

MEMO# 35426

August 31, 2023

IRS Provides Transition Relief for New Roth Catch-Up Requirement Under SECURE 2.0 Act

[35426]

August 30, 2023

TO: ICI Members

Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension

Tax RE: IRS Provides Transition Relief for New Roth Catch-Up Requirement Under SECURE 2.0 Act

IRS and Treasury on August 25, 2023, issued Notice 2023-62, which effectively provides for a 2-year delay (until taxable years beginning after December 31, 2025) of the applicability of section 603 of the SECURE 2.0 Act, which requires that catch-up contributions made by certain higher-earning participants in 401(k) and similar retirement plans must be made on a Roth basis.[\[1\]](#)

SECURE 2.0 Act Section 603

Section 603 amends section 414(v) of the Internal Revenue Code (Code), which permits certain retirement plan participants aged 50 and over to make elective catch-up contributions to plans. Section 603 requires that effective for tax years beginning after December 31, 2023, catch-up contributions for higher-earning participants in 401(k), 403(b), or governmental 457(b) plans must be made as Roth contributions. The applicable earnings threshold for this requirement is whether a participant's prior-year Social Security wages (i.e., FICA wages) from the employer sponsoring the plan exceeded \$145,000 (indexed). Moreover, if a plan offers catch-up contributions and has affected participants, it must offer all catch-up eligible participants the option to make such contributions on a Roth basis.

ICI—along with many retirement industry service providers and other industry participants—expressed concerns with the challenges of implementing section 603 by the effective date.[\[2\]](#) These concerns included, among other things, that not all impacted plans currently offer a Roth option, and that the definition of compensation in section 603 is one not generally used for other retirement plan administration purposes. As such, in addition to using a different definition of compensation, plans and their service providers also would

need to build connections with employer payroll providers. These concerns have become more urgent as the implementation deadline approached with no substantive guidance on how parties could or should implement section 603.

Notice 2023-62

IRS and Treasury issued the Notice in response to these concerns. The Notice:

- Provides for a two-year delay of the requirements of section 603, until taxable years beginning after December 31, 2025;
- Clarifies that during this two-year "administrative transition period" plans will be treated as complying with section 603 even if catch-up contributions by impacted participants are not made on a Roth basis;
- Clarifies that during this transition period plans need not add a Roth option to be considered as complying with section 603;
- Confirms that the limitation on the permissible amount of elective catch-up contributions in a taxable year is aggregated across plans, notwithstanding associated changes to the Code in section 603 (specifically, the elimination of Code section 402(g)(1)(C));
- Notes that further guidance as to the implementation of section 603 is forthcoming, and indicates IRS and Treasury's positions on numerous issues; and
- Requests comments to assist with future guidance.

Future Guidance

The Notice states that IRS and Treasury "intend to issue further guidance to assist taxpayers with the implementation of section 603," and highlights three specific areas as to which guidance is expected. Importantly, the Notice sets out IRS and Treasury's current thinking on a number of issues where the retirement industry has expressed concerns. While there is no guarantee that any eventual guidance will adhere to these positions, the Notice indicates that the agencies anticipate issuing the following guidance, after taking into account any comments received:

- Guidance clarifying that if an eligible participant did not have FICA wages from the sponsoring employer in the prior year, the requirement to make Roth catch-up contributions would not apply to them. Excluded participants include partners or other self-employed individuals receiving self-employment income, as well as certain state or local government employees whose services are excluded under the applicable Code section 3121(b)(7) definition of employment.[\[3\]](#) Similarly, section 603 would not apply to a participant who had no FICA wages from the sponsoring employer in the prior year (e.g., if they worked for another employer).
- Guidance that a plan administrator/employer may treat an election by an affected participant to make catch-up contributions on a pre-tax basis as an election to make Roth catch-up contributions. Absent this clarification, current law requires that Roth designations be made by an employee at the time of a deferral election.
- Guidance addressing a number of issues for plans maintained by more than one employer (including multiemployer plans), including that:
 - Prior year wages from multiple employers in the plan will not be aggregated for purposes of determining whether a participant's prior year wages from the sponsoring employer exceeded \$145,000.
 - Even if a participant's prior year wages from one participating employer exceeded \$145,000, the participant may still make non-Roth catch-up

contributions through another participating employer - provided the participant's prior year wages from that other employer did not exceed \$145,000.

Request for Comments

The Notice requests comments both on the contents of the Notice and on any other aspect of section 603, in particular with regard to the areas of anticipated future guidance summarized above.

In addition, the Notice solicits comments on whether future guidance should provide that where a plan permits catch-up contributions but does not include a qualified Roth option, the plan will not fail to satisfy section 603 if catch-up contributions are permitted only for participants who do not exceed the section 603 \$145,000 earnings threshold (as adjusted).

IRS and Treasury request written comments by October 24, 2023.

David Cohen
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Notes

[1] IRS Notice 2023-62, released August 25, 2023, available at <https://www.irs.gov/pub/irs-drop/n-23-62.pdf>. For a summary of the SECURE 2.0 Act, see ICI Memorandum No. 34795, dated January 12, 2023, available at <https://www.ici.org/memo34795>.

[2] Letter to IRS and Treasury from ICI and other signatories, dated July 19, 2023, see ICI Memorandum No. 35380, dated July 20 2023, available at <https://www.ici.org/memo35380>; Letter to US Congress from ICI and other signatories, dated June 29, 2023, see ICI Memorandum No. 35365, dated July 3, 2023, available at <https://www.ici.org/memo35365>; Letter to IRS and Treasury from Elena Chism and Shannon Salinas, dated March 23, 2023, see ICI Memorandum No. 35218, dated March 28, 2023, available at <https://www.ici.org/memo35218>.

[3] Section 3121(b)(7) excludes from the definition of employment services that constitute "covered transportations service" under Code §3121(j), as well as certain services in the employ of the Government of Guam or the Government of American Samoa or any political subdivision thereof or the District of Columbia, and certain services by State employees.