

MEMO# 35496

October 24, 2023

ICI Submits Comment Letter to IRS on New Roth Catch-Up Requirement Under SECURE 2.0 Act

[35496]

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TO: ICI Members

Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension

Tax RE: ICI Submits Comment Letter to IRS on New Roth Catch-Up Requirement Under SECURE 2.0 Act

On October 24, 2023, ICI submitted the attached comment letter (Comment) to IRS and Treasury in response to IRS Notice 2023-62. Notice 2023-62, issued August 25, 2023, 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 (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.[\[1\]](#)

Section 603 and Notice 2023-62

Section 603 of the Act 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.

Notice 2023-62 provided for a two-year "administrative transition period" until taxable years beginning after December 31, 2025. During this period, IRS and Treasury will treat plans as complying with section 603 even if catch-up contributions by impacted participants are not made on a Roth basis. Notice 2023-62 also provided additional guidance, noted specific future guidance IRS and Treasury anticipate issuing pursuant to section 603, and

requested comments both on the Notice and on other matters under section 603.

ICI Comment Letter

Our Comment expresses appreciation for the transition relief and makes several recommendations for further guidance needed to implement the Roth catch-up requirement. It focuses on two broad themes: the importance of according plans and plan sponsors flexibility in plan designs that satisfy the requirements of section 603; and providing flexibility to recharacterize contributions as necessary to comply with section 603. We make the following recommendations, each of which is detailed in the Comment.

- IRS and Treasury should adopt a flexible approach to permitting corrections and recharacterizations, including by allowing recharacterization of catch-up contributions made on a pre-tax basis where the participant is subject to Code section 414(v)(7)(A), through an in-plan Roth rollover for the relevant contribution amount. This approach should include a de minimis exception, whereby catch-up contributions under a given threshold need not later be recharacterized as Roth contributions.
- For individuals with wages above the \$145,000 threshold who elected to make catch-up contributions on a pre-tax basis, guidance should confirm that a plan can carry out their catch-up election on a Roth basis by utilizing negative consent.
- Future guidance should confirm that if a participant who is subject to the Roth catch-up requirement makes designated Roth contributions prior to reaching the Code section 402(g) limit, some or all of those Roth contributions ultimately could be characterized as catch-up contributions, thereby allowing the participant to make additional pre-tax deferrals until reaching an applicable limit.
- IRS and Treasury should permit alternative plan design structures for complying with section 603, including plan designs that allow catch-up contributions only for those employees under the Code section 414(v)(7)(A) limit or that require all catch-up contributions to be made on a Roth basis.
- Future guidance should confirm that section 603 does not apply to the special catch-up contributions permitted under Code sections 457(b)(3) or 402(g)(7).
- IRS and Treasury should consider providing additional administrative transition relief to governmental and multiemployer plans under certain circumstances.

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Notes

[1] See ICI Memorandum No. 35426, dated August 30, 2023, available at <https://www.ici.org/memo35426>. 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>.