

Employee Benefit Plans Alert

Regulations Recently Issued on Roth Catch-up and Form 8955-SSA

By Louis F. LiBrandi, Partner and Keely Portillo, Tax Professional

In this Alert, we will update our readers on two pension-related matters, namely:

- Roth Catch-Up Contribution Delay, and
- Form 8955-SSA, Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits

Roth Catch-Up Contribution Delayed Until 2026

The Internal Revenue Service (IRS) recently issued [Notice 2023-62](#) which provides specific guidance regarding a change made by the SECURE Act 2.0 regarding Roth Catch-Up Contributions and also announced a two-year delay for the implementation of Section 603 pertaining to this retirement plan operational change. The change impacts defined contribution types of plans; namely, 401(k), 403(b) and governmental 457(b) plans.

The SECURE Act 2.0 contains over 90 changes to retirement and welfare plans. One of the changes contained in Section 603 of the SECURE Act 2.0 required Roth catch-up contributions (i.e., after-tax contributions) for employees over the age of 50 whose preceding year Federal Insurance Contributions Act (FICA) wages exceeded \$145,000 (indexed) starting January 1, 2024. Previously, a participant could elect to make the catch-up contributions on a pre-tax or after-tax basis. The changes were supposed to become effective January 1, 2024. Notice 2023-62 granted an “administrative transition period” of two years.

The delayed implementation was needed for several reasons:

- Some plans needed to be amended to add the Roth contribution feature if they allowed for catch-up contributions; or, a plan could have been amended to suspend the age 50 catch-up contributions.
- The additional time allows an employer, its payroll company and recordkeepers to implement the new requirement.
- The Notice clarified that in the case of a plan maintained by more than one participating employer (e.g., a multiple employer plan – offered by a professional employer organization [PEO]), a worker’s FICA wages are not aggregated.

The recent IRS Notice clarified a few technical issues; these included:

- Treatment of participants who have no preceding FICA wages.
- Flexibility to automatically treat pre-tax catch-up contributions as Roth catch-up contributions for those participants whose FICA wages exceeded the indexed amount.
- Clarification that preceding FICA wages from different participating employers would not be aggregated to determine if participant catch-up contributions should be made on a Roth basis.

There are a few matters regarding this new requirement that will require further IRS guidance.

Many of the provisions that have been included in SECURE 1.0 and SECURE 2.0 are currently effective, others become effective over the next several years. Plans must be operated in compliance with the changes as they become effective. The IRS Notice provides some relief regarding this operational matter.

We will continue to provide additional information as it becomes available on this important topic.

Erroneous Penalty Notices for Late Filings of Form 8955-SSA

The PKF O'Connor Davies Employee Benefit Services Practice received many inquiries from plan administrators and employers who received a penalty notice (Notice CP 283-C) from the IRS indicating the Form 8955-SSA was filed late or incomplete. The IRS was contacted by many employee benefit industry organizations and taxpayers concerning the Notice.

The IRS subsequently issued a news bulletin explaining a programming issue with a regulatory filing system was fixed on August 23, 2023. This issue was to blame for the erroneous penalty notices sent to employers.

The IRS has confirmed that plan sponsors who filed a complete Form 8955-SSA on time do not need to respond to CP 283-C penalty notices dated prior to September 1, 2023. The programming issue causing this confusion has been resolved and IRS records are being updated to reflect timely filings.

IRS Form 8955-SSA

Form 8955-SSA is the Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits.

This tax form needs to be filed annually (if applicable) with the IRS to report separated employees who have not received their entire account balance or accrued benefit from the employer's retirement plan by the end of the plan year when separated, or the following plan year. Either reporting regime is acceptable but must be consistently followed.

The "SSA" reference on the form refers to the Social Security Administration. Once Form 8955-SSA is filed with the IRS, the data is shared with the Social Security Administration (SSA). The SSA notifies the reported individuals when they apply for social security benefits that are entitled to retirement benefits from a previous employer's retirement plan.

Contact Us

The Employee Benefit Services Practice at PKF O'Connor Davies is available to assist plan sponsors in meeting the various compliance requirements applicable to their employee benefit plans. We provide a full spectrum of compliance and reporting services for qualified retirement plans, nonqualified deferred compensation plans, and welfare plans. For more information, please contact your client services partner or any of the following individuals.

Timothy J. Desmond, CPA
Partner-in-Charge
Employee Benefit Services
tjdesmond@pkfod.com | 551.249.1728

Louis F. LiBrandi, EA, CEBS, ChFC, TGPC
Partner
Employee Benefit Services Group
llibrandi@pkfod.com | 646.449.6327

Our Firm provides the information in this e-newsletter for general guidance only and it does not constitute the provision of legal advice, tax advice, accounting services, or professional consulting of any kind.