IRS ISSUES FINAL REGULATIONS ON ROTH CATCH-UP PROVISIONS

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On September 15, the Internal Revenue Service issued final regulations which implement the mandatory Roth catch-up contribution rule enacted as part of the SECURE 2.0 Act of 2022 (the “SECURE Act”). Historically, employers are permitted to offer participants age 50 or older the opportunity to defer additional compensation in the form of “catch-up” contributions to certain of their retirement plans including 401(k), 403(b) and 457(b) plans. Before the SECURE Act, all eligible plan participants could make this elective contribution on either a pre-tax or post-tax (Roth) basis if permitted under the plan.

Under the SECURE Act and the final regulations, highly paid employees who elect to make catch-up contributions must have them made as Roth contributions. For purposes of this rule, a highly paid employee is an employee who earned more than $145,000 (indexed for inflation) in W-2 wages in the prior year from the employer sponsoring the plan. The final regulations also allow the plan sponsor to combine the wages paid by multiple employers in certain situations to determine if the $145,000 threshold is met. The Roth mandate applies to both “regular” catch-up contributions for participants who turn age 50 and over ($7,500 in 2025) and “super” catch-up contributions for participants who turn ages 60-63 during the year ($11,250 for 2025). A plan that allows catch-up contributions but does not offer Roth catch-up contributions can add a Roth feature to enable high wage earners to make catch-up contributions.

The final regulations confirm that if a plan does not permit Roth contributions, high wage earners will not be permitted to make catch-up contributions. They also make it clear that non-high wage employees must still be permitted to make their catch-up contributions on a pre- or post-tax basis.

The SECURE Act requires plan sponsors to begin implementing the Roth catch-up requirement for the 2026 tax year. However, because the final regulations are not effective until 2027, the IRS has stated that employers can apply a reasonable, good faith interpretation of the relevant SECURE Act provisions until the final regulations effective date.

If you have any questions regarding this alert, please contact your Cummings & Lockwood private clients attorney.