

August 27, 2024

Sent via email

Helen Morrison
Benefits Tax Counsel
U.S. Department of the Treasury

Rachel Leiser Levy
Associate Chief Counsel
Internal Revenue Service

Re: Implementation of Roth Catch-up Requirement

Dear Helen and Rachel:

On July 16, 2024, the SPARK Institute, Inc. held a SECURE 2.0 implementation workshop co-hosted by the Vanguard Group. The purpose of this workshop was to gather key stakeholders, including retirement plan recordkeepers and payroll providers, to discuss implementation of section 603 of SECURE 2.0 (relating to Roth catch-up contributions).[1] In addition to discussing operational issues and developing consensus on responsibilities, we also discussed areas where guidance from the Department of the Treasury and Internal Revenue Service (collectively, the "IRS") would be helpful.

On October 24, 2023, the SPARK Institute filed a comment letter on Notice 2023-62 (which requested input on the Roth catch-up requirement). We have attached a copy of that letter. This letter is intended to supplement our comment letter and to provide additional information regarding what we learned in our implementation workshop. We reiterate all the requests for guidance in our October 2023 letter and hope you will consider them as you are developing proposed regulations under section 603.

The SPARK Institute represents retirement plan recordkeepers, mutual fund companies, brokerage firms, insurance companies, banks, consultants, trade clearing firms, and investment managers. Collectively, our member firms administer the retirement plans for over 110 million American workers.

We believe our July workshop may have been the first major provider meeting on SECURE 2.0 that included both recordkeepers and payroll providers. While recordkeepers are generally well versed in all of the provisions of SECURE 2.0, we were happy to hear that the payroll providers that attended the workshop (especially the larger ones) have begun to think through the critical role they will plan in implementing the Roth catch-up requirement.

[1] During the workshop we also discussed section 109 of SECURE 2.0 (relating to the higher catch-up contributions for those age 60-63). This letter, however, focuses solely on the Roth catch-up requirement.

Procedures for Identifying Affected Participants

Section 603 of SECURE 2.0, known informally as the Roth catch-up requirement, requires participants whose wages for FICA purposes exceeded $145,000 in the prior year to make age-based catch-up contributions on a Roth basis. We refer to this group as the Roth Catch-up Population. In our discussion, the consensus was that information on FICA wages at the end of a year would be made available by payroll providers to plan sponsors, who would then provide the Roth Catch-up Population to the recordkeeper.[2] Payroll providers generally will be the parties who have FICA wage data for purposes of W-2 reporting.

We agreed that recordkeepers, payroll providers, and plan sponsors may agree to more flexible or streamlined arrangements if necessary, such as receiving preliminary or confirmed Roth Catch-up Population data prior to the end of the calendar year. We also discussed the file format and data information that will likely need to be transmitted.

Enforcement of Roth Catch-up Rule

Currently, payroll providers, plan sponsors, and recordkeepers work together to implement pre-tax and Roth elections, because how a participant makes a contribution election varies by service model. Beginning in 2026, the Roth Catch-up Population will need to have pre-tax contributions limited to the normal section 402(g) limit.

Just as they generally enforce elective deferral limits now, payroll providers should be primarily responsible for implementing and enforcing the new Roth catch-up rule on affected participants to ensure all pre-tax contributions made within a calendar year do not exceed the section 402(g) limit. In some service models, the recordkeeper may enforce a consistent limit calculation as a secondary validation to ensure that contribution limits are adhered to.

"Conversion" from Pre-Tax to Roth

A key discussion point was how to implement the need to "convert" or "shift" contributions to Roth for the Roth Catch-up Population when the normal section 402(g) limit is reached during the year. In some service models, the recordkeeping system captures and tracks all contribution elections. In other cases, the recordkeeper simply receives payroll files that identify the contributions and source by pre-tax or Roth. Because of differing models, the consensus is that the shifting of contributions from pre-tax to Roth should be discussed and addressed amongst all parties (plan sponsor, payroll provider, and recordkeeper) consistent with existing service offerings to avoid disruption and downstream implications. Under one model discussed, recordkeepers may want the payroll provider to shut off all new catch-up contributions until the

[2] While payroll providers will have FICA information, plan sponsors may need to be involved. For example, if the rules require aggregation of wages among related employers (an issue on which our October 2023 letter requested guidance), neither payroll providers nor recordkeepers will necessarily know to aggregate wages paid under different EINs.

participant notifies them on how they want to adjust their account. Another approach might be that the payroll provider might automatically switch catch-up contributions to Roth. Recordkeepers that are primarily responsible for managing and tracking payroll deferral elections for plan administration should continue to dictate changes to payroll providers prior to any contribution flips from pre-tax to Roth. It is important that the rules IRS implements not unnecessarily limit flexibility.

Need for Guidance – Excess Pre-tax Contributions

As noted in our October 2023 letter, we know that there will be circumstances under which contributions that were made and tracked in payroll as pre-tax will need to be recharacterized as Roth. In some cases, this may be simply an error caught during the year, or an error caught after the end of the year during limits testing. For example, an individual who was thought not to be part of the Roth Catch-up Population early in the year is determined to actually be subject to the Roth catch-up requirement. In other cases, contributions that were thought not to be catch-up contributions may need to be recharacterized as catch-up contributions to pass nondiscrimination testing.

One thing that was clear from the discussions is that recharacterizing pre-tax contributions to Roth contributions via the payroll system – that is, via Form W-2 – will not be a good approach. For one reason, the Form W-2 may have already been issued, and a corrected Form W-2c is very disruptive. For another reason, very often the need to recharacterize the contribution will be determined by the recordkeeper as part of testing, and recordkeepers are not set up to issue corrected Forms W-2c.

For this reason, and to reiterate a request we made in our October 2023 letter, is it is critical that the IRS provide guidance allowing plans to deal with recharacterization by issuing a Form 1099-R, similar to a Roth conversion. Such an option would be consistent with the IRS's guidance on section 604 of SECURE 2.0 (relating to employer contributions as Roth).[3]

In our discussions, we noted that the main difference between use of a Form 1099-R versus a Form W-2 is that this will impact income tax withholding. Ideally, participant catch-up contributions that must be made on a Roth basis will be captured on an ongoing basis in the payroll system to ensure withholding is made. That is clearly the best participant experience, and we think that as plan sponsors, payroll providers, and recordkeepers have a few years of this requirement under their belts, excess pre-tax contributions will be less and less common. Early on, however, we think that recharacterization will be common. But the consensus was that the impact to withholding should not drive the best process for correction, as we think that a corrected Form W-2c or retroactive withholding is in many cases a worse experience than receiving a Form 1099-R.

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[3] Notice 2024-02, Q&A L-9.

The SPARK Institute appreciates the opportunity to provide these comments to Treasury and IRS. We look forward to reviewing the proposed regulations. If you have any questions or would like more information regarding this letter, please contact me or the SPARK Institute's outside counsel, Michael Hadley (mlhadley@davis-harman.com), Davis & Harman LLP.

Sincerely,



Tim Rouse
Executive Director

Attachment (October 24, 2023 SPARK Institute Letter)

cc: William Evans, Department of the Treasury
Jason Levine, Internal Revenue Service
Jessica Weinberger, Internal Revenue Service

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