PLAN SPONSOR QUARTERLY UPDATE
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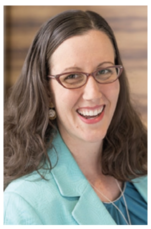
What's New In Washington: Roth Catch-Up Requirement Delayed to 2026



By Kelsey Mayo,
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Kelsey's practice is focused in the areas of Employee Benefits and Executive Compensation. She works with business owners and HR executives to understand and manage employee benefits and executive compensation arrangements. She routinely represents clients before the Internal Revenue Service, Department of Labor, and Pension Benefit Guarantee Corporation and has extensive experience in virtually all aspects of employee benefit plans and executive compensation arrangements.

The industry has been anxiously awaiting guidance from the IRS on a variety of SECURE 2.0 issues, including questions related to the requirement that individuals with more than $145,000 in FICA wages make catch-up contributions on a Roth basis beginning in 2024. An immediate question was whether Congress had inadvertently eliminated all catch-up contributions due to a drafting error in SECURE 2.0. In addition, the new Roth requirement posed a number of challenges for payroll companies and recordkeepers. Industry advocates had been in contact with both the Department of Treasury and Congressional representatives about guidance and transition relief. The IRS delivered relief in epic fashion at the end of August with the following guidance:

- **Catch-up contributions still exist.** Despite what appeared to be technical error in the language of SECURE 2.0, the IRS announced that the language did not eliminate catch-up contributions. Therefore, participants will continue to be eligible for the extra deferrals upon attaining age 50.
- **Roth Catch-up Not Required Until 2026.** In a move that surprised many, the IRS also announced relief from the Roth requirement for two years. Until 2026 catch-up contributions do not have to be designated Roth contributions. IRS further clarified that the plan doesn't even need to offer the ability to make catch-up contributions on a Roth basis until 2026.
- **Additional Clarifications.** The IRS also answered a few ancillary questions regarding this provision of SECURE 2.0, including the following:
    - Confirming partners and self-employed individuals will not be subject to the Roth requirement because they do not have "wages" as defined in Code Section 3121(a).
    - Plans will be allowed to treat an election to make contributions on a pre-tax basis as an election to make catch-up contributions that are designated Roth contributions.
    - Clarifying how the wage threshold applies to employers participating in a multiple employer plan (MEP).

This guidance provides welcomed relief for plan sponsors and service providers alike. Essentially, this preserves the status-quo on catch-up contributions for the next two years, and plan sponsors are not required to make significant changes next year (such as adding a Roth feature).

We also anticipate that additional guidance will be forthcoming — including whether a plan sponsor can require all catch-up contributions to be Roth (regardless of wage threshold) and whether a plan can elect to not offer Roth contributions and still offer catch-up contributions to participants under the $145,000 wage threshold.

While two years may seem a long way off, there may be significant payroll implementation hurdles, so sponsors would be well advised to consider now how they will comply. Therefore, now is the time to navigate this new guidance with clients in order to plan for 2026 when the Roth requirement will take effect.

Best Practices:
IRS Provides Limited RMD Guidance and Transition Relief

By Kelsey Mayo
Partner, Poyner Spruill

On July 14th, the IRS issued transitional relief under SECURE 2.0 related to required minimum distributions (RMDs). The guidance — set forth in Notice 2023-54 — provides some limited transition relief and gives a clue about when final guidance may be expected.

1. Provides transition relief and rollover window for participants born in 1951.

SECURE 2.0 changed the age-based required beginning date from age 72 to 73 beginning in 2023. As we know, SECURE 2.0 passed on December 29, 2022 —giving service providers a matter of days to adjust to the new law. This was impractical — resulting in a number of unavoidable errors, such as participants who turned 72 in 2023 (i.e. those born in 1951) and who took distributions being treated as though they were receiving an RMD (and therefore not being given a rollover opportunity). In acknowledgement of the practical implementation issues, the IRS issued guidance. Participants who were born in 1951 and received distributions that were treated as RMDs prior to July 31, 2023 — but who shouldn't have because the RMD age requirement was increased to age 73 — had until September 30, 2023, to roll these distributions back into their retirement accounts. If this deadline was missed, then a participant would need to qualify for rollover relief to take advantage of the missed rollover opportunity.

2. Extends transition relief relating to the 10-year rule.

Practitioners will remember that SECURE 1.0 changed the RMD rules and created the "10-year rule"— requiring that, regardless of whether the participant dies before or after the required beginning date, the participant's account balance generally must be distributed within ten years of death (unless the beneficiary is an "eligible designated beneficiary"). There has been significant confusion and debate regarding how the 10-year rule applies. The IRS issued proposed regulations in 2022 implementing this rule, which took a position that surprised many in the industry — that if the participant died after the required beginning date then the beneficiary

had to take annual distributions in addition to satisfying the 10-year rule. This was a surprise because the vast majority of service providers believed that the annual distribution requirement had been eliminated. In a notice issued later that year, the IRS acknowledged the issue, advised that the final regulations would apply no earlier than 2023, and provided that excise taxes would not be owed on any missed RMDs before 2023 for beneficiaries. Notice 2023-54 now further extends this transition relief: it provides that final regulations will not be effective earlier than 2024 and the IRS will not assert excise taxes for any failure to make a 2023 RMD to a beneficiary.

3. SECURE 2.0 RMD final guidance?

The IRS antcipates updating the 2022 proposed regulations for SECURE 2.0, to the extent possible, and likely issuing another proposed regulation for items that must be offered with another notice and comment period. These are expected to be issued relatively soon and will apply for calendar years beginning no earlier than 2024.

Clients with questions about RMDs in 2023 will be glad to know of this limited transition guidance.

Hot Topic: SECURE 2.0's New Emergency Savings Options

by Kelsey Mayo, Partner, Poyner Spruill

We continue our series highlighting portions of SECURE 2.0 by looking at a new, optional plan feature that may be attractive to clients interested in helping their employees save for small emergency expenses: pension-linked emergency savings accounts ("PLESAs").

What's a PLESA and why would clients want to add one to their plan? Surveys routinely show that emergency savings is a major concern for employees. By some estimates, nearly 60% of adults in the U.S. are uncomfortable with the amount in their emergency savings. Nearly 25% have no savings at all, and less than 45% would be able to pay for a $1,000 emergency without going into debt. Clients may see PLESAs as a possible solution: authorizing an automatic emergency savings program within their existing retirement plans.

PLESAs can only be offered in defined contribution plans. They are intended as short-term savings accounts for eligible participants. PLESAs must meet certain design requirements set out in SECURE 2.0, may only accept participant contributions, and must treat such contributions as designated Roth contributions. PLESAs may be added for plan years beginning after December 31, 2023.

Who's eligible? Only non-highly compensated employees are allowed to contribute to a PLESA. If a non-highly compensated employee who contributed to a PLESA becomes a highly compensated employee, contributions to the PLESA must stop, but the individual will still be able to take withdrawals from that account in the same manner as before. Plan sponsors may —though are not required — to implement automatic enrollment for this optional feature.

Are there any account limitations, administratively? Yes. Plan sponsors may not set a minimum contribution or require a minimum account balance in the PLESA. The PLESA account must be capped at $2,500 (indexed annually after 2024), although the plan sponsor can apply a lower limit. Once the account reaches that cap, contributions must stop. This will require coordination between the recordkeeper and payroll provider because it is based on the account balance, not just annual contributions. In addition, contributions to the PLESA must be coordinated with regular deferrals to the plan to ensure the combined total does not exceed the Code Section 402(g) deferral limit.

Are there limitations on investments? Yes. PLESA funds may only be invested in cash, an interest-bearing deposit account, or a regulated investment product designed to: (1) maintain over the term of the investment the dollar value that is equal to the amount invested in the product and (2) preserve principal and provide a reasonable rate of return — whether or not such return is guaranteed — consistent with the need for liquidity. Participants are treated as directing the investment, but plan sponsors are still duty-bound to offer prudent investment options.

How does this coordinate with employer matching contributions? If a plan provides for matching contributions, then PLESA contributions must be matched at the same rate. Matching contributions will be added to the plan's regular match account, not the PLESA (which can hold only participant contributions). IRS is directed to issue guidance on ways that plans can ensure this matching requirement is not abused (because participants theoretically could contribute, get a match, and then immediately withdraw the PLESA contribution — resulting in a match on effectively no deferrals).

Are there limits on withdrawals? Not really. Consistent with intent to create a short-term savings account, the law requires plans to permit participant withdrawals at least once per calendar month. In addition, the first <u>four</u> withdrawals in a plan year cannot be subject to fees or charges.

Once implemented, can PLESAs be terminated? Yes. SECURE 2.0 provides Code Section 411(d)(6) relief, so plans that add PLESAs can terminate these later. Plans must allow participants to transfer their PLESA account balance to another designed Roth account under the plan. For any amounts not transferred, SECURE 2.0 provides that plan sponsors should "make such amounts available within a reasonable time."

These PLESAs create interesting opportunities as well as administrative challenges. Not all recordkeepers are currently intending to offer this option. If your client is interested in the PLESA, you will need to work with a recordkeeper that offers the option, so now is great time to reach out to clients and begin the process of determining whether a PLESA may be of interest.