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SECURE 2.0 Update: Final Roth Catch-Up Regulations, More Decisions to Make

SECURE 2.0 requires that catch-up contributions made by employees with FICA wages of more than \$145,000, indexed and based on prior calendar year wages, be designated as Roth contributions. Final regulations regarding this new mandate were released in September and make clear that employers have several decisions to make in implementing this new requirement. The mandate is still effective January 1, 2026. Amendments to plan documents are not required until December 31, 2026, or December 31, 2029 for governmental plans.

To Deem or Not to Deem

The final regulations provide different approaches for implementing the Roth catch-up mandate. Under the deemed approach, all elections by catch-up-eligible employees subject to the mandate shift to Roth when contributions hit the Code Section 401(a)(30) (i.e., \$23,500 in 2025) limit. The regulations permit the shift to occur when all an employee's contributions reach the limit or when the limit is reached looking only at pre-tax contributions. Employers must provide employees an opportunity to make a different election. An employer's choice to use the deemed approach must be stated in the plan document and should be included in participant communications.

Alternatively, employers may use the "affirmative election" approach, under which applicable employees must actively elect Roth treatment for their catch-up contributions. If an employee does not make an election, they may not make catch-up contributions until a Roth catch-up election is made.

Many employers will find that the deemed approach works best for their employees and their plan. The deemed approach is the least disruptive to employees, and it affords employers greater flexibility in correcting operational mistakes related to the Roth catch-up mandate.

Applicability to Plans Without a Roth Program, 403(b)/457(b) Special Catch-Ups, and Dual-Qualified Plans

If a plan does not have a qualified Roth contribution program, the final regulations do not require plan sponsors to adopt such a program. However, participants subject to the Roth catch-up mandate may not make catch-up contributions in plans without a designated Roth contribution program.

The final regulations provide additional information on how the mandate interacts with 403(b) plans, 457(b) governmental plans, and plans qualified under both 401(a) and the Puerto Rico Code (dual-qualified plans). In a 403(b) plan, if an employee is eligible to make special 403(b) catch-up contributions and is also subject to the Roth catch-up mandate, then only amounts exceeding the special catch-up limit are subject to the mandate. A similar rule applies for governmental 457(b) plans and the special catch-up limit under those plans.

Contacts

John E. Schembari

Omaha
402.231.8886
john.schembari@kutakrock.com

Michelle M. Ueding

Omaha
402.661.8613
michelle.ueding@kutakrock.com

William C. McCartney

Omaha
949.852.5052
william.mccartney@kutakrock.com

P. Brian Bartels

Omaha
402.231.8897
p.brian.bartels@kutakrock.com

Ruth S. Marcott

Minneapolis
612.334.5044
ruth.marcott@kutakrock.com

Sevawn Foster Holt

Little Rock
501.975.3120
sevawn.holt@kutakrock.com

John J. Westerhaus

Omaha
402.231.8830
john.westerhaus@kutakrock.com

Marcus P. Zelzer

Minneapolis
612.334.5037
marcus.zelzer@kutakrock.com

Emma L. Franklin

Omaha
402.231.8842
emma.franklin@kutakrock.com

Aaron D. Schuster

Kansas City
816.960.0090
aaron.schuster@kutakrock.com

Jacob S. Gray

Minneapolis
612.334.5053
jacob.gray@kutakrock.com

Jason Kotlyarov

Kansas City
816.502.4622
jason.kotlyarov@kutakrock.com

Will Jennings

Omaha
402.661.8683
will.jennings@kutakrock.com

Lastly, transition relief was provided for dual-qualified plans and multiemployer plans. Puerto Rico participants are not subject to the mandate until the first taxable year that the Puerto Rico Code is amended to provide for designated Roth contributions. Similarly, multiemployer plans are deemed to satisfy the mandate until the first taxable year following the date on which the parties' collective bargaining agreement in effect on November 17, 2025 terminates.

Employer Aggregation: Whose Wages Count for the Threshold?

Generally, when employers are related (for example, because they are under common control or part of an affiliated service group), they are treated as a single employer for most retirement plan purposes. However, for the purpose of determining whether an employee is subject to the Roth catch-up mandate, the proposed regulations provide that wages are not aggregated among related employers. The final regulations retain this as the default rule but permit employers to choose to aggregate wages with related employers in certain instances.

Action Items

We anticipate that recordkeepers and payroll providers have or will soon provide an explanation of their process for implementing the Roth catch-up mandate. Many are distributing election forms requesting the plan sponsor's election with respect to the deemed or affirmative election approach. We recommend:

- Electing to use the deemed approach when implementing the Roth catch-up mandate. Regardless of the approach used, keep a record of your decisions as it will be needed for your plan document amendment in 2026.
- If the deemed approach is used, discussing with your recordkeeper and payroll provider whether it will apply when an employee's contributions reach the 401(a)(30) limit, or only when pre-tax contributions reach the limit.
- Determining which tasks will be performed by the plan sponsor, the recordkeeper, payroll provider or other service providers when implementing the Roth catch-up mandate, including:
 - o Identifying which employees are subject to the Roth catch-up mandate.
 - o Identifying the first payroll period when the mandate applies and how this information will be communicated so that a change is made in payroll.
 - o Receiving affirmative or opt-out elections from impacted participants and how this information will be communicated so that a change is made in payroll.

If you have questions or need assistance, please contact a member of our [**Employee Benefits and Executive Compensation practice group**](#).

