Law and Policy Group

GRIST

IRS proposes rules on Roth catch-up mandate for high earners

By Brian J. Kearney, Margaret Berger and Matthew Calloway
Feb. 25, 2025

In this article

Roth mandate basics | Employees subject to the Roth mandate | Employees not subject to Roth mandate | Administering the Roth mandate | Plans with no Roth program | Miscellaneous issues | Applicability date and reliance on proposal | Related resources

IRS proposed regulations provide much-needed guidance on the requirement that catch-up contributions by certain high-earning employees participating in 401(k), 403(b) and governmental 457(b) plans may be made only on a Roth basis (referred to in this article as the "Roth mandate"). Enacted as part of the SECURE 2.0 Act of 2022 (Div. T of Pub. L. No. 117-328), the Roth mandate applies to tax years starting after 2023. However, compliance with the mandate is on hold until 2026 after IRS announced a two-year administrative implementation period. The proposal largely incorporates — and expands upon — IRS's interim guidance on the Roth mandate in Notice 2023-62. Plans may rely on the proposal for tax years before final regulations are effective. Comments are due by March 14.

The proposal also addresses SECURE 2.0's higher "super catch-up" contribution limit for employees turning ages 60, 61, 62 or 63 during the year. For a discussion of that portion of the proposal, see IRS confirms SECURE 2.0 age 60-63 "super catch-ups" are optional (Jan. 10, 2025).

Roth mandate basics

Section 401(k), 403(b) and governmental 457(b) plans can allow employees to make catch-up contributions above the applicable limit on elective deferrals starting in the year an employee turns age 50. The applicable limit can be the Internal Revenue Code (IRC) annual limit on elective deferrals (i.e., the Section 402(g) limit for 401(k) and 403(b) plans and the Section 457(e)(15) limit for governmental 457(b) plans), the limit on annual additions under Section 415(c), or a lower limit set by the plan. Catch-up contributions are subject to an annually indexed dollar amount. For 2025, the regular catch-up limit is $7,500 and the super catch-up limit is $11,250.

Before SECURE 2.0, plans could allow all employees to choose whether to make catch-up contributions on a pretax or Roth basis. But SECURE 2.0 permits only Roth catch-up contributions if an employee's FICA wages in the preceding calendar year from the employer sponsoring the plan exceeded $145,000. This threshold is indexed starting in 2025 (even though the Roth mandate is on hold). SECURE 2.0 also requires plans to offer all other eligible employees the option to make Roth catch-up contributions if any employee is subject to the Roth mandate during the plan year.

Two-year delay. In Notice 2023-62, IRS gave employers a two-year "administrative implementation period" for the Roth mandate. The notice says plans can continue accepting pretax catch-up contributions from all catch-up-eligible employees during the 2024 and 2025 tax years. The notice also says plans without a Roth program don't have to add one to satisfy the requirement that all catch-up-eligible employees must have the option to make Roth catch-up contributions if any employee is subject to the mandate. The proposed regulations would make this guidance permanent for plans without a Roth program (see Plans with no Roth program below).

SIMPLE IRAs and SARSEPs are exempt. Savings incentive match plans for employees (SIMPLE IRAs) and salary reduction simplified employee pension plans (SARSEPs) can also accept catch-up contributions. However, the Roth mandate doesn't apply to these arrangements.

Employees subject to the Roth mandate

As noted above, the Roth mandate applies to employees whose preceding-year FICA wages from the employer sponsoring the plan exceeded the applicable threshold. The proposed regulation includes guidance on how to identify these employees.

Preceding year's FICA wages

SECURE 2.0 set the initial preceding-year FICA-wage threshold at $145,000 (i.e., the amount of 2023 FICA wages used to determine whether an employee would have been subject to the Roth mandate in 2024) and requires annual indexing starting in 2025. The proposed regulations confirm that the indexed FICA wage threshold for 2025 (which will be announced in October or November of this year) will be used to determine if the Roth mandate applies to catch-up-eligible employees in 2026.

Employees with no FICA wages. The proposal confirms that employees with no FICA wages in the preceding year aren't subject to the Roth mandate in the current year. This could include, for example, a partner with only self-employment income or a worker whose pay is subject to the railroad retirement tax.

No proration of threshold in the year of hire. The proposal also clarifies that the Roth mandate's FICA wage threshold isn't prorated for an employee's year of hire. For example, if an employee is hired on Oct. 1, 2025, the employee won't be subject to the Roth mandate in 2026 unless the employee's FICA wages for the last three months of 2025 exceed the full 2025 threshold.

Employer sponsoring the plan

SECURE 2.0 doesn't define the phrase "employer sponsoring the plan." The proposal clarifies that the employer sponsoring the plan is the employee's common law employer. For this purpose, an employer is generally considered a common law employer if the employer has the right to control both what work an employee does and how the employee does it.

No aggregation of wages from related employers. The proposed regulation explains that the employer sponsoring the plan wouldn't include other employers in the common law employer's controlled group. This is true even if related employers are participating in the same plan. To illustrate this point, an example in the proposal explains that if an employee transferred from one employer in the controlled group to another during the preceding year, the Roth mandate would apply in the current year only if the employee's preceding-year FICA wages with the current employer exceeded the mandate's threshold. The employee's preceding-year FICA wages year with the other related employer would have no bearing on whether the mandate applies under the current employer.

Multiple employer plans. The analysis for related employers also applies to employees participating in a multiple employer plan (MEP), including a pooled employer plan (PEP). If an employee worked for two participating employers in the preceding year, the FICA wages earned from the two employers in the preceding year wouldn't be aggregated to determine if the Roth mandate applied in the current year.

Employees not subject to Roth mandate

SECURE 2.0 requires giving all employees the option to designate their catch-up contributions as Roth contributions if any employee is subject to the Roth mandate. The group that must have a Roth catch-up option includes employees whose preceding-year FICA wages were below the mandate's threshold, including employees who had no FICA wages. (However, as explained below, the proposal clarifies that this rule applies only if a plan offers a Roth program.)

Plans can't limit everyone to Roth catch-ups. In a footnote to the preamble, IRS explains that plans can't limit all catch-up-eligible employees to making catch-up contributions on a Roth basis. This is because the IRC's Roth rules say a designated Roth contribution must be elected by an employee in lieu of the elective deferrals the employee is otherwise eligible to make. Limiting employees who aren't subject to the Roth mandate to making only Roth catch-up contributions would be inconsistent with the IRC.

Administering the Roth mandate

The proposed regulations include helpful guidance for plans on how to administer the Roth mandate.

Deemed Roth catch-up elections

The proposal would permit — but not require — 401(k) and 403(b) plans to provide that employees subject to the Roth mandate are deemed to have irrevocably designated any catch-up contributions as

Roth contributions. The proposal would allow deemed elections without regard to how a plan designates elective deferrals as catch-up contributions (i.e., some plans require employees to make an affirmative election to designate deferrals as catch-up contributions, while others use a “spillover design” that automatically treats elective deferrals as catch-up contributions whenever an employee’s deferrals exceed the applicable IRC or plan limit). Plans relying on deemed elections would be required to provide high-earning employees the opportunity to decline making catch-up contributions.

Governmental 457(b) plans. The proposal doesn’t include similar amendments to the regulations under Section 457(b) to allow deemed Roth catch-up elections. In a footnote to the preamble, IRS explains that this is because the 457(b) regulations currently don’t reflect that governmental 457(b) plans can accept Roth contributions (IRS proposed regulations in 2016 to address Roth contributions under governmental 457(b) plans but hasn’t finalized those regulations). Presumably, governmental 457(b) plans could rely on the 401(k) and 403(b) rules for deemed elections, but IRS stops short of saying so. Sponsors of these plans might want to consult with legal counsel.

Error corrections

The proposed regulations include two methods that plans could use to correct pretax deferrals exceeding the applicable limit by an employee who is subject to the Roth mandate:

- **Form W-2 correction method.** The Form W-2 correction method would involve transferring the contributions, adjusted for earnings or losses, from the employee’s pretax account to the Roth account. The employer would then report the contributions, unadjusted for earnings or losses, on the employee’s Form W-2 for the deferral year. The Form W-2 correction method would be available only if the employer hadn’t yet issued the employee’s Form W-2, which is due by Jan. 31 following the year of deferral. In a footnote to the preamble, IRS acknowledges that this makes the Form W-2 correction generally unavailable to help calendar-year plans pass the actual deferral percentage (ADP) test by recharacterizing pretax elective deferrals as Roth catch-up contributions. This is because ADP testing for such a plan is typically completed after the deadline for issuing the Form W-2.
- **In-plan Roth rollover correction method.** Under the in-plan Roth rollover method, a plan would directly roll over the pretax deferral that should have been made as a Roth catch-up contribution, adjusted for gains or losses, to the employee’s Roth account and report the full rollover amount on Form 1099-R for the year of the rollover.

Plans could use either correction method but would have to use the same method in a given plan year for all pretax elective deferrals made exceeding the same limit. Plans that are unable to use either method would have to distribute the erroneous pretax deferrals (the exact procedure for doing so would depend on which applicable limit the pretax deferrals exceed).

Correction deadlines. The deadline for using the correction methods would depend on which limit an elective deferral exceeded:

- For deferrals treated as catch-up contributions because they exceed the annual limit on elective deferrals, the deadline would be April 15 of the following calendar year.
- For deferrals treated as catch-up contributions because they exceed the limit on annual additions under IRC Section 415, the deadline would be the last day to allocate amounts to the limitation year for which the elective deferral was made.
- For pretax elective deferrals recharacterized as Roth catch-up contributions to help a plan pass ADP testing and for deferrals exceeding a plan limit, the deadline would be two-and-a-half-months after the end of the plan year (or six months after the end of the plan year if the plan includes an eligible automatic contribution arrangement).

A plan that failed to correct by the deadline would be required to distribute the excess deferrals under IRS's Employee Plans Compliance Resolution System (EPCRS).

Additional conditions for catch-up contributions exceeding statutory limits. The proposal includes conditions for plan sponsors to use either of the above correction methods to correct pretax deferrals exceeding a statutory limit (the annual limit on elective deferrals or IRC Section 415 limit on annual additions). The plan sponsor or plan administrator would need to have practices and procedures in place to ensure catch-up contributions in excess of the statutory limits were made on a Roth basis. This would include using deemed Roth elections to automatically treat deferrals exceeding a statutory limit as Roth catch-up contributions. If a plan didn't provide for deemed Roth catch-up contribution elections, its only correction option would be to distribute deferrals exceeding the statutory limit. These additional conditions wouldn't apply to catch-up contributions exceeding the ADP limit or a plan limit on deferrals.

Correcting catch-up errors due to incorrect FICA wage reporting. The proposal would allow plans to determine whether an employee is subject to the Roth mandate based on the employee's preceding-year FICA wages reported on a timely filed Form W-2. However, the preamble explains that if the employee's reported FICA wages are later determined to be incorrect, the plan would need to correct any pretax catch-up contributions that should have been subject to the Roth mandate based on the correct amount of FICA wages. The preamble doesn't explain whether plans would also need to correct Roth catch-up contributions that otherwise would have been made on a pretax basis where the employee's corrected FICA wages are below the Roth mandate's FICA wage threshold.

Existing IRS guidance on fixing Roth errors. Under existing IRS guidance, failure to honor an employee's Roth election can be corrected by the plan transferring the deferrals, as adjusted for earnings or losses, to the employee's Roth account. The employer must then report the transferred amount on either a corrected Form W-2 for the year of deferral or a Form W-2 for the year of the transfer. If a plan used deemed Roth elections to comply with the Roth mandate, could a plan's failure to implement the deemed election be a failure to honor a Roth election that's eligible for correction under the existing guidance? The proposed regulation doesn't explicitly permit or preclude this. Clarification from IRS would be helpful.

Plans with no Roth program

Under the proposed regulations, plans that don't offer a Roth contribution program wouldn't have to add one to comply with the Roth mandate's requirement to offer non-high earners the option to make catch-ups on a Roth basis. In such a plan, only employees who aren't subject to the mandate could make catch-up contributions (and only on a pretax basis).

No violation of the universal availability requirement. The IRC and IRS's current regulations include a "universal availability requirement" for catch-up contributions, which generally says all catch-up-eligible employees must be able to make catch-up contributions up to the same dollar amount. Under the proposal, a plan with no Roth program wouldn't violate the universal availability requirement even though employees subject to the Roth mandate couldn't make catch-up contributions while other employees could. This is because the proposal would amend the existing IRS regulations to clarify that a plan would satisfy the universal availability rule if each catch-up-eligible employee could make catch-up contributions up to the dollar limit that applies to them. For a plan with no Roth program, the proposal would provide that the catch-up limit for employees subject to the Roth mandate would be $0, while a higher limit would apply to other catch-up-eligible employees (in 2025, either $7,500 or $11,250, depending on the employee's age).

The universal availability requirement applies on controlled group basis. However, the proposal says plans in a controlled group not offering a Roth program — and therefore not allowing high-earners to make catch-up contributions — will not cause a failure of the universal availability requirement merely because other plans in the controlled group with Roth programs limit high-earners to making catch-up contributions on a Roth basis.

Benefits, rights and features testing issues. Under IRS's current regulations, a plan won't violate benefits, rights and features (BRF) testing merely because the group of employees that can make catch-up contributions doesn't satisfy the IRC's minimum coverage requirements. Under the proposed regulations, this rule wouldn't apply to a plan with no Roth program that allows catch-up contributions by employees who aren't subject to the Roth mandate. This could complicate BRF testing because such a plan could still have some highly compensated employees (HCEs) in the group that can make catch-up contributions. For example, a partner who earned enough in the preceding year to be an HCE in the current year wouldn't be subject to the Roth mandate if the preceding-year earnings were self-employment wages and not FICA wages. The proposal would allow these plans to exclude some HCEs from making catch-up contributions if necessary to pass BRF testing.

Miscellaneous issues

The proposal also addresses the following additional issues:

- **Any Roth contributions can satisfy the mandate.** The proposed regulations would allow plans to count any Roth contributions made by the employee during the year toward the Roth mandate, even those made before the employee has reached an applicable limit. For example, if an employee makes Roth contributions before reaching the IRC Section 402(g) annual limit on elective deferrals, the plan can count those Roth contributions as catch-up contributions if the employee is later making pretax deferrals and exceeds the 402(g) limit.

- **Non-calendar year plans.** Plans with non-calendar-year plan years will face added complexity when administering the Roth mandate. This is because an employee's preceding-year FICA wage threshold is determined on a calendar-year basis, while the Roth mandate is applied on a plan-year basis. The proposed regulation includes an example of a plan with a July 1-June 30 plan year to illustrate this point. In the example, an employee who is eligible to make catch-up contributions in 2026 earned above the FICA wage threshold in 2025 and is therefore limited to making Roth catch-up contributions during the first half of the 2026 plan year (i.e., from July-Dec. 2026). The example doesn't say whether the employee continues to be limited to making Roth catch-up-contributions during the second half of the 2026 plan year (i.e., from Jan.-June 2027). Clarification from IRS would be helpful.
- **Special catch-up contributions under 457(b) plans.** Governmental 457(b) plans can allow employees to make special catch-up contributions during the last three taxable years ending before normal retirement age. These special catch-up contributions are separate from regular catch-up contributions at age 50 and later, and employees must choose one or the other. Usually, the special catch-up limit is much higher than the regular limit, but for some employees, the regular limit may be greater. The Roth mandate doesn't apply to the special catch-up contributions, so SECURE 2.0 amended Section 457(e) to address the situation when the regular limit exceeds the special limit. Although not part of the proposed regulations, the preamble explains that the SECURE 2.0 change means that if an employee is subject to the Roth mandate, any catch-up contribution up to the special catch-up limit needn't be Roth, but any catch-up contributions in excess of that limit must be made on a Roth basis.
- **US-Puerto Rico dual-qualified plans.** The proposal also addresses the application of the Roth mandate to plans that are "dual-qualified" in both the US and Puerto Rico. Unlike the US IRC, the Puerto Rico Internal Revenue Code doesn't allow Roth contributions, but it does allow after-tax contributions. The proposed regulation says a dual-qualified plan could comply with the Roth mandate by allowing Puerto Rico employees subject to the mandate to make catch-up contributions on an after-tax basis. Similarly, the preamble says dual-qualified plans could offer Puerto Rico employees who aren't subject to the mandate the option to make after-tax catch-up contributions to satisfy the mandate's requirement that these employees must have a Roth catch-up option (although this isn't stated in the text of the proposed regulation). It's unclear why the preamble and proposed regulatory text address different groups of employees. Clarification from IRS would be helpful. (The Puerto Rico Code's limit on catch-up contributions is $1,500 and is not indexed for inflation.)

Applicability date and reliance on proposal

For noncollectively bargained plans, the proposed regulation would apply to contributions made in taxable years beginning more than six months after the IRS issues final regulations. For collectively bargained plans, the regulations would apply to contributions made after this same date, or if later, the first taxable year that begins after the date on which the last collective bargaining agreement that is in effect on Dec. 31, 2025, terminates (disregarding any extensions). Though most plans likely won't implement the Roth mandate until the 2026 tax year, all plans can apply the proposed regulations to contributions in tax years beginning after Dec. 31, 2023, and until final regulations are effective.

Related resources

Non-Mercer resources

- Proposed regulations (Federal Register, Jan. 13, 2025)
- News release (IRS, Jan. 10, 2025)

Mercer Law & Policy resources

- User's Guide to SECURE 2.0 (regularly updated)
- IRS confirms SECURE 2.0 age 60-63 'super catch-ups' are optional (Jan. 10, 2025)
- Lawmakers release SECURE 2.0 corrections bill for beta testing (Jan. 12, 2024)
- IRS delays SECURE 2.0's Roth catch-up mandate until 2026 (Aug. 29, 2023)
- Implementing SECURE 2.0's Roth provisions may tax DC plan sponsors (April 11, 2023)

