The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
INVESTMENT COMPANY INSTITUTE
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March 14, 2025

Internal Revenue Service
CC:PA:01:PR (REG-101268-24)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: REG-101268-24 – Notice of Proposed Rulemaking, Catch-Up Contributions

To Whom It May Concern:

The Investment Company Institute (ICI)[1] appreciates the opportunity to provide our views to the Treasury Department ("Treasury") and the Internal Revenue Service (IRS) on the proposed regulations ("Proposal") relating to catch-up contributions.[2] The Proposal would amend regulations under section 414(v) of the Internal Revenue Code (Code) to reflect various changes to catch-up contributions made by sections 109, 117, and 603 of the SECURE 2.0 Act.

Background

Code section 414(v) permits a plan to allow participants aged 50 or over to make additional elective deferrals that are catch-up contributions, and also sets out the requirements for these contributions. The SECURE 2.0 Act amended section 414(v) as follows.

Section 109—Higher catch-up limit at ages 60, 61, 62, and 63. Effective for taxable years beginning after December 31, 2024, the limit on catch-up contributions for participants who turn 60, 61, 62, or 63 during a taxable year is increased to the greater of $10,000 ($5,000 in the case

[1] The Investment Company Institute (ICI) is the leading association representing the asset management industry in service of individual investors. ICI's members include mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors in other jurisdictions. Its members manage $39.1 trillion invested in funds registered under the US Investment Company Act of 1940, serving more than 120 million investors. Members manage an additional $9.6 trillion in regulated fund assets managed outside the United States. ICI also represents its members in their capacity as investment advisers to collective investment trusts (CITs) and retail separately managed accounts (SMAs). ICI has offices in Washington DC, Brussels, and London.

[2] Notice of Proposal Rulemaking, Catch-Up Contributions, 90 Fed. Reg. 2645 (2025).

of SIMPLE plans) or 50 percent more than the regular catch-up amount in 2024 (2025 in the case of SIMPLE plans); adjusted annually for increases in the cost of living.

Section 117—Contribution limit for SIMPLE plans. Effective for taxable years beginning after December 31, 2023, section 117 increases the annual deferral limit for SIMPLE plans, and the catch-up contribution limit that applies at age 50 for SIMPLE plans, to 110 percent of the otherwise applicable limits in 2024 (and indexed thereafter). These increased limits are automatically available to employers with no more than 25 employees. For employers with more than 25 employees and not more than 100 employees, the increased limits are available only to employers who make enhanced employer contributions on behalf of employees (either a 4 percent matching contribution or a 3 percent non-elective contribution). Section 117 also requires that Treasury study, and report to Congress on, SIMPLE plans.

Section 603—Roth treatment of certain "catch-up" elective deferrals. Effective for taxable years beginning after December 31, 2023, all future catch-up contributions by employees aged 50 or older to a 401(k), 403(b), or governmental 457(b) plan must be made as Roth contributions, unless the employee earned no more than $145,000 (indexed) in FICA wages from the employer sponsoring the plan in the prior taxable year.

Treasury and IRS in August 2023 issued Notice 2023-62, which provided interim guidance for implementing the Roth catch-up requirements of SECURE 2.0 Act section 603.[3] Among other things, Notice 2023-62 provided for a two year "administrative transition period" (until taxable years beginning after December 31, 2025) during which plans would be treated as complying with section 603 even if catch-up contributions by impacted participants are not made on a Roth basis. Notice 2023-62 also noted further guidance that IRS and Treasury anticipated providing in formal guidance further to section 603. ICI submitted a comment letter to Notice 2023-62 ("Notice 2023-62 Comment"), providing feedback on the anticipated guidance items and recommending other items for inclusion in such guidance.[4]

Executive Summary

We appreciate Treasury's and IRS' consideration of the recommendations in our Notice 2023-62 Comment. Our recommendations here include selected recommendations in our earlier comment that were not reflected in the Proposal, as well as additional recommendations and requests for clarification. Our goal is to improve plan sponsors' and plan service providers' ability to

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[3] Notice 2023-62, 2023-37 I.R.B. 817.

[4] Letter to IRS from Elena Chism, Deputy General Counsel—Retirement Policy, and David Cohen, Associate General Counsel—Retirement Policy, ICI, dated October 24, 2023, available at https://www.ici.org/system/files/2023-10/23-cl-roth-catch-up-req.pdf.

efficiently and successfully implement Roth catch-up contributions. To this end, we make the following recommendations.

- Treasury and IRS should reconsider permitting a plan design where all catch-up contributions must be designated as Roth contributions. The availability of such a plan design would encourage the adoption of Roth catch-up contributions by smaller plans and smaller plan service providers.

- Corrections via in-plan Roth rollover would be of significantly more utility were plans not required to adjust for earnings and losses when determining the amount to be rolled over. The final rule also should clarify both that a plan need not generally permit voluntary in-plan Roth rollovers in order to use this correction method, and that any amounts rolled over pursuant to this correction method are treated the same as any Roth contribution for purposes of the 5-year holding period under Code section 402A(d)(2)(b).

- The final rule should include a standing de minimis exception for the correction of pre-tax contributions to comply with the Roth catch-up requirements. A de minimis exception would both encourage compliance with the applicable limits and ease reasonable concerns as to the burden and cost of correcting small errors.

- The final rule should confirm that that it does not apply to special 15-year catch-up contributions permitted under Code section 402(g)(7) for 403(b) plans.

1. Treasury and IRS Should Permit a Plan to Allow Catch-Up Contributions Only as Roth Contributions

We recommended in our Notice 2023-62 Comment that Treasury and IRS permit in formal guidance a plan design whereby all catch-up contributions are designated as Roth contributions. We noted the practical challenges that such a plan design would mitigate, as well as the fact that it would encourage smaller plans to continue to offer catch-up contributions. Smaller plans in particular are more likely to partner with payroll providers who may face challenges implementing the system changes necessary to connect payroll system reporting of FICA wages with plan service providers.

The Proposal notes that Treasury and IRS considered this request and determined that such a plan design "would be inconsistent with the language of section 402A(b)(1), which provides that

a designated Roth contribution must be elected by an employee 'in lieu of all or a portion of elective deferrals the employee is otherwise eligible to make.'"[5]

In numerous instances the Proposal—as well as Notice 2023-62—adopts a flexible view of the applicable statutory language with the goal of encouraging plans to implement Roth catch-up contributions. As ICI and other commenters have indicated to Treasury and IRS, permitting a "Roth-only" design for catch-up contributions would lead to greater adoption of catch-up contributions generally by simplifying implementation of the mandatory Roth catch-up requirement. It also would significantly reduce the potential for errors in this context, thus providing for a smoother participant experience. We ask that Treasury and IRS reconsider their interpretation of section 402A(b)(1).

2. Correction via In-Plan Roth Rollovers

2.1. Treasury and IRS should reconsider the proposal to require adjustment for allocable gains and losses for corrections though in-plan Roth rollovers

The Proposal would allow plans to correct a pre-tax deferral in excess of an applicable limit by completing an in-plan Roth rollover. Under this correction method, a plan would correct the excess pre-tax contribution by directly rolling over the excess deferral (adjusted for allocable gain or loss) from the participant's pre-tax account to a designated Roth account, and reporting the adjusted amount as an in-plan Roth rollover (includable in gross income) on Form 1099-R. We reiterate the recommendation in our Notice 2023-62 Comment that for correction via in-plan rollover, the transfer *should not* be subject to earnings calculations (*i.e.*, only the amount of the original contribution would be transferred to the designated Roth account, not adjusted for gain or loss). This approach would minimize the impact on participants. This treatment also would preclude a need for a plan to separately track earnings and losses on amounts that a plan otherwise does not separately track. Should Treasury and IRS determine to still require that earnings and losses be accounted for, we recommend that final guidance maintain flexibility as to the method a plan utilizes to calculate such earnings and losses.

2.2. Treasury and IRS should confirm that correction via in-plan Roth rollover does not require a plan to make voluntary in-plan Roth rollovers generally available to plan participants

The Proposal does not address whether a plan must generally permit voluntary in-plan Roth rollovers in order to utilize the in-plan Roth rollover correction method. To facilitate the efficient correction of foot faults in implementing and administrating section 603 of the SECURE 2.0 Act,

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[5] 90 Fed. Reg. at 2653, n.16.

we recommend Treasury and IRS clarify that a plan need not generally allow for in-plan Roth rollovers in order to utilize this correction method. There are many reasons why a plan sponsor may determine not to make in-plan Roth rollovers generally available. Adding an in-plan Roth rollover feature increases the complexity, and typically the cost, of administering a plan—these costs often are paid by plan participants. Additionally, a plan's recordkeeping and plan administration systems and platforms may not be equipped to handle the broad adoption of in-plan Roth rollovers, including tracking and reporting the associated monies. Giving participant the choice to roll funds from a pre-tax plan account into an in-plan Roth account also can subject them to significant adverse tax consequences. As such, a plan sponsor may determine that it does not want to broadly offer voluntary in-plan Roth rollovers as a plan feature. Clarification that a plan need not broadly offer in-plan Roth rollovers also would be consistent with the goal of this correction method to put the plan participant in the position they would have been in but for the error.

2.3. Treasury and IRS should confirm the holding period treatment of in-plan Roth rollovers resulting from a correction

We ask that Treasury and IRS confirm the application of the 5-year holding period under Code section 402A(d)(2)(b) to in-plan Roth rollovers resulting from use of the in-plan Roth rollover correction method. As we understand subsection (b) and the guidance under 26 C.F.R. section 1.40A-1, A-4, a contribution to an in-plan Roth account due to a correction via in-plan Roth rollover should properly be treated the same as a participant-initiated designated Roth contribution to such account. Confirmation of this in the final rule would be appreciated.

3. Treasury and IRS Should Establish a Standing De Minimis Exception for the Correction of Pre-Tax Contributions under Code Section 414(v)

We recommend, as we did in the Notice 2023-62 Comment, that as part of a permissive approach to the correction of Roth catch-up contribution failures, Treasury and IRS establish a standing de minimis exception whereby catch-up contributions under a given threshold need not later be corrected. We suggest a de minimis amount of $250, consistent with the EPCRS de minimis exception for excess amounts. This de minimis exception would both facilitate compliance with Code section 414(v) and help minimize the risk of participant confusion. Importantly, it also would promote efficient plan administration by not requiring the expenditure of plan resources for de minimis amounts.

4. The Final Rule Should Confirm That Section 603 Does Not Apply to Special Catch-up Contributions

As we requested in the Notice 2023-62 Comment, we ask that Treasury and IRS confirm that the Roth catch-up contribution requirement of SECURE 2.0 Act section 603 does not apply to the

special 15-year catch-up contributions permitted under Code section 402(g)(7) for 403(b) plans. The Roth catch-up requirement should not apply with respect to these special catch-up contributions because they are not governed by Code section 414(v), and section 603 of the SECURE 2.0 Act does not reference them.

Conclusion

ICI and its members appreciate the opportunity to comment on the Proposal. If you have any questions, please contact Elena Chism at 202/326-5821 (elena.chism@ici.org) or David Cohen at 202/326-5361 (david.cohen@ici.org).

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Sincerely,

/s/ Elena Barone Chism

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cc: Helen Morrison, Benefits Tax Counsel, US Department of Treasury
Rachel Leiser Levy, Associate Chief Counsel, IRS