IRS PROVIDES 2-YEAR GRACE PERIOD FOR ROTH CATCH-UP CONTRIBUTION REQUIREMENT UNDER SECURE 2.0

PEOPLE

Bret Hamlin

Kirsten L. Vignec

Alton C. Ward

Timothy P. Zehnder

CAPABILITIES

Employee Benefits & Executive Compensation

Advisory
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The SECURE 2.0 ACT OF 2022 (SECURE 2.0) Sec. 603 requires that all catch-up contributions made to a 401(k) plan, a 403(b) plan, or a governmental 457(b) plan by employees paid more than $145,000 (indexed) in FICA wages in the prior year ("Higher Paid Participants") must be made on a Roth basis, effective for taxable years beginning after December 31, 2023 (the "Roth Catch-Up Contribution Requirement").

On August 25, 2023, the IRS issued Notice 2023-62 (the "Notice") providing for an administrative transition period for implementing the Roth Catch-Up Contribution Requirement. The following briefly summarizes the transition relief and other guidance provided by the Notice.

Two-Year Grace Period for the Roth Catch-Up Contribution Requirement

The Notice provides for a 2-year administrative transition period which is defined as the 2taxable years beginning after December 31, 2023 (the “Transition Period”). During the Transition Period, catch-up contributions for Higher Paid Participants, as described above, will be treated as satisfying the applicable Internal Revenue Code (“Code”) sections added by SECURE 2.0 even if the contributions are not designated as Roth contributions. Additionally, the Notice provides that, during the Transition Period, a plan that does not provide for designated Roth contributions will be treated as satisfying the applicable Code sections added by SECURE 2.0. <u>In short, as a result of the guidance set forth in the Notice, plan sponsors and service providers now generally have until January 1, 2026, to implement the</u>

Roth Catch-Up Contribution Requirement.

Guidance Under Consideration From the IRS

Under the Notice, the IRS also referenced guidance that the IRS intends to issue in the future in regards to the Roth Catch-Up Contribution Requirement. The Notice states that the IRS expects to issue additional guidance that:

1. Clarifies that the Roth Catch-Up Contribution Requirement would not apply to a participant who has no FICA wages in the preceding plan year because the participant was a partner (or other self-employed individual) receiving self-employment income or the participant was a state or local government employee.
2. Permits a plan administrator and the employer to treat an election by a Higher Paid Participant to make catch-up contributions on a pre-tax basis as an election by the participant to make catch-up contributions that are designated Roth contributions.
3. Provides that, where a plan that is maintained by more than one employer (including a multiemployer plan), an eligible participant's wages for the preceding calendar year from one participating employer are not aggregated with the wages from another participating employer for purposes of determining whether the participant's wages meet the threshold for the definition of a Higher Paid Participant.

Next Steps

The Notice provides welcome relief to plan sponsors, payroll providers and vendors by allowing additional time to implement the Roth Catch-up Contribution Requirement. It also indicates that further guidance is forthcoming, as discussed above, which will be welcome given the numerous technical questions that still remain. If you are a plan sponsor that has recently amended its plan to add Roth contributions then you will be ready to implement the Roth Catch-up Contributions at the end of the Transition Period. We will continue to provide updates on all forthcoming guidance and other changes with respect to SECURE 2.0.