Section 603.

(last updated 1/23/2025)

Title: Elective deferrals generally limited to regular contribution limit

Effective Date: Effective for taxable years beginning after December 31, 2023, extended to December 31, 2025 through IRS notice 2023-62.

Mandatory or Optional: Mandatory (if offered)

Plans Affected: All

Previous Law: Catch-up contributions to Section 401(k), 403(b), and governmental 457(b) plans (if age 50 or older) may be made on either a pre-tax or Roth basis.

SECURE 2.0 Law: Catch up contributions to Section 401(a) qualified plans, Section 403(b) plans, and governmental Section 457(b) plans must be made to on a Roth basis, except for eligible participants whose prior year wages do not exceed $145,000 (indexed for inflation). This requirement does not apply to SIMPLE IRAs or SEP plans.

Guidance and/or Correction Bills:

- IRS Proposed Regulations (01/10/25)
- IRS Notice 2023-62: Guidance on Section 603 of the SECURE 2.0 Act with Respect to Catch-Up Contributions (08/25/23)

NAGDCA Action:

- 10/24/23 NAGDCA Comment Letter
- 6/29/23 Joint Action Letter
- 6/7/23 American Benefits Council Letter Requesting Delayed Effective Date
- 5/23/23 Letter from the Four Corners on SECURE 2.0 Technical Corrections
- 5/15/23 NAGDCA Catch-Up Letter to House and Senate Committee Members
- 3/23/23 Letter to IRS and Treasury

Question & Answer *(last updated 9/11/2023)*

All answers marked with an asterisk (*) are pending verification from the IRS.

<u>Tax Treatment</u>

Why was $145,000 picked for the limit to determine whether catch-up contributions would be Roth or Pre-Tax?

- *Unclear.*

If a participant is over the $145,000 income threshold the previous year, must all their current contribution dollars be treated as Roth, or only those falling under the 50+ or new 60-63 catch-up provision?

- *No. Section 603 only affects these participant's catch-up contributions. Participants making more than $145,000 in the preceding year could still choose to make their regular contributions pre-tax.*

Is the $145,000 gross income or taxable income?

- *Income is FICA wages as defined in Code §3121(a).*

Can we require that all age-based catch-up provisions be made as Roth, regardless of previous year's salary?

- *Unclear. Requiring all catch-up contributions, regardless of income, be made as Roth is not directly addressed. The IRS may provide additional guidance on this point*.*

Can we restrict all age-based catch-up contributions to employees whose previous year's salary was $145,000 or less?

- *Unclear. Recently, Treasury suggested they are considering guidance that would allow plans without Roth to provide catch-up contributions only to employees who made less than $145,000 the previous year. We expect further guidance on this issue.**

<u>Timeline</u>

Do plans have to adopt the changes in 2024, but have an additional 3 years to change the plan document to reflect this?

- *No. Based on recent Treasury guidance, plans have an administrative transition period that allows them to maintain their current catch up program while working to implement the changes in Section 603 by December 31, 2025. Plan documents still need to be amended by December 31,2026.*

<u>Income Verification</u>

Is the plan sponsor responsible for verifying participant salary relative to the $145,000 threshold if they did not work for an employer in the plan the previous year?

- *Unclear, but it appears "no." Section 603 states that the employer, not the plan sponsor is responsible for verifying income from the employer. State plans with multiple state and local employers will need guidance from the IRS on the definition of "employer".*

  *Recent Treasury guidance suggested they are considering a rule that would allow income from only the primary employer to be used to determine salary for multiple employer plans. However, this was not finalized, and we expect further guidance soon.**

If a participant works for more than one participating employer simultaneously and contributes to the plan under both, who is responsible for coordinating the compensation totals among those employers to ensure the plan tracks the total compensation?

- *Unclear. Treasury recently suggested they are considering guidance to alleviate the plan sponsor from having to aggregate data for employees receiving a salary from more than one employer in the plan. While this guidance addresses this question directly, it was categorized as "guidance under consideration", and has not officially been addressed by the Treasury or IRS.*

Who is responsible for income verification in multi-employer plans?

- *The employer. Section 603 states that the employer, not the plan sponsor is responsible for verifying income from the employer. State plans with multiple state and local employers will need guidance from the IRS on the definition of "employer". **

  Multi-employer may need to update their existing joinder or other participation agreements with political subdivisions to require income verification by the employer.

Would it be acceptable to ask the participant prior to making their election if they made over $145,000 in the prior year?

- *No. SECURE 2.0 does not allow for self-certification in this instance.*

<u>Special Catch-up Provisions</u>
Does Section 603 affect the 457 special catch-up provision?

- *No.*

Does Section 603 affect the 403b 15-year catch-up?

- *No.*

<u>Statutory Plans</u>
Does this federal law preempt state laws and automatically allow a plan to add Roth if the state statute does not?

- *No. This Section of SECURE 2.0 does not preempt state law. If a plan is created by statute, and does not allow Roth contributions, the statute must be changed to allow Roth contributions and for the plan to be able to offer catch-up contributions.*

<u>Plans without Roth</u>
If we currently do not offer Roth, are we required to suspend or terminate age 50+ catch-up contributions for all employees regardless of income until we add the Roth options for our plans?

- *Yes. Plans must have a Roth option to allow catch-up contributions starting in 2026. However, recent Treasury guidance suggested they are considering a rule that would allow plans without Roth to offer catch-up contributions to employees with previous year salaries below $145,000. We expect this to be addressed definitively in future guidance.**

<u>Elections</u>
Can this be a one-time election instead of every year?

- *Yes.*

Can excess deferrals for employees over the age of 50 be automatically treated as catch-up contributions and made into Roth deferrals if the participant is over the income threshold?

- *Unclear. This is not directly addressed in the provision. In the absence of IRS guidance, it may be possible to amend a plan and to draft the initial election forms such that participants elect to* *have excess deferrals treated as catch-up deferrals including switching to Roth deferrals in the event the participant's preceding year wages exceed the wage limit*.*

Plans must comply with the section 603 requirement allowing employee election for catch-up contribution type, and section 604 indicates the IRS may issue regulations on a participant's ability to change their election if their compensation is determined to exceed the wage limitation after the election is made.

What is the correction mechanism if a participant making $145,000 or more in the preceding year is making pre-tax contributions and has excess pre-tax deferrals treated as catch-up contributions?

- *Unclear. Further IRS guidance is needed on the proper correction mechanism. Potential corrections such as recategorization as Roth or in-plan conversion may be available. However, these likely would require payroll system updates, adjustments to the W-2 and remitting additional taxes from future paychecks*.*

  Absent IRS guidance, the current EPCRS procedures might require the non-Roth catch-up contributions be viewed as "excess amounts." Those excess amounts, adjusted for earnings, would then be made as a taxable corrective distribution to the participant and be reported as taxable income on a Form 1099-R. If the error is caught in the same plan year, future catch-up contributions should then be contributed as Roth.

Additional Resources:

- NAGDCA SECURE Implementation Webinar (01/16/25)
- NAGDCA Roth Catch-Up Guidance Webinar (09/30/23)