Guidance on Section 603 of the SECURE 2.0 Act with Respect to Catch-Up Contributions

Notice 2023-62

I. PURPOSE

This notice provides guidance with respect to section 603 of Division T of the Consolidated Appropriations Act, 2023, Pub. L. 117-328, 136 Stat. 4459 (2022), known as the SECURE 2.0 Act of 2022 (SECURE 2.0 Act). Among other changes, section 603 of the SECURE 2.0 Act requires that, in the case of certain eligible participants, catch-up contributions under section 414(v)(1) of the Internal Revenue Code (Code) must be designated as Roth contributions pursuant to an employee election.

This notice is not intended to provide comprehensive guidance as to section 603 of the SECURE 2.0 Act, but rather is intended to provide guidance on particular issues to assist in the implementation of that section. This notice also announces a 2-year administrative transition period with respect to the requirement under section 603 of the SECURE 2.0 Act that catch-up contributions made on behalf of certain eligible participants be designated as Roth contributions. The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) have been made aware of taxpayer concerns with being able to timely implement section 603 of the SECURE 2.0 Act. The administrative transition period described in this notice is intended to facilitate an orderly transition for compliance with that requirement.

The Treasury Department and the IRS continue to work on implementation of section 603 of the SECURE 2.0 Act and intend to issue further guidance, as described

in section V of this notice. The Treasury Department and the IRS invite comments on this notice and any other aspect of section 603 of the SECURE 2.0 Act.

II. BACKGROUND

Section 414(v)(1) of the Code provides that an applicable employer plan (as defined in section 414(v)(6)(A)) will not be treated as failing to meet any requirement of the Code solely because the plan permits an eligible participant (as defined in section 414(v)(5)) to make additional elective deferrals under section 414(v) (catch-up contributions) in any plan year. Section 414(v)(3)(A)(i) further provides that a catch-up contribution is not, with respect to the year in which the contribution is made, subject to any otherwise applicable limitation contained in section 401(a)(30) (that is, the limitation on the exclusion of elective deferrals from gross income under section 402(g)(1)(A)), 403(b) (including the requirement under section 403(b)(1)(E) that a contract purchased under a salary reduction agreement satisfy the requirements of section 401(a)(30)), or 457(b)(2) (determined without regard to section 457(b)(3)), among other provisions.

Section 603(a) of the SECURE 2.0 Act amends section 414(v) of the Code to add section 414(v)(7). Section 414(v)(7)(A) generally provides that, in the case of an eligible participant whose wages (as defined in section 3121(a)) for the preceding calendar year from the employer sponsoring the plan exceed $145,000 (as adjusted under section 414(v)(7)(E)), section 414(v)(1) applies only if any catch-up contributions are designated Roth contributions (as defined in section 402A(c)(1)) made pursuant to an employee election.

Section 414(v)(7)(B) provides that, in the case of an applicable employer plan with respect to which section 414(v)(7)(A) applies to any participant for a plan year,

section 414(v)(1) does not apply to the plan unless the plan provides that any eligible participant may make catch-up contributions as designated Roth contributions. Thus, if a plan provides that an eligible participant who is subject to the requirements of section 414(v)(7)(A) may make catch-up contributions as designated Roth contributions, then all eligible participants in the plan must be permitted to make catch-up contributions as designated Roth contributions.

Section 414(v)(7)(C) provides that section 414(v)(7)(A) does not apply in the case of an applicable employer plan described in section 414(v)(6)(A)(iv) (a SEP arrangement under section 408(k) or a SIMPLE IRA plan under section 408(p)). Thus, section 414(v)(7)(A) applies in the case of an applicable employer plan that is a qualified plan under section 401(a) (including a section 401(k) plan), a section 403(b) plan, or a section 457(b) plan maintained by an employer described in section 457(e)(1)(A) (an eligible governmental plan).

Section 414(v)(7)(D) provides that the Secretary (the Secretary of the Treasury or the Secretary's delegate) may provide by regulations that an eligible participant may elect to change the participant's election to make catch-up contributions if the participant's compensation is determined to exceed the limitation under section 414(v)(7)(A) after the election is made.

Section 603(b) of the SECURE 2.0 Act includes conforming amendments with respect to section 603(a). Section 603(b)(1) of the SECURE 2.0 Act strikes section 402(g)(1)(C) of the Code. Prior to that amendment, section 402(g)(1)(C) provided that an eligible participant's gross income does not include elective deferrals in

excess of the applicable dollar amount under section 402(g)(1)(B)[1] to the extent that the amount of those elective deferrals does not exceed the applicable dollar amount under section 414(v)(2)(B)(i)[2] for the taxable year (without regard to the treatment of the elective deferrals by an applicable employer plan under section 414(v)).

Section 603(b)(2) of the SECURE 2.0 Act amends section 457(e)(18)(A)(ii) of the Code to replace "the applicable dollar amount for the taxable year determined under section 414(v)(2)(B)(i), or" with "the lesser of any designated Roth contributions made by the participant to the plan or the applicable dollar amount for the taxable year determined under section 414(v)(2)(B)(i), or".

Section 603(c) of the SECURE 2.0 Act provides that the amendments made by section 603 apply to taxable years beginning after December 31, 2023.

III. GUIDANCE ON SECTION 603 OF THE SECURE 2.0 ACT

A. Catch-Up Contributions for Taxable Years Beginning After December 31, 2023

Pursuant to section 414(v)(1), an applicable employer plan is not treated as failing to meet any requirement of the Code solely because the plan permits an eligible participant to make catch-up contributions under section 414(v) in any plan year. Accordingly, for taxable years beginning after December 31, 2023, an applicable employer plan may permit an eligible participant to make elective deferrals under the plan that exceed the applicable dollar amount under section 402(g)(1)(B) (or deferrals under the plan that exceed the applicable dollar amount under section 457(e)(15)) if those contributions in excess of the applicable dollar amount satisfy the requirements

[1] The applicable dollar amount under section 402(g)(1)(B) is $22,500 for 2023.

[2] The applicable dollar amount under section 414(v)(2)(B)(i) is $7,500 for 2023.

under section 414(v) for catch-up contributions. The elimination of section 402(g)(1)(C) of the Code under section 603(b)(1) of the SECURE 2.0 Act does not change this result for taxable years beginning after December 31, 2023.[3]

If an eligible participant is subject to the requirements of section 414(v)(7)(A), then any catch-up contributions that are made to the plan on behalf of the participant must be designated as Roth contributions. However, if an eligible participant is not subject to the requirements of section 414(v)(7)(A), then any catch-up contributions that are made to the plan on behalf of the participant are not required to be designated as Roth contributions. In that case, any catch-up contributions under section 414(v) that are made to the plan on behalf of the participant that are not designated as Roth contributions are not includible in the participant's gross income under section 402(g)(1)(A) (and do not exceed the limitation in section 457(b)(2)) because, in accordance with section 414(v)(3)(A)(i), the limitations on elective deferrals under sections 401(a)(30) and 403(b) (and the limitation on deferrals under section 457(b)(2)) do not apply to those catch-up contributions.

B. Elective Deferrals Made to Two or More Plans

If an individual makes elective deferrals to two or more plans during a taxable year (including plans maintained by unrelated employers), then, under section 402(g)(1)(A), those elective deferrals are aggregated for purposes of determining whether the amount of the individual's elective deferrals exceeds the applicable dollar amount under section 402(g)(1)(B). Similarly, an eligible participant's elective deferrals

[3] Proposed regulations, which were issued before the enactment in 2002 of section 402(g)(1)(C), permitted catch-up contributions in excess of the applicable dollar amount under section 402(g)(1)(B) or 457(e)(15) for purposes of section 414(v). See proposed § 1.414(v)-1(a)(1) and (b)(1)(i), 66 FR 53555 (the 2001 NPRM).

made to two or more plans during a taxable year are also aggregated for purposes of applying the limitation on the amount of catch-up contributions under section 414(v)(2). The elimination of section 402(g)(1)(C) of the Code under section 603(b)(1) of the SECURE 2.0 Act does not change this result for taxable years beginning after December 31, 2023.[4]

IV. ADMINISTRATIVE TRANSITION PERIOD

Under section 603(c) of the SECURE 2.0 Act, the provisions of section 603 apply to taxable years beginning after December 31, 2023. However, the first two taxable years beginning after December 31, 2023, will be regarded as an administrative transition period with respect to the requirement under section 414(v)(7)(A) of the Code that catch-up contributions made on behalf of certain eligible participants be designated as Roth contributions. Specifically, until taxable years beginning after December 31, 2025, (1) those catch-up contributions will be treated as satisfying the requirements of section 414(v)(7)(A), even if the contributions are not designated as Roth contributions, and (2) a plan that does not provide for designated Roth contributions will be treated as satisfying the requirements of section 414(v)(7)(B).

V. GUIDANCE UNDER CONSIDERATION REGARDING SECTION 603 OF THE SECURE 2.0 ACT

As noted in section I of this notice, the Treasury Department and the IRS intend to issue further guidance to assist taxpayers with the implementation of section 603 of the SECURE 2.0 Act. The guidance that the Treasury Department and the IRS

[4] Proposed § 1.414(v)-1(g) of the 2001 NPRM also provided for aggregation of an eligible participant's elective deferrals made to two or more plans for purposes of section 414(v)(2).

anticipate issuing with respect to section 603 of the SECURE 2.0 Act, after taking into account any comments received, is expected to include:

1. Guidance clarifying that section 414(v)(7)(A) of the Code would not apply in the case of an eligible participant who does not have wages as defined in section 3121(a) (that is, wages for purposes of the Federal Insurance Contributions Act (FICA)) for the preceding calendar year from the employer sponsoring the plan. For example, under that guidance, if an eligible participant did not have any wages for purposes of FICA for the preceding calendar year because the individual was a partner (or other self-employed individual) receiving self-employment income or because the individual was a State or local government employee whose services were excluded from the definition of employment under section 3121(b)(7), then the eligible participant would not be subject to the requirements of section 414(v)(7)(A).
2. Guidance providing that, in the case of an eligible participant who is subject to section 414(v)(7)(A), the plan administrator and the employer would be permitted to treat an election by the participant to make catch-up contributions on a pre-tax basis as an election by the participant to make catch-up contributions that are designated Roth contributions.[5]
3. Guidance addressing an applicable employer plan that is maintained by more than one employer (including a multiemployer plan). The guidance would provide that an eligible participant's wages for the preceding calendar year from one participating

[5] Under section 402A(c)(1)(B), an employee may designate elective deferrals as Roth contributions at such time and in such manner as the Secretary may prescribe. Sections 1.401(k)-1(f)(1)(i) and 1.403(b)-3(c)(1) provide that a designation of an elective contribution as a Roth contribution must be made at the time of the cash or deferred election, and a similar rule applies to an eligible governmental plan.

employer would not be aggregated with the wages from another participating employer for purposes of determining whether the participant's wages for that year exceed $145,000 (as adjusted). For example, under that guidance, if an eligible participant's wages for a calendar year were: (1) $100,000 from one participating employer; and (2) $125,0000 from another participating employer, then the participant's catch-up contributions under the plan for the next year would not be subject to section 414(v)(7)(A) (even if the participant's aggregate wages from the participating employers for the prior calendar year exceed $145,000, as adjusted). The guidance also would provide that, even if an eligible participant is subject to section 414(v)(7)(A) because the participant's wages from one participating employer in the plan for the preceding calendar year exceed $145,000 (as adjusted), elective deferrals made on behalf of the participant by another participating employer that are catch-up contributions would not be required to be designated as Roth contributions unless the participant's wages for the preceding calendar year from that other employer also exceed that amount.

VI. REQUEST FOR COMMENTS

The Treasury Department and the IRS invite comments and suggestions regarding the matters discussed in this notice and any other aspect of section 603 of the SECURE 2.0 Act. In particular, the Treasury Department and the IRS request comments on section V of this notice.

In addition, comments are requested with respect to whether the intended guidance should address a plan that permits eligible participants to make catch-up contributions under section 414(v) but does not include a qualified Roth contribution

program. In particular, should the guidance provide that such a plan will not fail to satisfy section 414(v)(4) (which provides that all eligible participants must be allowed to make the same election with respect to catch-up contributions) or section 414(v)(7)(B), merely because the plan provides that eligible participants who are not subject to section 414(v)(7)(A) are permitted to make catch-up contributions while eligible participants who are subject to section 414(v)(7)(A) are prohibited from making catch-up contributions.[6]

Comments should be submitted in writing on or before October 24, 2023, and should include a reference to Notice 2023-62. Comments may be submitted electronically via the Federal eRulemaking Portal at www.regulations.gov (type "IRS-2023-0039" in the search field on the Regulations.gov home page to find this notice and submit comments). Alternatively, comments may be submitted by mail to: Internal Revenue Service, Attn: CC:PA:LPD:PR (Notice 2023-62), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20044.

The Treasury Department and the IRS will publish for public availability any comment submitted electronically or on paper to its public docket.

VII. DRAFTING INFORMATION

The principal author of this notice is the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the Treasury Department and the IRS participated in the development of

[6] Under section 402A(a), an applicable retirement plan may, but is not required to, include a qualified Roth contribution program. However, in the case of an eligible participant who is subject to section 414(v)(7)(A), the catch-up contribution provisions of section 414(v)(1) apply only if any catch-up contributions are designated as Roth contributions. Accordingly, if an applicable employer plan does not include a qualified Roth contribution program, then an eligible participant who is subject to section 414(v)(7)(A) would be prohibited from making catch-up contributions under the plan.

this guidance. For further information regarding this notice, contact Kara M. Soderstrom at (202) 317-6799 (not a toll-free number).