 catch-up provision does not apply to a participant for any year for which a higher limitation applies to the participant under the pre-retirement special catch-up.

Section 403(b) plans for qualified organizations (e.g., an educational organization for the benefit of certain State and municipal colleges and universities described in Code Section 170(b)(1)(A)(ii)) also have a special catch-up limit for employees who have at least 15 years of service with a qualified organization. However, this special catch-up of up to \$3,000 merely increases the elective deferral limit of Code Section 402(g). If an employee who is eligible for the age 50 catch-up under Code Section 414(v) also is eligible for the special catch-up limit under Code Section 402(g)(7), the age 50 catch-up applies after the employee reaches the higher limit permitted under Code Section 402(g)(7).

Section 109 of SECURE 2.0 amends Code Section 414(v) to increase the applicable dollar catch-up limit for taxable years beginning after December 31, 2024 for a catch-up eligible participant who attains age 60 through 63 during the calendar year. The limit is increased to the greater of (i) \$10,000, or (ii) 150% of the regular catch-up amount for 2024 (\$11,250 for 2025). The increased limit is adjusted for changes in the cost of living for taxable years beginning after December 31, 2025.

B. Guidance Regarding Mandatory Roth Catch-Ups

- **Plans That Do Not Offer Roth Contributions.** Plans are not required to offer Roth contributions. However, with a new provision that can be especially relevant to governmental plans, if a plan does not include a qualified Roth contribution program, then an affected participant cannot make any catch-up contributions (but eligible participants who are not subject to the Roth catch-up requirement can make catch-up contributions). This proposal means that plans that do not include a qualified Roth contribution program will nonetheless be required to track which participants are subject to the mandatory Roth catch-up provision.
- **Deemed Roth Catch-Up Contribution Elections.** The proposed regulations would amend the 401(k) and 403(b) regulations to permit a 401(k) or 403(b) plan to deem a participant's pre-tax catch-up election to be a Roth catch-up election for impacted participants provided that the participant has a reasonable opportunity to stop catch-up contributions. The proposed regulations would not amend the regulations that apply to eligible governmental Code Section 457(b) plans, because the regulations permitting Roth contributions under those plans are still in proposed form. However, the deemed Roth catch-up contribution option presumably applies to eligible governmental 457(b) plans, particularly since this would also enable such plans to utilize the new correction methods described below; a plan could provide for such a deemed election regardless of whether it requires separate catch-up contribution elections or utilizes a spillover design.
- **Determination of FICA Wages.** FICA wages would be defined by reference to Social Security taxes taken into account in the same year that they are taken into account for Social Security tax purposes. An individual who did not have any FICA wages from the "employer sponsoring the plan" for the preceding calendar year would not be subject to the mandatory Roth catch-up requirement under the plan in the current year. For example, a state or local government employee whose services were excluded from the definition of employment under section 3121(b)(7) without regard to section 3121(u) would not be subject to the Roth catch-up requirement under the plan in the current year. In addition, the FICA wage threshold would not be prorated for an individual's year of hire. This relief, consistent with the 2023 IRS guidance, is expected to be a positive feature for many governmental plans.
- **Availability of Roth Catch-Up Contributions.** If a plan has at least one impacted participant (and the plan has a Roth program), then all participants must be provided the right to make Roth catch-up contributions.
- **Identification of "Employer Sponsoring the Plan".** The mandatory Roth catch-up provision applies to a participant if the participant has prior-year FICA wages from the "employer sponsoring the plan" in excess of \$145,000 (as adjusted). The "employer sponsoring the plan" is the participant's common law employer. In addition, where more than one employer sponsors a plan, a par-

participant's prior-year FICA wages from one employer sponsoring the plan are not aggregated with the wages from another employer sponsoring the plan for purposes of determining whether the mandatory Roth catch-up provision applies to the participant. This feature, again consistent with the 2023 IRS guidance, is likely to be beneficial for governmental multiple employer defined contribution plans where tracking compensation across governmental employers can be challenging.

- **Designated Roth Contributions as Catch-Up Contributions.** All of a participant's Roth deferrals during the year count towards the Roth catch-up limit (regardless of when made).
- **Methods for Correcting Failures.** The proposed regulations have detailed correction procedures to either distribute the pre-tax catch-up or convert the pre-tax to Roth catch-up contributions. To retain the catch-up contributions, either a Form W-2 correction or a Form 1099-R (in-plan Roth rollover) correction may be available if the same approach applies to all impacted participants for the plan year, and certain other requirements are met (including correction deadlines depending on the situation). Note, however, that in order to take advantage of the Roth conversion, a plan must provide for a deemed Roth catch-up election for affected participants. Plans would not be permitted to avoid mistakes by requiring that all catch-up contributions be made as designated Roth contributions.
- **Applicability Dates.** For non-bargained plans, the regulations would apply with respect to contributions in taxable years that begin after the date that is six months after the final regulations are published. For bargained plans, the regulations would apply with respect to contributions in taxable years beginning after the later of the first taxable year described in the preceding sentence or the first taxable year beginning 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). However, a plan could apply the regulations with respect to contributions in taxable years beginning after December 31, 2023.

C. Guidance Regarding Increased Catch-Up Limit

The proposed regulations do not provide significant substantive guidance with respect to the increased catch-up limit provision for governmental 457(b) plans, thereby leaving plan administrators (or their recordkeepers or third-party administrators) with the task of calculating the maximum deferral amount under the age 50 catch-up, the age 60 – 63 catch-up, and the pre-retirement special catch-up, to determine which catch-up yields the larger amount for eligible participants and keep track of eligible participants' maximum deferral amounts under each catch-up. Similarly, for applicable 403(b) plans, plan administrators (or their recordkeepers or third-party administrators) will have to calculate the maximum deferral amount under the special catch-up, the age 50 catch-up and the age 60 – 63 catch-up. Not doing so could result in excess deferrals.

The regulations relating to the increased catch-up limit would apply with respect to contributions in taxable years that begin after the date that is six months after the final regulations are published, but a plan could apply the regulations with respect to taxable years beginning after December 31, 2024.

D. Observations and Next Steps

The proposed regulations provide helpful guidance, particularly with regard to the mandatory Roth catch-up provision. However, it is clear that this requirement will introduce significant complexity for employers and plans. Plans should immediately begin to develop processes to enable tracking of FICA wages, if applicable, identification of participants subject to the requirement, and facilitation of deemed Roth catch-up elections. With respect to the increased catch-up limit, it will be imperative that plans communicate with participants to enable them to make elections that are most beneficial.

Comments on the proposed regulations must be submitted by March 14, 2025. A public hearing is scheduled for April 7, 2025. NAGDCA has already been working with members on identifying items for comment and clarification and looks forward to further engagement with our membership on this topic.