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REGULATORY Update

Roth Catch-Up Requirement in 2026

One provision of SECURE Act 2.0 will soon affect individuals who are eligible to make catch-up contributions to their retirement plans. Plan participants aged 50 and above can make contributions above the IRC 415 annual limit, known as catch-up contributions, if the plan allows. Starting in 2026, if these individuals have more than $145,000 of prior year earned income, they can no longer make catch-up contributions as pretax. Instead, their catch-ups must be made to a Roth account.

This new rule was initially scheduled to take effect in 2024; however, retirement plan providers and third-party administrators expressed concerns about the insufficient time to update systems and plan documents to comply with the new rules. A transition period was granted, extending the deadline to comply to January 1, 2026.

Which Plans Are Affected?

The mandatory Roth catch-up rule applies to qualified employer-sponsored plans such as 401(k), 403(b), and governmental 457(b) plans. The rule does not apply to IRAs or IRA-based employer-sponsored plans such as SIMPLE IRA and SEP IRA plans.

How Are Catch-Up Eligible Participants Affected?

With the new rule, if the plan offers catch-up contributions but does not have a Roth option, participants earning more than $145,000 will not be able to make catch-ups of any kind. Conversely, employees earning $145,000 or less will still be able to make catch-ups on a pretax basis.

Prior year earned income (FICA W-2 wages only) is used to determine whether a participant is subject to the new rule. For example, in 2026, someone aged 50 or older would be required to make catch-up contributions to a Roth only if their FICA income in 2025 exceeded $145,000.

What Action Steps Can Be Taken?

Catch-up contributions and Roth availability are both optional plan design features, and any given 401(k), 403(b), or 457(b) plan may offer either, both, or neither.

The change in law marks an opportune time for plan sponsors and their financial advisors to evaluate their plan offerings in full and determine the best course of action that supports their employees and the goals of the plan's fiduciaries. If changes to the plan are to be made, work with recordkeepers, administrators, and payroll providers to ensure that the plan is ready for 2026.

Alternatives in Retirement Plans: Decoding the New Guidance

The Trump administration issued an executive order aiming to expand access to alternatives, which include cryptocurrencies, private markets, and real estate, in qualified retirement plans such as 401(k) plans and other defined contribution plans. There are many open questions on how this will be accomplished, other than repealing the DOL's 2022 guidance on the "extreme care" standard for cryptocurrency in 401(k) plans.

The executive order directs the DOL to:

- Define what an "alternative asset" means.
- Examine guidance on fiduciary duties regarding alternative assets.
- Clarify the DOL's position on alternatives and the fiduciary process when offering alternatives in asset allocation funds.
- Work with the other regulatory bodies to determine whether parallel changes should be made at those agencies.
- Propose regulations that may include appropriate "safe harbors."

In addition, it directs the Securities and Exchange Commission to facilitate access to alternatives in plans by revising applicable regulations.

Fiduciary Considerations

Prior to the recent order, alternative investments could be purchased in qualified retirement plans under the long-standing guidance of prudent fiduciary decision-making. The executive order will not mandate the use of alternatives, and the subsequent guidance will not avoid the need to have a sound prudent process for selecting investments.

Plans have traditionally avoided offering alternatives due to the lack of regulatory guidance and the fear of litigation. The complexity of alternative investments, lack of transparency, high fees, and potential illiquidity pose serious questions about how a fiduciary can create a prudent fiduciary process to evaluate such investments and demonstrate the duties of loyalty and care to the participant.

The inclusion of alternatives in asset allocation investment funds, such as target date funds, could be the first route taken. This may raise the question of whether those investments should still be considered appropriate as default alternatives for participants. Alternatives that generate pass-through taxation, like unrelated business taxable income, will require administrators to have an understanding of the alternatives and systems in place to track and file appropriate forms and make tax payments on behalf of the plan.

Once guidance is released, plan sponsors who want to consider offering alternatives will need to have discussions on best practices for fiduciary decision-making and whether the administrative support systems will be available to incorporate alternatives into a plan. A prudent process should be used to vet out these concerns and guide the decision-making process.

Mergers and Acquisitions: What Retirement Plan Sponsors Need to Know

Considering merging your company with another through acquisition? All too often, the impacts on retirement plan benefits are an afterthought during the complexity of mergers and acquisitions (M&As). Understanding the impacts, incorporating them into the buy/sell agreement, and creating a plan to ease the transition for plan sponsors and employees can be vital in avoiding disruption, employee confusion, and compliance issues.

Merger Preparation

Consider first the implications of a stock sale versus an asset sale:

- **Stock sale:** In a stock acquisition, the acquiring company automatically takes over the acquired company's retirement plan assets and liabilities unless arrangements are made for the acquisition target to terminate its plan prior to the acquisition. The acquiring firm will then determine if the plan will be maintained, merged with an existing plan, or terminated.
- **Asset sale:** In an asset sale, the acquiring firm is only buying certain assets of the target company, not the company as a whole. The acquisition does not involve the retirement plan assets and liabilities unless the parties agree otherwise. This typically involves terminating the plan for the acquired firm. Often, the employees are officially terminated but may be offered new roles at the acquiring firm, which may include access to new retirement benefits.

What Does Your Buy/Sell Agreement Say?

The agreement for acquisition should include the type of sale and the agreement on the disposition of the retirement (and other) benefits. Discussions should be held well in advance with legal counsel to determine the language in the agreement and clarify who will be responsible for the retirement benefits of the acquired firm.

There are many questions the merging businesses will need to ask themselves to be prepared for the impact of the agreement and any applicable deadlines, such as:

- Will the selling firm's employees be terminated and have an opportunity to be hired by the acquiring firm?
- Will employees be immediately eligible for a new plan, or will they be subject to the eligibility requirements of the acquiring firm's plan?
- What happens to any loans if the plan is terminated?
- If the plan is not terminated, at what point does the acquiring firm take on employer contribution liability under the terms of the plan? How will the acquired retirement plan be administered alongside an existing plan—or can they even coexist if they are different plan types, i.e., a SIMPLE IRA and a 401(k) plan?

Start the Service Provider Conversations Early!

Plan administrators and record keepers should be included in early conversations so they can help employers address these questions and adequately plan for any changes to the plans. Notices of plan termination, separation from service, plan amendments, compliance testing, annual filing, and other administrative tasks all have deadline requirements that need to be met for plans to remain compliant.

Proper M&A planning can help business owners understand when their obligations start and when they end, helping them look toward a future of growth or divestment for the next phase of their lives.

Authored by the Strategic Retirement Solutions team at Commonwealth Financial Network®.