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Proposed IRS Regulations Regarding Catch-Up Contributions Under SECURE 2.0 for Single Employer Plans

On January 10, 2025, the Internal Revenue Service (IRS) issued proposed regulations addressing two significant catch-up contribution changes enacted under the SECURE 2.0 Act of 2022 (SECURE 2.0): the "super-catch up" contribution limit and the "Rothification" of catch-up contributions.

The proposed regulations are scheduled to go into effect for contributions made in taxable years that begin six months or more after the date that finalized regulations are issued. However, for multiemployer plans, the regulations will apply as of the **later** of the aforementioned six-month period, or the date on which the last applicable collective bargaining agreement expires.

Super Catch-up Contributions for Participants Aged 60-63

SECURE 2.0 established an increased catch-up contribution limit for participants aged 60-63, creating a "super catch-up" feature for that age group. The proposed regulations affirm that SECURE 2.0 establishes a limit of $11,250 (or 150 percent of the generally applicable catch-up contribution limit) for participants who will attain age 60, 61, 62 or 63 within a taxable year. This amount is subject to cost-of-living adjustment.

Furthermore, the proposed regulations confirm that the super catch-up contribution feature does not violate the universal availability requirement, provided each participant has an "effective opportunity to make the maximum amount of catch-up contributions permitted for that participant" under the law.

In the proposed regulations, the IRS did **not** provide specific guidance indicating if this increased limit is mandatory; in other words, it remains unclear whether or not a plan that implements a catch-up contribution feature must also implement the increased "super catch-up" limit for plan participants aged 60-63.

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Roth Catch-up Requirement for Higher Income Participants

SECURE 2.0 also established a requirement that catch-up contributions made by catch-up eligible participants who earned $145,000 (as indexed) or more in the prior year (the High Earning Group) must be designated as after-tax Roth contributions in the current year. Consistent with the non-enforcement guidance issued by the IRS in 2023, this provision is effective January 1, 2026.

The newly proposed regulations offer significant guidance for plans in administering SECURE 2.0's Roth catch-up rule. The main points of guidance applicable to single-employer plans are summarized as follows:

1. **Wage Threshold**. Pursuant to the proposed regulations, the $145,000 limit is based on a participant's FICA wages for the preceding calendar year, is subject to cost-of-living increases and does not need to be prorated for the first year of hire. This means that if a participant had **no** FICA wages exceeding $145,000 during the previous year, such participants would **not** be subject to the Roth catch-up requirement during the current year. Note that this definition of compensation differs from the definition of compensation for the determination of highly compensated employees (HCEs).Additionally, only compensation paid by the individual's common law employer is relevant for the determination of whether an individual is a member of the High Earning Group. Compensation earned from an affiliated employer or unrelated employer is not relevant for the determination of the High Earning Group.

2. **Availability**. If a plan permits the High Earning Group to make catch-up contributions as designated Roth contributions for a plan year, such plan must allow all other catch-up eligible participants to also make designated Roth contributions. In other words, catch-up contributions on a Roth basis must be made an option to all participants, if made an option for some.

3. **No Requirement to Include Roth Feature**. Under the proposed regulations, **no plan is required to implement a Roth feature**. If a plan does not include a Roth feature, the High Earning Group will not be permitted to make any catch-up contributions under such a plan. The proposed regulations further provide that this is compliant with the universal availability requirements as long as a plan permits each catch-up eligible participant to make elective deferrals up to the maximum dollar

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amount of catch-up contributions permitted under applicable law with respect to that participant. For the High Earning Group, in a plan without a Roth feature, the maximum amount permitted under applicable law is $0.

4. **Roth Contributions Made Prior to Reaching Catch-up Limit**. The proposed regulations also provide that **all** Roth contributions made by a member of the High Earning Group (including elective contributions that are **not** catch-up contributions) will count toward the Roth catch-up contribution requirement. For example (using the elective deferral limits applicable in 2025), if a participant in the High Earning Group elects to make 50 percent of their elective contributions on a pre-tax basis and 50 percent on a Roth basis, then the participant will have made $11,750 in Roth contributions before reaching the contribution limit. This participant's election will not need to be converted when they begin making Roth contributions. Accordingly, the plan administrator should review the contribution elections of each participant in the High Earning Group to determine whether any changes to the taxation of catch-up contributions are required.

5. **Deemed Elections**. If a participant in the High Earning Group has elected to make pre-tax contributions, then any future catch-up contributions above the elective contribution limit will automatically be "deemed" or designated as Roth contributions, even without an affirmative election, unless the participant elects otherwise. As such, with regard to such deemed Roth contributions, an employer must (1) treat the contributions as not excludable from the participant's gross income; and (2) maintain the contributions in a Roth account. A participant in the High Earning Group must also be provided an "effective opportunity" to make a new election, including an election to stop making elective contributions.

6. **Correction Methods**. Finally, the proposed regulations clarify the permissible methods and rules for correcting pre-tax elective deferrals from the High Earning Group that exceed the applicable limit. Under the proposed regulations, plans may correct such an error through either (1) a corrected Form W-2; or (2) an In-Plan Roth Rollover. The proposed regulations also establish general correction requirements and deadlines.

   a.) General Rules. Plans can only use one of the two new correction methods if the plan sponsor has practices in place that are "designed

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to result in compliance" with the applicable regulations when the elective contribution is made.

b.) Deadlines. The applicable correction deadline under the proposed regulations depends on the type of error. If a contribution exceeds the annual elective deferral limit, then the deadline to correct is April 15 of the calendar year following the year in which the contribution was made. If a contribution results in a participant exceeding an employer-provided annual limit, then the deadline to correct is 2 ½ months after the close of the plan year in which the contribution was made (or six months for plans that include an eligible automatic contribution arrangement). If a contribution exceeds the actual deferred percentage (ADP) limit, then the deadline to correct it is the same as in the previous sentence.

As an additional reminder, the IRS has consistently held that Roth contributions must be elective, and therefore, the IRS generally provides that participants who are **not** in the High Earning Group must still have the option of making traditional catch-up contributions; in other words, plans cannot require that all catch-up contributions be made on a Roth basis to simplify the administration of this requirement.

If you have questions or require further assistance, please contact your Reinhart attorney or a member of Reinhart's Employee Benefits Practice. Note that the proposed regulations also include guidance applicable to plans sponsored by more than one employer, but those provisions are beyond the scope of this publication. If you have questions about the applicability of the proposed regulations to your multiple or multiemployer plan, please contact your Reinhart attorney.

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