

34th Annual Tax Symposium

IT'S TIME TO CATCH UP ON THE 401(K) **CATCH-UP CONTRIBUTION RULES**

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I. WHAT ARE CATCH-UP CONTRIBUTIONS ("CUC")?

- A. Since 2002, 401(k) plans (as well as 403(b) and 457(b) plans) can provide for plan participants over age 50 to make additional contribution amounts beyond the "regular" 402(g) contribution limit.
 - 1. For 2025, the 402(g) limit is \$23,500 and will be \$24,500 for 2026.
 - 2. In 2002, the catch-up limit started at \$1,000 and has been indexed annually for inflation. For 2025, the limit is \$7,500 and for 2026 will increase to \$8,000.
 - 3. The purpose of these CUCs was to allow older participants to save more later in their working careers than they likely could at a younger age.
 - 4. CUCs could be made either on a pre-tax basis or as an after-tax Roth contribution basis (if the plan permitted Roth contributions).
 - 5. CUCs are generally ignored for testing purposes.
 - a. Excluded for ADP testing; however, even in cases where there was no intention to treat a contribution as a CUC if the ADP test fails, elective deferrals can be recategorized as catch-up contributions to help pass the ADP test.
 - b. Excluded in determining compliance with the 415(c) defined contribution plan limit (\$70,000 for 2025 and \$72,000 for 2026).

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- c. Excluded in determining if a “plan limit” has been exceeded, such as where participant deferrals are limited to a specified percentage of compensation (for example, a plan contribution limit of 5% of compensation).

II. INCREASED CUCS FOR AGES 60-63

- A. Effective January 1, 2025 under the SECURE 2.0 Act, higher CUC limits are available for certain participants.
- B. To be eligible for the increased contribution limit, the participant must be at least age 60 anytime during the calendar year, but not have reached age 64 or older during the calendar year.
- C. If eligible, a participant's catch-up limit increases to 150% of the regular catch-up limit (which is \$7,500 in 2025 and will be \$8,000 in 2026) resulting in a catch-up limit in 2025 of \$11,250 (150% x \$7,500) and in 2026 of \$12,000 (150% x \$8,000).
- D. Other things to note:
 - 1. This provision is not mandatory. A plan need not provide for increased catch-up limits.
 - 2. Actual plan document amendments will not be necessary until December 31, 2026.
 - 3. Increased CUC limits for high-paid participants will be subject to the mandatory Roth contribution treatment, as are regular catch-up contributions for high earners.
 - 4. As long as the plan will allow the increased catch-up limit in 2025, eligible participants may avail themselves of its use anytime during the year.

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III. “ROTHIFICATION” OF CUC FOR HIGHLY-PAID PARTICIPANTS (“HPP”)

- A. Under the SECURE 2.0 Act, CUCs made by HPP must be made in the form of after-tax Roth contributions.
- B. HPP are plan participants whose Form W-2 wages, reported in Box 3 on their Form W-2, exceeds \$145,000 adjusted annually for COLA increases. The \$145,000 threshold will be indexed in \$5,000 increments.
- C. Partners and self-employed individuals only receive self-employment income which is not subject to FICA or reported as FICA wages. S Corporation shareholders who receive Form W-2 income may be subject to the Roth contribution requirement.
- D. Plans that do not provide access to Roth contributions may not include CUCs for HPP.
- E. This provision was initially effective for years beginning in 2024; however, the IRS postponed the effective date until years beginning in 2026.
- F. This may dramatically increase the numbers of 401(k) plan participants availing themselves of Roth contributions. Presently, it is estimated that only 16% of 401(k) plan participants have Roth accounts.
- G. Unlike other CUC provisions, this provision may have a “chilling effect” on retirement savings.

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IV. WHAT WAS CLARIFIED IN THE NEW FINAL REGULATIONS (SEPTEMBER 16, 2025) CONCERNING CUCS?

- A. With regard to the increased catch-up limit between the ages of 60 to 63:
 - 1. If CUCs are available, then all participants must have the opportunity to make contributions of the same dollar amount.
 - 2. If one plan within a controlled group includes the increased contribution limit, all plans of employers within the controlled group must offer an increased catch-up limit.
- B. With regard to the required Rothification rules for HPP for CUCs:
 - 1. The final regulations are not mandatory until 2027; however for 2026, plans may use a “good faith interpretation” of the statutory provisions.
 - 2. The compensation limit amount is generally determined by wages from the “employer sponsoring the plan”, which means the individual’s common law employer; however under the final regulations, multiple employers (either under common control rules or using a common paymaster arrangement) may aggregate compensation voluntarily. Presumably this was done to ease administration of the plan, but could restrict flexibility for certain participants who will be designated a HPP unnecessarily.
 - 3. Plans without Roth contributions may permit only non-HPP to make CUCs.
 - 4. Clarified the deemed Roth contribution rules.
 - a. Plans may provide that participants subject to Roth CUC rules are deemed to have the CUC as Roth, even if they have a pre-tax contribution election in place.
 - i. Plans can simply ignore the pre-tax election.

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- ii. Participants must be given an “effective opportunity” to make a different election (such as the opportunity to terminate their CUC election).
 - b. Plans may elect to take into account Roth contributions made prior to reaching the deferral limit as CUC if needed to satisfy the CUC rules.
 - c. EXAMPLE: In 2025, a participant subject to the Roth CUC rules contributes \$10,000 in Roth deferrals and \$13,500 in pre-tax deferrals. The participant then defers another \$7,500 in pre-tax deferrals for the CUC. Since the participant already contributed more than \$7,500 in Roth deferrals, they may be substituted as the Roth CUC, thereby allowing the participant the full deferral and CUC.
5. If an error occurs when a pre-tax CUC is made by a participant subject to the Roth catch-up requirement, correction can be made by either:
- a. Transferring deferrals to the participant’s Roth account and reporting the contribution as a Roth contribution; or
 - b. Conducting an in-plan Roth rollover and reporting it as such on a Form 1099-R for such year.
6. No correction of a mistaken pre-tax deferral is required if the correction amount is less than \$250.

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V. WHAT ARE SOME THINGS YOU CAN DO NOW TO HELP YOUR CLIENT BE READY TO IMPLEMENT THESE NEW CATCH-UP RULES?

- A. Review plan documents to determine if Roth contributions are permitted, and if not determine if they should be added to continue the availability of CUC for HPP.
- B. Make sure clients educate plan participants, as soon as possible about the required Roth contributions for CUC of HPP. Also advise participants of the increased CUC limit for participants in the age 60 to 63 window.
- C. Help determine which entity's wages will be used to determine if an employer's wages exceed the \$145,000 threshold from the "employer sponsoring the plan."
 - 1. There is great latitude in this determination.
 - 2. Presumably, each employer/plan sponsor will want to give participants the greatest flexibility possible in determining the type of contribution to make (Roth or traditional deferrals).
 - 3. On the other hand, the compensation determination may be readily available from groups of employers (under common controlled group or affiliated service group rules), under the common paymaster rules or other reasonable methods of grouping employers that are related in some manner.
- D. Help employers and plan participants understand the difference in taxability of traditional 401(k) accounts and Roth 401(k) accounts.
 - 1. While 90% of all plans have 401(k) deferrals available, only 16% of 401(k) plan participants maintain Roth accounts.
 - 2. The new rules will subject many more participants to Roth accounts where proper planning may be necessary and even provide new planning retirement options.