



July 1, 2025

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Department of the Treasury  
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**Re: Proposed Regulations Related to Section 603 of the SECURE 2.0 Act with Respect to Roth-Mandated Catch-Up Contributions [REG-101268-24]**

Dear Mses. Morrison and Warshawsky:

The American Institute of CPAs (AICPA) appreciates the efforts of the Department of the Treasury ("Treasury") and the Internal Revenue Service (IRS) to address the need for guidance related to plans that provide or intend to provide, catch-up contributions designated as Roth contributions, as enacted in Section 603 of the SECURE 2.0 Act of 2022 (SECURE 2.0), signed into law on December 29, 2022, as part of the Consolidated Appropriations Act of 2023.<sup>1</sup>

On January 10, 2025, Treasury and the IRS issued [\[REG-101268-24\]](#), including Prop. Reg. § 1.414(v)-(2)<sup>2</sup> (the "Proposed Regulations") to provide guidance reflecting the statutory changes made by section 603 of SECURE 2.0, including the requirement that catch-up contributions made by certain catch-up eligible participants must be designated as Roth contributions ("Roth Mandate").

The AICPA recommends that Treasury and the IRS address the following items as they relate to the Proposed Regulations:

- I. Safe harbor for Form W-2 reliance
- II. Application to disregarded entities

**Background**

Section 603 of SECURE 2.0 amends section 414(v) to add section 414(v)(7). Section 414(v)(7)(A) provides that catch-up contributions made by certain catch-up eligible participants (those whose wages as defined in section 3121(a) for the preceding calendar year from the employer sponsoring the plan exceeded \$145,000 (as adjusted for changes in the cost of living) must be designated Roth contributions.

The Proposed Regulations provide general rules applicable to the Roth Mandate under section 414(v)(7)(A). Proposed Reg. § 1.414(v)-2(a)(2) defines wages as those "defined in section 3121(a) for purposes of the taxes imposed by sections 3101(a) and 3111(a)" (increased for

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<sup>1</sup> P.L. 117-328.

<sup>2</sup> Unless otherwise indicated, hereinafter, all section references are to the Internal Revenue Code of 1986, as amended, or to the Treasury Regulations promulgated thereunder.

changes in the cost of living) for the preceding calendar year from the employer sponsoring the plan.

Proposed Reg. § 1.414(v)-(2)(b)(3) clarifies that the term “employer sponsoring the plan” means the participant’s common law employer contributing to the plan and does not include other entities that are treated as a single employer with a catch-up eligible participant’s common law employer under section 414(b), (c), (m), or (o).<sup>3</sup> Footnote 14 in the preamble to the Proposed Regulations provides that Prop. Reg. § 1.414(v)-(2)(b)(3) “applies even if responsibilities under chapter 21 of the Internal Revenue Code (IRC or Code) are imposed on a third party, such as a section 3401(d) statutory employer, a section 3504 agent, a section 3121(s) common paymaster, a section 3511 certified PEO, or a section 3512 motion picture project employer.”

## **I. Safe harbor for Form W-2 reliance**

### **Overview**

Section 414(v)(7)(A) defines wages as those “defined in section 3121(a).” Proposed Reg. § 1.414(v)-2(a)(2) defines wages as those “defined in section 3121(a) for purposes of the taxes imposed by sections 3101(a) and 3111(a).” The term “wages” is defined in section 3121(a) for social security and Medicare (collectively FICA) tax purposes as all remuneration for employment, including wages subject to the excise taxes imposed by sections 3101 and 3111. Sections 3101(a) and 3111(a) impose social security tax (i.e., OASDI) on the employee and employer, respectively, subject to the wage base limitation (\$176,100 in 2025). Sections 3101(b) and 3111(b) impose the Medicare tax on the employee and employer, respectively, with no limitation on wages subject to Medicare taxation.

For purposes of social security taxation of wages, section 3121(a)(1) provides that, in the case of taxes imposed by sections 3101(a) and 3111(a) (employee and employer social security taxes, respectively), if an employer (herein referred to as a successor employer) “during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for the purpose of determining whether the successor employer has paid remuneration [...] with respect to employment equal to the contribution and benefit base [...], to such individual during such calendar year, any remuneration [...] with respect to employment paid [...] to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor employer.”

Revenue Procedure 2004-53 provides predecessor-successor employers with two procedures — a standard procedure and an alternate procedure — for preparing and filing Forms W-2 and other applicable payroll filings. Section 4.01 of Rev. Proc. 2004-53 provides that under the standard procedure, the predecessor performs all the reporting duties for the wages and other compensation it pays. The successor, under the standard procedure, performs all the reporting

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<sup>3</sup> Proposed Reg. § 1.414(v)-2(d), Example 4.

duties for the wages and other compensation it pays. In other words, under the standard procedure, an employee who is initially employed by the predecessor employer and then transfers to the successor employer in the same calendar year (a “transferred employee”) will receive two Forms W-2, one from each of the predecessor and successor employers, reflecting only the compensation paid directly by those respective employers.

Section 5.01 of Rev. Proc. 2004-53 provides that under the alternate procedure, if the predecessor and successor so agree, the predecessor will be relieved from furnishing Forms W-2 to any transferred employees, with the successor reporting wages paid, and taxes withheld, by both the predecessor and the successor. As such, under the alternate procedure, a transferred employee will receive a single Form W-2 from the successor employer, comprising all compensation paid during the year by both the predecessor and successor employers.

### Recommendation

The AICPA recommends that Treasury and the IRS provide a safe harbor permitting all plan administrators to rely on wage information as reported on Forms W-2 when determining whether employees have exceeded the catch-up wage threshold for purposes of the Roth Mandate.

Absent the inclusion of a safe harbor, we suggest that Treasury and the IRS provide specific guidance for scenarios involving predecessor-employers, and other third-party arrangements (e.g., common paymasters, professional employer organizations (PEOs), and certified professional employer organizations (CPEOs)), including, but not limited to, relief for noncompliance that may result and otherwise be unavoidable in reasonable administration of plans using Form W-2 information for purposes of determining which employees are subject to the Roth Mandate.

### Analysis

The statutory definition of wages for purposes of the Roth Mandate encompasses the FICA definition, but the Proposed Regulations narrow this definition to the OASDI component of FICA, effectively limiting the amounts taken into account to wages subject to the OASDI wage threshold. This definition in conjunction with idiosyncrasies of reporting will result in some anomalies on which further guidance would be helpful. Further, because these anomalies exist, employers should be permitted to rely on the wages reported in Box 3 of Form W-2 even when the amount reported varies from the social security wages paid by the common-law employer.

There are scenarios where an employee Form W-2 does not accurately represent the actual wages paid by the issuing employer or the wages paid by the common law employer subject to the rules of section 414(v)(7)(A). For example, in successor employer scenarios, regardless of whether the standard or alternate procedure is used, the Form W-2 issued by the successor employer will generally not have accurate information regarding social security wages it paid. However, plan administrators generally do not have ready access to payroll records or have limited experience with and capacity for reviewing such records to determine wages, such that they must rely on Form W-2 information when determining wages paid. Reliance on Forms W-2, particularly in situations involving successor employers and three-party arrangements, can lead

to improper application of the Roth designation or failure to apply the Roth designation to one or more employees when required.

To illustrate issues of inaccurate representation via Form W-2, consider an example using successor employers. Employees transferred to a successor employer may receive a single Form W-2 for the year of transfer that reports wages from both the predecessor and successor employers, or two Forms W-2, one from each predecessor and successor employers, depending on whether the predecessor and successor use the standard or alternate procedure provided by Rev. Proc. 2004-53. In these successor employer situations, the Form W-2 may inaccurately reflect the wages subject to social security tax paid by the successor employer, leading to improper application of the Roth Mandate, regardless of which procedure is used.

As an example, assume the same facts as Proposed Regulation § 1.414(v)-2(d), Example 4, except the wages paid by Employers F and G are reversed, where Employer F paid \$35,000 in wages for 2025 and Employer G paid \$155,000 in wages for 2025. Pursuant to Section 3121(a)(1) and Rev. Proc. 2004-53, Employer F is considered a predecessor employer and Employer G is considered a successor employer. The following table illustrates how these amounts are reported on Form W-2 using the standard and alternate procedures in Boxes 3 (social security wages) and 5 (Medicare wages):

| RP 2004-53   | 2023 <sup>4</sup> Form W-2 Reporting |                |                  |                |
|--------------|--------------------------------------|----------------|------------------|----------------|
|              | Box 3 (Social Security)              |                | Box 5 (Medicare) |                |
|              | Standard                             | Alternate      | Standard         | Alternate      |
| Employer F   | 35,000                               | -              | 35,000           | -              |
| Employer G   | 125,200                              | 160,200        | 155,000          | 190,000        |
| <b>Total</b> | <b>160,200</b>                       | <b>160,200</b> | <b>190,000</b>   | <b>190,000</b> |

Section 3121(a)(1) entitles Employer G, the successor employer, to a credit for the \$35,000 in wages already paid by Employer F. If successor Employer G uses the standard procedure, Employer G's Form W-2, Box 3 (social security wages) will only report the \$125,200 in wages subject to social security tax that remain for the employee (\$160,200 social security wage base, less the \$35,000 paid by Employer F and credited to Employer G), despite the fact that Employer G actually paid wages of \$155,000, which exceeds the wage threshold. As such, in relying on the Form W-2, Box 3 information, Employer G will fail to apply the Roth Mandate to this employee.

Conversely, if Employers F and G use the alternate procedure, the Form W-2 issued by Employer G will report the full \$160,200 in Box 3 for the year (comprising the \$35,000 from Employer F plus the remaining \$125,200 of wages paid by Employer G up to the social security wage base), indicating that the employee has exceeded the wage threshold under the Proposed Regulation's definition. While the Roth Mandate would be applied correctly in this example given Employer G actually paid \$155,000 in wages for the calendar year, which is over the wage

<sup>4</sup> The AICPA acknowledges that the requirements under Section 603 of SECURE 2.0 were suspended for two years; the example utilizes amounts, including the 2024 OASDI limit of \$160,200, that would have applied to 2024 for illustrative purposes only.

threshold of \$145,000, had the amounts been reversed such that Employer G had paid \$35,000 in wages and predecessor Employer F had paid the \$155,000, Employer G would have incorrectly applied the Roth Mandate for the employee based on the Form W-2. This is one example among many that can result in inconsistent application of the Roth Mandate in successor employer situations, regardless of which procedure is used. While this issue applies in the predecessor-successor employer context, there is also concern regarding inconsistent application of the Roth designation based on use of Form W-2 in other scenarios where a Form W-2 may not accurately reflect wages paid by the employer sponsoring the plan (i.e., the common law employer). These scenarios include fact patterns involving common paymasters, PEOs, and CPEOs, as well as other third parties such as section 3401(d) employers and section 3504 agents.

To address these anomalies, the AICPA recommends that employers be permitted, but not required, to rely on the amount reported in Box 3 of the Form W-2 to determine which employees are subject to the Roth mandate. The AICPA does not believe that the requested safe harbor would be abused by plan administrators, nor will the safe harbor have any real bearing on plan administrators' decision on whether a plan should have a designated Roth feature. Therefore, it is not necessary to include a "pick and stick" requirement for those utilizing the safe harbor.

## **II. Application to Disregarded Entities**

### **Overview**

The entity classification regulations under section 301.7701-2(c)(2)(i) provide that, except as otherwise provided in paragraph(c) of the regulation, a business entity that has a single owner and is not a corporation under paragraph (b) of section 301.7701 of the regulations is disregarded as an entity separate from its owner (a "disregarded entity" or "DRE"). The initial flush language of section 301.7701-2(c) provides that this is the rule "for federal tax purposes." Section 301.7701-3(b) provides that an entity not classified as a corporation that has only one owner may file an election to either be classified as an association or to be disregarded as an entity separate from its owner. The regulations under section 301.7701-3(b)(1)(ii) provide that a domestic entity with a single owner will be disregarded as an entity separate from its owner if it does not otherwise make an election under section 301.7701-3(b)(1)(ii) to be classified as a corporation, as defined in section 301.7701-2(b)(2). These regulations are commonly referred to as the "check the box" regulations.

However, final regulations issued in 2009 provide distinct rules regarding the treatment of disregarded entities for Subtitle C ("Employment Taxes") purposes. Specifically, section 301.7701-2(c)(2)(iv) provides that an entity that is disregarded as an entity separate from its owner for any purpose under section 301.7701-2 is treated as a corporation with respect to Subtitle C, which includes the FICA provisions; thus, the entity is "re-regarded" or is not disregarded. A disregarded entity with employees is generally required to file employment tax returns using its own employer identification number and is treated as an employer, regardless of its disregarded status for income tax purposes.

Section 301.7701-2(c)(2)(iv) does not apply to Subtitle A ("Income Taxes") and therefore does

not apply to section 414(v)(7)(A).

## Recommendation

The AICPA recommends that Treasury and the IRS articulate a position on whether a disregarded entity is treated as a separate “employer sponsoring the plan” for purposes of Prop. Reg. 1.414(v)-2(b)(3) and (4).

## Analysis

The application of the Roth Mandate depends on whether, in the previous year, an individual received wages from “the employer sponsoring the plan” in excess of the applicable threshold. Proposed Reg. 1.414(v)-2(b)(3) states:

For purposes of determining the employer sponsoring the plan with respect to a catch-up eligible participant, the employer is the participant’s common law employer. Thus, for purposes of this section, the employer sponsoring the plan does not include other entities that are treated as a single employer with a catch-up eligible participant’s common law employer under section 414(b), (c), (m), or (o).

Proposed Reg. 1.414(v)-2(b)(4) states, in part

If an applicable employer plan has more than one employer sponsoring the plan (that is, the plan is sponsored by multiple employers that are aggregated under section 414(b), (c), (m), or (o), or is a multiple employer plan or a multiemployer plan), a catch-up eligible participant’s wages for the preceding calendar year from one employer sponsoring the plan are not aggregated with the wages from another employer sponsoring the plan ...

The rules of section 414(b), (c), (m), and (o) treat entities that are otherwise separate legal entities (and separately regarded for Federal tax purposes) as a single employer for purposes of various rules governing qualified retirement plans. The Proposed Regulations would not aggregate these otherwise aggregated entities in determining the amount of wages for purposes of applying the Roth Mandate. However, a disregarded entity is not considered a separate entity for Federal tax purposes (except for employment tax purposes under Subtitle C), and thus the rules of sections 414(b), (c), (m) and (o) would not aggregate a disregarded entity with its owner. This is because the disregarded entity is part of (i.e., one and the same) as its owner for purposes of these rules.

Despite this, as previously indicated, a DRE is considered a separate entity for employment tax purposes. In addition, the proposed regulations also indicate that the “employer sponsoring the plan” is the actual common law employer, determined on a separate legal entity basis. This would suggest that wages paid by the DRE and by its owner (in the case of an employee who works for both entities during the year) would not be combined for purposes of determining the application of the Roth Mandate.

Ms. Helen Morrison  
Ms. Laura Warshawsky  
July 1, 2025  
Page 7 of 7

The better reading of the proposed regulations would treat the DRE as a separate entity for purposes of the Roth mandate (based on the first sentence of proposed regulation 1.414(v)-2(b)(3)). However, this is not entirely clear, because the DRE is not considered a separate entity for purposes of subtitle A of the Code (which is where section 414(v) appears). Based on the potential for confusion, we recommend that the final regulations contain an explicit statement regarding the treatment of a DRE and whether it is considered a separate “employer sponsoring the plan” or one and the same with its owner for this purpose.

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We appreciate your consideration of these comments and welcome the opportunity to discuss them further. If you have any questions, please contact Anne Bushman, Chair, AICPA Employee Benefits Taxation Technical Resource Panel, at (202) 370-8213, or [anne.bushman@rsmus.com](mailto:anne.bushman@rsmus.com); Kristin Esposito, AICPA Director – Tax Policy & Advocacy, at (202) 434-9241, or [kristin.esposito@aicpa-cima.com](mailto:kristin.esposito@aicpa-cima.com); or me at (610) 217-4495 or [CheriFreeh@gmail.com](mailto:CheriFreeh@gmail.com).

Sincerely,



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