Important Alert for 401(k) and 403(b) Plans that Do Not Allow Participants to Make Roth Contributions

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The recent comprehensive retirement plan legislation, often called SECURE 2.0, made an important change to the rules regarding catch-up contributions. Under the new rules, catch-up contributions must be made as after-tax Roth contributions if the participant making the contribution earned more than $145,000 in FICA wages from the employer sponsoring the plan in the prior calendar year. Moreover, if the Roth requirement applies to any participant, participants making under $145,000 must be permitted to make catch-up contributions as Roth contributions as well.

It will be difficult for plans to implement these rules by January 1, 2024, in part because there are aspects of the rules that remain unclear. The Department of the Treasury has received requests to delay application of the rules or to immediately issue guidance and relief for good faith compliance. However, if no relief is provided, plans that don't now offer Roth contributions must act fast to preserve the ability of those earning more than $145,000 to make catch-up contributions.

Participant contributions to 401(k) and 403(b) plans are limited to $22,500 for 2023, and additional "catch-up" contributions can be made by participants who will be age 50 or older by the end of the year. Catch-up contributions are limited to $7,500 for 2023. Both limits are indexed for inflation from time to time.

Plans that do not already offer Roth should contact their recordkeeper now and request Roth to be added to the plan effective January 1, 2024, if the plan wants to allow those earning more than $145,000 to make catch-up contributions. Some recordkeepers require months of advance notice for any amendment and/or limit the number of amendment requests they can accommodate based on available staff at the recordkeeper.

All plans will need to communicate this change to participants and set up their payroll system to mandate catch-up contributions be

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made on a Roth basis beginning January 1, 2024, for those who earned more than $145,000 in FICA wages in 2023.

There are many unanswered questions about how these rules will work in operation, and recordkeepers or payroll providers may have limitations on what can be done as an administrative matter. Some of the unresolved questions include:

- Can plans provide that only catch-up contributions may be Roth, but not allow regular contributions to be Roth?
- Can a plan allow catch-up contributions only for those earning less than $145,000 and avoid adopting a Roth feature?
- Can plans use a negative election process to switch an ongoing deferral election from pre-tax to Roth after the regular contribution limit is reached?
- How will these rules impact the ability of plans to recharacterize excess contributions as catch-up contributions (in order to reduce corrective distributions) in the event of an ADP test failure?

Contact Caroline Renner, Sarah Lowe or any member of Frost Brown Todd's Employee Benefits and ERISA team to discuss your 401(k) plan's compliance with these new rules for catch-up contributions.

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