



Roth Roadblocks

You are probably tired of hearing about SECURE 2.0 by now and for good reason. It passed at the end of 2022, and you can't tune into the retirement-plan scene without hearing something about this massive piece of retirement-plan legislation that was signed into law on December 29, 2022. By and large, many of the provisions in SECURE 2.0 are permissive provisions, which means that plan sponsors don't have to implement them. However, there is one required provision that is causing a lot of questions and concerns: Section 603.

Here's What You Really Need to Know:

1. Section 603 of SECURE 2.0 provides that all catch-up contributions to qualified retirement plans are subject to Roth tax treatment, except for participants with compensation of \$145,000 or less (indexed for inflation). This provision is effective starting January 1, 2024.
2. Some plans (hopefully there aren't many) do not have Roth as an option today. For these plans, fiduciaries should revisit the plan design because Roth comes up in several provisions throughout SECURE 2.0.
3. Although there is a technical error in SECURE 2.0 that would eliminate catch-up contributions entirely, that technical error is likely to be corrected as noted [in a letter from Congressional leaders to the Internal Revenue Service \(IRS\)](#).

Let's Dive In...

Plan design decisions are made by the business owner and not the fiduciary to the plan. Also referred to as "settlor decisions," these are the types of decisions that change the way the plan is set up and can include decisions about the basic features of the plan, such as whether to offer a matching contribution, whether or not to automatically enroll and escalate participants, etc. This also extends to decisions such as whether to allow over age 50 catch-up contributions, traditional contributions and/or also allow Roth contributions. Let's quickly revisit the basics on a few of these:

- **Over age 50 catch-up provision:** Provisions available in retirement plans that when elected are available for individuals over age 50 to make additional contributions to their retirement savings accounts beyond the regular annual contribution limits, generally only allowed once the individual meets the normal contribution limit.
For example, in 2023, the contribution limit is \$22,500 and the catch-up limit is an additional \$6,500. Also note that some types of plans such as 403(b) plans have another type of catch-up provision available when elected. (However, that's beyond the scope of this discussion.)

- **Roth contribution:** Roth contributions are those that are made with after-tax dollars, and therefore they do not provide an immediate tax deduction. Employees contribute to the plan with money that has already been taxed. This should not be confused with a Roth Individual Retirement Account (IRA), which is the same concept, but this is Roth *within* the retirement plan itself as a different contribution source.

SECURE 2.0 Provisions

SECURE 2.0 included a few provisions that involve catch-up contributions and Roth. First, starting at the date of enactment, December 29, 2022, Section 604 allowed for the optional treatment of employer matching or nonelective contributions as Roth. Previously, employee contributions could be made as Roth or traditional contributions if the plan design allowed for it, but SECURE 2.0 made updates to allow for employer contributions to become Roth. This provision is optional and has been largely dependent on three parties working together: (1) plan sponsor, (2) payroll provider and (3) recordkeeper. Thus far, adoption has not been widespread but it may be easier to implement alongside the next change.

Section 603 of SECURE 2.0 is a required provision, and it provides that all catch-up contributions to qualified retirement plans are subject to Roth tax treatment *except* for participants with compensation of \$145,000 or less.

Nearly all legislative efforts cost money, and SECURE 2.0 is no different. The Congressional intent of section 603 is to generate revenue to pay for the

legislation because Roth contributions require participants to pay now and not later. Congress deals in short budget cycles rather than thinking long-term.

Unlike Section 604, the required changes to catch-up contributions are not effective until January 1, 2024. However, for the reasons discussed below, settlors (or business owners) and their plan fiduciaries should be planning for these provisions now, as it requires careful consideration with the payroll provider and recordkeeper. Consider:

- The \$145,000 is indexed for inflation over time.
- The \$145,000 compensation is based on compensation from the prior year. For 2024, it looks at 2023 compensation.
- For partners and self-employed individuals, compensation tracking should be closely evaluated.
- For those used to tracking highly-compensated employees in payroll, this is a new type of employee compensation level to track. And, it's not the same!
- Some plans do not have Roth as an option at all, in which case it would need to be added to comply with this new provision.
- When planning ahead, one other provision to keep in mind is that in 2025, under Section 109, participants ages 60–63 can make additional catch-up contributions, above the catch-up contributions already available to participants aged 50 and over.

Many are hopeful that additional guidance will be forthcoming from the IRS related to implementation of Section 603, but plan sponsors should be encouraged to proceed in preparation as though there will not be guidance soon.

Potential Strategies

Based on the complexity of Section 603, which might be the most complex *required* operational provision of SECURE 2.0, plan sponsors seem to be pursuing three paths:

1. Implement the provision as suggested in the legislation where those below \$145,000 in compensation will be traditional catch-up and those over \$145,000 in compensation will be Roth.
2. Remove catch-up contributions entirely.
3. Make all catch-up contributions to Roth, regardless of the participant's compensation.

The optimal selection is option one but only if the (1) plan sponsor, (2) payroll provider and (3) recordkeeper (and third party administrator, if applicable) can work together to ensure the provision is set up properly.

Action Items for Plan Sponsors

As is the case with all of the provisions of SECURE 2.0, plan sponsors are encouraged to review applicable provisions and consider these steps as it relates to your implementation plan for all SECURE 2.0 provisions:

1. Assemble your implementation team for SECURE 2.0, and be sure to include all relevant stakeholders, including the recordkeeper, third party administrator (if applicable), payroll provider, retirement plan advisor/consultant, legal and/or compliance counsel, and stakeholders from the retirement plan fiduciary committee.
2. Once your SECURE 2.0 working group is established, meet to determine the capabilities of the service providers to the plan and ask questions—particularly related to Roth and Section 603.
3. Once capabilities are confirmed, evaluate which service providers can support the provisions desired by the settlor and the plan fiduciaries.
4. Communicate with participants *this year* regarding how you will handle provisions next year; though it may be a small population, it might have a big impact on their personal financial situation.
5. Stay tuned for updates related to SECURE 2.0, which will be forthcoming from the IRS, DOL and potentially legislators, but don't let the potential for those updates stall your progress. Work with a retirement plan advisor or consultant to assist with your review and monitoring of these forthcoming provisions.



Christopher D. Cervantes, C(k)P®, CFP®, CIMA®, NQPA®

Founder & Managing Partner
5700 Tennyson Parkway, Suite 250
Plano Texas 75024
214.800.4451

Christopher.Cervantes@valorousadvisors.com
www.valorousadvisors.com