AMERICAN RETIREMENT ASSOCIATION

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Working for America's Retirement

March 14, 2025

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

RE: Proposed Regulations Regarding Catch-Up Contributions (RIN 1545–BR11)

The American Retirement Association (ARA) is writing in response to the Notice of Proposed Rulemaking regarding catch-up contributions published in the Federal Register on January 13, 2025, and referenced above (the "Proposed Rule"). ARA thanks the Internal Revenue Service (IRS or "Service") and the Department of the Treasury ("Treasury") for the opportunity to provide input on these matters.

The ARA is a national organization of nearly 39,000 members who provide consulting and administrative services to American workers, savers, and sponsors of retirement plans and IRAs. ARA members are a diverse group of retirement plan professionals of all disciplines including financial advisers, consultants, administrators, actuaries, accountants, and attorneys. ARA is the coordinating entity for its five underlying affiliate organizations representing the full spectrum of America's private retirement system, the American Society of Pension Professionals and Actuaries ("ASPPA"), the National Association of Plan Advisors ("NAPA"), the National Tax-Deferred Savings Association ("NTSA"), the American Society of Enrolled Actuaries ("ASEA"), and the Plan Sponsor Council of America ("PSCA"). ARA's membership is diverse but united in a common dedication to America's employer-based retirement plan system.

Summary

ARA thanks Treasury and the Service for its work to issue guidance on catch-up contributions. ***ARA recommends*** the Service clarify a number of issues related to the Proposed Rule. In particular, ARA recommends the Service provide the following guidance:

- Permit an employer that is part of a controlled group or affiliated service group to aggregate compensation across multiple entities for purposes of determining whether a participant is required to make catch-up contributions on a Roth basis.
- With respect to the Proposed Rule's in-plan Roth rollover correction method:
    - Permit a plan administrator to utilize the correction method until the last day of the plan year following the close of the plan year for which the excess contribution was made;
    - Clarify the treatment of in-plan Roth rollover corrections for purposes of plan qualification requirements; and
    - Provide that the recapture tax applicable to qualified rollover contributions (within the meaning of section 408A(e)) does not apply to in-plan Roth rollover corrections.
- Clarify that a plan offering the age 60-63 catch-up may utilize other permitted practices, including limiting total deferrals to 75% of compensation, without violating the universal availability requirement.

Discussion

I. Permit Aggregated Wages for Plans Maintained by Related Employers

Internal Revenue Code (IRC) §414(v)(7)(A) requires a participant to make any catch-up contributions as designated Roth contributions if, for the preceding the calendar year, the participant had IRC §3121(a) wages ("FICA wages") "from the employer sponsoring the plan" that exceeded the applicable Roth catch-up wage threshold. The Proposed Rule interprets this requirement to mean that, in the case of a participant who receives wages from multiple entities, the wages are not aggregated for purposes of determining whether the employee is subject to the Roth catch-up requirement, even if the employers are aggregated under IRC §414(b), (c), (m), or (o). While ARA generally agrees with this interpretation, we recommend the Service permit an employer to voluntarily aggregate wages across all related entities in order to accommodate aggregated employers who have elected to use a common paymaster arrangement permitted under the FICA rules.

The Proposed Rule notes that the Service reached the interpretation that wages should not be aggregated even if the employers would be aggregated under IRC §414(b), (c), (m), or (o) because the phrase "from the employer sponsoring the plan" modifies the reference to FICA wages and therefore the determination of whether the Roth catch-up requirement applies to a participant should generally follow the FICA rules (which is based on the FICA wages from the participant's common law employer and generally is not aggregated).

However, the Proposed Rule does not address or make any exception for the common paymaster rules afforded related employers under IRC §§ 3121(s) and 3306(p). The common paymaster rules "enable a related corporation (the 'common paymaster') to be treated as a single employer for purposes of the FICA and FUTA wage bases." These entities may not be able to effectively and efficiently distinguish the wages applicable to each related entity for purposes of the retirement plans and requiring such separation appears inconsistent with the treatment of the entities as a single employer under FICA.

To align the treatment of these entities and ease the administrative burdens of complying with the Roth catch-up requirement, ***ARA recommends*** the Service permit plans maintained by members of a related group of employers under IRC § 414(b), (c), (m), or (o) to determine whether a participant's FICA wages exceeded the threshold by aggregating the FICA wages paid by the related group of employers.

II. In-Plan Roth Rollover Correction Method

If a participant who is subject to the Roth catch-up mandate in §414(v)(7) makes pre-tax deferrals in excess of a statutory, employer-provided, or ADP limit, the Proposed Rule allows a plan to correct the failure by directly rolling-over the catch-up contribution (adjusted for earnings and losses) from the participant's pre-tax account to the participant's designated Roth account and reporting the amount on Form 1099-R. ARA thanks the Service for providing the ability to correct such errors and recommends several adjustments to this aspect of the Proposed Rule.

a. Extend Deadline for In-Plan Roth Rollover Correction

The Proposed Rule provides that the deadline to use the Roth rollover method to correct a pre-tax catch-up contribution that exceeds the ADP limit would be the date that is 2 1⁄2 months (6 months, in the case of a plan that includes an eligible automatic contribution arrangement) after the close of the plan year for which the pre-tax contribution was made. This proposed deadline is consistent with the deadline for distributing excess contributions above the ADP limit in order to avoid a 10% excise tax on the excess contributions, but is shorter than the actual deadline for distributing excess contributions under Treas. Reg. §1.401(k)-2. ***ARA recommends*** the Service extend the deadline for recharacterization to 12 months after the close of the plan year in which the excess contribution arose, which is the deadline for making corrective distributions under Treas. Reg. §1.401(k)-2.

Recharacterization of deferrals as catch-up contributions is *mandatory* under current guidance. Failure to recharacterize a deferral as a catch-up contribution (when possible) before making corrective distributions is a failure to effectively allow employees to make deferrals up to the catch-up limit, which violates universal availability. Limiting the ability to recharacterize deferrals as catch-up contributions to a deadline that is earlier than the distribution deadline will effectively change the distribution deadline. This change of the deadline is inconsistent with Treas. Reg. §1.401(k)-2 and would create unnecessary administrative burdens. Plan administrators will continue to have an appropriate incentive to recharacterize deferrals as catch-up contributions by the earlier deadline in the Proposed Rule in order to avoid excise taxes, but they should not be foreclosed from utilizing the remainder of the deadline for making corrective ADP distributions simply because an amount is eligible to be recharacterized as a catch-up contribution and the individual is subject to IRC §414(v)(7)(A).

Therefore, ***ARA recommends*** that the Service permit plan administrators to utilize the in-plan Roth rollover correction method provided under the Proposed Rule until the last day of the plan year following the close of the plan year for which the pre-tax contribution was made.

b. Clarify Rules re Availability of In-Plan Roth Rollover

The Proposed Rule provides that the Roth rollover correction is to be made in accordance with IRC §402A(c)(4)(E) ("In-Plan Roth Transfers"). An In-Plan Roth Transfer typically would be a feature of the plan that is subject to benefits, rights, and features testing under IRC §401(a)(4) and generally is made only at the participant's election (*see* IRC §402A(c)(4)(E)(i)). The Service should clarify that neither of these rules applies to a Roth rollover correction.

The Proposed Rule effectively precludes a Plan from obtaining a participant's election to execute an In-Plan Roth Transfer because the plan is required to use the same correction method (W-2 or Roth rollover) for all participants. This means that a plan cannot provide each participant with an election regarding the correction, and, therefore, the Service should clarify that the provision of IRC §402A(c)(4)(E)(i) that calls for a participant's election to make the transfer does not apply to a Roth rollover correction. Further, because the Roth rollover correction is not a feature that is elective, it should not be treated as a benefit, right, or feature that must be made available to a nondiscriminatory group.

Therefore, ***ARA recommends*** the Service clarify that (1) a participant need not be offered an election regarding the Roth rollover correction and (2) the use of the Roth rollover correction is not a benefit, right, or feature that is subject to IRC §401(a)(4).

c. Conform Rules re Taxation of In-Plan Roth Rollover

In-Plan Roth Transfers are subject to a recapture tax that does not apply to other designated Roth contributions made to plans. This is due to IRC §402A(c)(4)(E)(ii), which treats the transfer as a qualified rollover contribution within the meaning of IRC §408A(e). The Proposed Rule does not make an exception to this taxation for the Roth rollover corrections, and, therefore, the Proposed Rule would subject rollover corrections to this recapture tax. ARA believes that subjecting corrective rollovers to this special taxation would create inconsistent tax policy and create undue administrative burdens.

The recapture tax applicable to §408A(e) Roth conversions mitigates the potential for a taxpayer to selectively execute a Roth conversion (and pay income taxes) at a time when earnings are lowest and then be eligible for tax-free distributions of earnings in the next five years when the investment recovers and prevents the participant from avoiding the 10% additional tax on early withdrawal through a Roth conversion prior to distribution. It currently applies only to these conversions where the participant has authority and control to select the timing of the conversion. It does not apply to regular designated Roth salary deferrals or Roth employer contributions. ARA believes this is because the participant has less ability to control the timing of the taxation. Similarly, here, a Roth rollover correction is not in the participant's control—it is mandated by the regulations—and, therefore, should not be subject to the recapture tax. Rather, it should be taxed the same way that any other designated Roth salary deferral is taxed.

In addition, many recordkeepers do not currently have the ability to administer In-Plan Roth Transfers (typically recordkeepers offer In-Plan Roth Rollovers only for amounts that are currently distributable and therefore are not subject to the recapture tax applicable to conversions under IRC §402A(c)(4)(E), which requires special tracking of each conversion). Requiring that the Roth rollover corrections be treated as In-Plan Roth Transfer amounts rather than ordinary Roth deferrals will create administrative burdens and potentially prevent the ability to use the correction method. Removal of this special tracking provision will allow recordkeepers to simply transfer the amount to the ordinary Roth accounting source without the need to specially track the amount separately.

Therefore, ***ARA recommends*** the Service provide that Roth rollover corrections are not subject to the recapture tax by clarifying that the catch-up amount is transferred to the participant's designated Roth account, in accordance with IRC §402A(c)(4)(E) *(without regard to section 402A(c)(4)(E)(ii))*.

III. Clarify Plans May Limit Deferrals to a Maximum Percentage of Compensation

The amendment to Treas. Reg. §1.414(v)-1(e) in the Proposed Rule adds a new paragraph (iii), which clarifies that adding the age 60-63 catch-up does not violate universal availability. However, it states that universal availability is not violated by the addition of the age 60-63 catch-up only if "each catch-up eligible participant . . . is provided with an effective opportunity to make the maximum amount of catch-up contributions permitted for that participant under 414(v)."

Treas. Reg. §1.414(v)-1(e)(ii) permits certain practices, including allowing a plan to limit catch-up contributions based on cash available (and provides that limiting deferrals to a percentage that is no less than 75% of compensation is permitted). It is not clear that new paragraph (iii) in the Proposed Rule continues to allow for the permitted practices in paragraph (ii) when a plan adds the age 60-63 catch-up. ***ARA recommends*** the Service clarify that the phrase "make the maximum amount of catch-up contributions permitted" in paragraph (iii) does not preclude an employer from utilizing the permitted practices in paragraph (ii), including the 75% deferral limit.

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These comments are submitted on behalf of ARA and were prepared by ASPPA's IRS Subcommittee, Claire P. Rowland, Esq., QPA, QKA, Chair. If you have any questions regarding the matters discussed herein, please contact Kelsey N.H. Mayo, Chief of Regulatory Affairs, at kmayo@usaretirement.org or (703) 516-9300. Thank you for your time and consideration.

Sincerely,

/s/

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