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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 10033]

RIN 1545-BR11

Catch-Up Contributions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document sets forth final regulations that provide guidance for retirement plans that permit participants who have attained age 50 to make additional elective deferrals that are catch-up contributions. The regulations reflect statutory changes made by the SECURE 2.0 Act of 2022, including the requirement that catch-up contributions made by certain catch-up eligible participants must be designated Roth contributions. The regulations affect participants in, beneficiaries of, employers maintaining, and administrators of certain retirement plans.

DATES: *Effective date*: These regulations are effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Applicability date: These regulations generally apply with respect to contributions in taxable years beginning after December 31, 2026. However, see §§1.401(k)-1(f)(5)(iii), 1.414(v)-1(i)(2), and 1.414(v)-2(e)(2) and the Applicability Dates section later in this preamble for additional details regarding applicability dates.

FOR FURTHER INFORMATION CONTACT: Jessica S. Weinberger at (202) 317-6349 (not a toll-free number) or Christina M. Cerasale at (202) 317-4102 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Authority

This document sets forth amendments to the Income Tax Regulations (26 CFR part 1) under sections 401(k), 403(b), and 414(v) of the Internal Revenue Code (Code) relating to catch-up contributions. These final regulations are issued by the Secretary of the Treasury or the Secretary's delegate (Secretary) under the express delegations of authority in sections 401(m)(9), 414(v)(7)(D), and 7805(a) of the Code.

Section 401(m)(9) provides, in part, that "[t]he Secretary shall prescribe such regulations as may be necessary to carry out the purposes of [section 401(m) and (k)]." Section 414(v)(7)(D) provides a specific delegation of authority with respect to the requirements of section 414(v)(7)(A), stating, "[t]he Secretary may provide by regulations that an eligible participant may elect to change the participant's election to make additional elective deferrals if the participant's compensation is determined to exceed the limitation under [section 414(v)(7)(A)] after the election is made." Section 7805(a) provides that "the Secretary shall prescribe all needful rules and regulations for the enforcement of [the Code], including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue."

Background

This document sets forth amendments to the Income Tax Regulations under section 414(v) of the Code. Section 414(v) permits a retirement plan to allow catch-up eligible participants to make additional elective deferrals that are catch-up contributions and sets forth requirements relating to those contributions.[1] These final regulations amend the regulations under section 414(v) to reflect changes to the catch-up

[1] Existing §1.414(v)-1(g)(3) provides that an employee is a "catch-up eligible participant" for a taxable year if the employee is eligible to make elective deferrals under an applicable employer plan (without regard to section 414(v) or §1.414(v)-1) and the employee's fiftieth or higher birthday would occur before the end of the employee's taxable year.

contribution requirements for certain catch-up eligible participants pursuant to sections 109, 117, and 603 of Division T of the Consolidated Appropriations Act, 2023, Public Law 117-328, 136 Stat. 4459 (2022), known as the SECURE 2.0 Act of 2022 (SECURE 2.0 Act).

This document also sets forth conforming amendments to the regulations under sections 401(k) and 403(b) of the Code that reflect section 603 of the SECURE 2.0 Act.

I. *General Statutory and Regulatory Framework*

Section 414(v)(1) of the Code provides that an applicable employer plan will not be treated as failing to meet any requirement of the Code solely because it permits an eligible participant to make additional elective deferrals (as defined in section 414(v)(6)(B)) in any plan year. "Applicable employer plan" is defined in section 414(v)(6)(A) to mean a qualified plan under section 401(a) (qualified plan), a plan under which amounts are contributed by an individual's employer for an annuity contract described in section 403(b) (section 403(b) plan), an eligible deferred compensation plan under section 457 of an eligible employer described in section 457(e)(1)(A) (eligible governmental 457(b) plan),[2] an arrangement meeting the requirements of section 408(k) (SEP arrangement), and an arrangement meeting the requirements of section 408(p) (SIMPLE IRA plan). Under section 414(v)(5), an eligible participant is a participant who is generally eligible to make elective deferrals under an applicable employer plan, who would attain age 50 by the end of the taxable year, and with respect to whom no further elective deferrals may (without regard to section 414(v)) be made to the plan for the plan year (or other applicable year) by reason of a limitation or restriction listed in section 414(v)(3) or a comparable limitation or restriction included in the terms of the plan.

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[2] Section 414(v)(6)(C) provides that section 414(v) does not apply to a participant in an eligible governmental 457(b) plan for any year for which a higher limitation applies to the participant under section 457(b)(3).

Under section 414(v)(2)(A), the amount of additional elective deferrals that a plan may permit a participant to make pursuant to section 414(v)(1) for a taxable year is limited to the lesser of: (1) the applicable dollar amount under section 414(v)(2)(B) (referred to as the applicable dollar catch-up limit), and (2) the excess (if any) of the participant's compensation (as defined in section 415(c)(3)) for the year over any other elective deferrals of the participant for such year that are made without regard to section 414(v). Section 414(v)(2)(B)(i) provides the applicable dollar catch-up limit for an applicable employer plan other than a plan described in section 401(k)(11) (SIMPLE 401(k) plan) or a SIMPLE IRA plan. Section 414(v)(2)(B)(ii) provides the applicable dollar catch-up limit for a SIMPLE 401(k) plan or a SIMPLE IRA plan (collectively referred to as SIMPLE plans). Section 414(v)(2)(C) provides that the applicable dollar catch-up limits under section 414(v)(2)(B)(i) and (ii) are subject to annual adjustment based on changes in the cost of living. Section 414(v)(2)(D) provides that, for purposes of section 414(v)(2), all applicable employer plans, other than eligible governmental 457(b) plans, that are maintained by the same employer (as determined under section 414(b), (c), (m), or (o)) are treated as a single plan, and all eligible governmental 457(b) plans that are maintained by the same employer are treated as a single plan.

Under section 414(v)(3)(A)(i), a catch-up contribution is not, with respect to the year in which the contribution is made, subject to certain otherwise applicable limitations, including those contained in section 401(a)(30) (limiting a participant's elective deferrals during a calendar year to the amount permitted under section 402(g)), section 403(b) (including the requirement under section 403(b)(1)(E) that a contract purchased under a salary reduction agreement must meet the requirements of section 401(a)(30)), and section 457(b)(2) applied without regard to any increase under section 457(b)(3) (limiting a participant's elective deferrals for a taxable year to the applicable dollar amount in section 457(e)(15), or if less, 100 percent of the participant's

includible compensation). Under section 414(v)(3)(B), in the case of any catch-up contribution to a plan, except as provided in section 414(v)(4), the plan shall not be treated as failing to meet the requirements of sections 401(a)(4), 401(k)(3), 401(k)(11), 403(b)(12), 408(k), 410(b), or 416 by reason of the making of (or the right to make) the catch-up contribution.

Section 414(v)(4) provides that an applicable employer plan is treated as failing to meet the nondiscrimination requirements under section 401(a)(4) with respect to benefits, rights, and features unless the plan allows all catch-up eligible participants to make the same election with respect to catch-up contributions. For purposes of section 414(v)(4), all plans maintained by employers that are treated as a single employer under section 414(b), (c), (m), or (o) are treated as one plan (with the exception of a plan described in section 410(b)(6)(C)(i) for the duration of the transition period described in section 410(b)(6)(C)(ii) with respect to that plan).

Section 414(v) was added to the Code by section 631 of the Economic Growth and Tax Relief Reconciliation Act of 2001, Public Law 107-16, 115 Stat. 38. The Department of the Treasury (Treasury Department) and the IRS issued comprehensive regulations under section 414(v) in 2003 (TD 9072, 68 FR 40510). Subsequently, provisions relating to catch-up contributions under section 414(v) were incorporated into regulations under sections 401(k), 403(b), and 457(b).

II. *SECURE 2.0 Act Changes to Section 414(v)*

A. Section 109 of the SECURE 2.0 Act

For taxable years beginning after December 31, 2024, section 109 of the SECURE 2.0 Act amends section 414(v)(2) of the Code to increase the applicable dollar catch-up limit under section 414(v)(2)(B)(i) and (ii) in the case of a catch-up eligible participant who attains age 60, 61, 62, or 63 during the taxable year. For such a participant in an applicable employer plan other than a SIMPLE plan, the increased

applicable dollar catch-up limit is 150 percent of the otherwise applicable dollar catch-up limit under section 414(v)(2)(B)(i) in effect for 2024.[3] For such a participant in a SIMPLE plan, the increased applicable dollar catch-up limit is 150 percent of the otherwise applicable dollar catch-up limit under section 414(v)(2)(B)(ii) in effect for 2025.[4] In either case, for a year beginning after December 31, 2025, the increased applicable dollar catch-up limit is subject to adjustment to reflect changes in the cost of living, in accordance with the last sentence of section 414(v)(2)(C).

B. Section 117 of the SECURE 2.0 Act

A SIMPLE plan is an alternative plan design under which employees of an eligible employer as defined in section 408(p)(2)(C)(i) (that is, generally, an employer that had no more than 100 employees who received at least $5,000 of compensation from the employer for the preceding calendar year) are permitted to elect to have salary reduction contributions (or elective contributions, in the case of a SIMPLE 401(k) plan) made on their behalf.[5] Among other things, section 117 of the SECURE 2.0 Act amends section 414(v)(2) of the Code to increase the applicable dollar catch-up limit under section 414(v)(2)(B)(ii) for SIMPLE plans sponsored by certain eligible employers who are described in section 408(p)(2)(E)(iv).[6] The increased applicable dollar catch-up limit

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[3] Under section 414(v)(2)(E)(i), the adjusted annual limit on catch-up contributions that applies to an employee participating in an applicable employer plan other than a SIMPLE plan in a year in which the employee attains age 60, 61, 62, or 63 is described as the greater of $10,000 or an amount equal to 150 percent of the otherwise applicable dollar catch-up limit under section 414(v)(2)(B)(i) in effect for 2024. However, the amount equal to 150 percent of the otherwise applicable dollar catch-up limit for 2025 ($11,250) is greater than $10,000, and this amount will continue to be greater than $10,000 in future years.

[4] Under section 414(v)(2)(E)(ii), the adjusted annual limit on catch-up contributions that applies to an employee participating in an applicable employer plan that is a SIMPLE plan in a year in which the employee attains age 60, 61, 62, or 63 is described as the greater of $5,000 or an amount equal to 150 percent of the otherwise applicable dollar catch-up limit under section 414(v)(2)(B)(ii) in effect for 2025. However, the amount equal to 150 percent of the otherwise applicable dollar catch-up limit for 2025 ($5,250) is greater than $5,000, and this amount will continue to be greater than $5,000 in future years.

[5] The annual limit on salary reduction contributions or elective contributions is lower for SIMPLE plans than for other types of plans. In addition, SIMPLE plans are not subject to nondiscrimination testing, and the employer must make certain contributions.

[6] An eligible employer is described in section 408(p)(2)(E)(iv) if, during the three-taxable-year period preceding the first year that the employer maintained the SIMPLE plan, the employer (including any member of the employer's controlled group or any predecessor of the employer or member of its

is available automatically to a SIMPLE plan sponsored by an eligible employer described in section 408(p)(2)(E)(iv) that had no more than 25 employees who received at least $5,000 of compensation from the employer for the preceding calendar year. Other eligible employers described in section 408(p)(2)(E)(iv) may make an election for the increased applicable dollar catch-up limit to apply and, if the election is made, the employer must make additional matching or nonelective contributions.

The increased applicable dollar catch-up limit, which applies to taxable years beginning after December 31, 2023, is 110 percent of the otherwise applicable dollar catch-up limit under section 414(v)(2)(B)(ii) for calendar year 2024. For a year beginning after December 31, 2024, the increased applicable dollar catch-up limit is subject to adjustment to reflect changes in the cost of living, in accordance with section 414(v)(2)(C)(ii).

C. Section 603 of the SECURE 2.0 Act

Section 603(a) of the SECURE 2.0 Act amends section 414(v) of the Code to add section 414(v)(7). Section 414(v)(7)(A) sets forth the requirement that catch-up contributions made by certain catch-up eligible participants must be designated Roth contributions (the Roth catch-up requirement). Specifically, under section 414(v)(7)(A), in the case of a catch-up eligible participant whose wages as defined in section 3121(a) (that is, wages for purposes of the Federal Insurance Contributions Act (FICA), codified at subtitle C, chapter 21 of the Code, or FICA wages) for the preceding calendar year from the employer sponsoring the plan exceeded $145,000, section 414(v)(1) applies only if any catch-up contributions made by the participant are designated Roth contributions (as defined in section 402A(c)(1)).

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controlled group) has not established or maintained a qualified plan, a section 403(a) annuity plan, or a section 403(b) plan under which contributions were made or benefits were accrued for substantially the same employees as the employees eligible to participate in the SIMPLE plan. *See* Q&A E-1 in Notice 2024-2, 2024-2 IRB 316.

Section 414(v)(7)(B) provides that, in the case of an applicable employer plan with respect to which section 414(v)(7)(A) applies to any participant for a plan year, section 414(v)(1) does not apply to the plan unless the plan provides that any catch-up eligible participant may make catch-up contributions as designated Roth contributions. Section 414(v)(7)(C) provides that section 414(v)(7)(A) does not apply to SEP arrangements or SIMPLE IRA plans. Under section 414(v)(7)(D), the Secretary may issue regulations providing that a catch-up eligible participant may elect to change the participant's election to make catch-up contributions if the participant's compensation is determined to exceed the wage limitation under section 414(v)(7)(A) after the election is made. Under section 414(v)(7)(E), for taxable years beginning after December 31, 2024, the wage limitation is adjusted for changes in the cost of living (the wage limitation, as adjusted, is referred to as the Roth catch-up wage threshold).[7]

Section 603(b) of the SECURE 2.0 Act includes conforming amendments with respect to section 603(a). Section 603(b)(1) of the SECURE 2.0 Act strikes section 402(g)(1)(C) of the Code. Prior to its elimination, section 402(g)(1)(C) provided that a catch-up eligible participant's gross income did not include elective deferrals in excess of the applicable dollar amount under section 402(g)(1)(B) to the extent that the amount of those elective deferrals did not exceed the applicable dollar catch-up limit under section 414(v)(2)(B)(i) for the taxable year (without regard to the treatment of the elective deferrals by an applicable employer plan under section 414(v)).

Section 603(b)(2) of the SECURE 2.0 Act amends section 457(e)(18)(A)(ii) of the Code and, pursuant to this amendment, if a catch-up eligible participant's limit under section 457(e)(18) is greater than the limit under section 457(b)(3) (determined without regard to section 457(e)(18)), then a portion of the catch-up contributions made to the

[7] The adjustments are to be made in the same manner as adjustments under section 415(d)(1)(A) (including that any increase which is not a multiple of $5,000 is rounded to the next lower multiple of $5,000), except that the base period is the calendar quarter beginning July 1, 2023.

eligible governmental 457(b) plan by the participant is required to be designated Roth contributions. The portion of the catch-up contributions that is subject to this Roth requirement is the amount by which the sum of the limits under sections 457(b)(2) and 414(v)(2)(B)(i) exceeds the maximum permitted contribution set forth in section 457(b)(3) (determined without regard to section 457(e)(18)).

Under section 603(c) of the SECURE 2.0 Act, the amendments made by section 603 of the SECURE 2.0 Act apply to taxable years beginning after December 31, 2023.

III. *Notice 2023-62*

In August 2023, the Treasury Department and the IRS issued Notice 2023-62, 2023-37 IRB 817. Notice 2023-62 clarifies that, despite the elimination of section 402(g)(1)(C) of the Code under section 603(b)(1) of the SECURE 2.0 Act, applicable employer plans may, for taxable years beginning after December 31, 2023, continue to permit catch-up eligible participants to make elective deferrals that exceed the applicable dollar amount under section 402(g)(1)(B) of the Code (or deferrals that exceed the applicable dollar amount under section 457(e)(15)) if those contributions in excess of the applicable dollar amount satisfy the requirements for catch-up contributions under section 414(v). In addition, pursuant to Notice 2023-62, the first two taxable years beginning after December 31, 2023, are regarded as an administrative transition period with respect to the Roth catch-up requirement. During the administrative transition period, catch-up contributions made by a participant who is subject to the Roth catch-up requirement will be treated as satisfying the requirements of section 414(v)(7)(A), even if the contributions are not designated Roth contributions.

Notice 2023-62 also summarizes anticipated guidance from the Treasury Department and the IRS with respect to the implementation of section 603 of the SECURE 2.0 Act as follows: (1) the Roth catch-up requirement would not apply in the

case of a catch-up eligible participant who did not have FICA wages for the preceding calendar year from the employer sponsoring the plan; (2) in the case of a catch-up eligible participant who is subject to the Roth catch-up requirement, a plan administrator and an employer would be permitted to treat an election by the participant to make catch-up contributions on a pre-tax basis as an election by the participant to make catch-up contributions that are designated Roth contributions; and (3) a catch-up eligible participant's FICA wages for the preceding calendar year from one participating employer in an applicable employer plan that is maintained by more than one employer (including a multiemployer plan) would not be aggregated with the participant's FICA wages for the preceding calendar year from another participating employer in the plan for purposes of determining whether the participant's FICA wages for that year exceeded the Roth catch-up wage threshold. The notice requested comments with respect to the anticipated guidance summarized in the notice, additional matters under consideration relating to a plan without a qualified Roth contribution program, and, more generally, the provisions of section 603 of the SECURE 2.0 Act.

IV. *Proposed Regulations*

A notice of proposed rulemaking (REG-101268-24) containing proposed regulations that would amend the regulations under sections 401(k), 403(b), and 414(v) to reflect changes to the catch-up contribution requirements for certain catch-up eligible participants pursuant to sections 109, 117, and 603 of the SECURE 2.0 Act was published in the **Federal Register** on January 13, 2025 (90 FR 2645). Comments received in response to Notice 2023-62 were considered in the preparation of the proposed regulations. Nineteen comments were received on the proposed regulations, and a public hearing was held on April 7, 2025.

After consideration of the comments received in response to the notice of proposed rulemaking and testimony at the public hearing, the proposed regulations are

adopted by this Treasury decision with certain changes described in the Summary of Comments and Explanation of Revisions section of this preamble.

Summary of Comments and Explanation of Revisions

This Summary of Comments and Explanation of Revisions addresses the significant comments regarding catch-up contributions under section 414(v) of the Code that the Treasury Department and the IRS received in response to the proposed regulations and describes the revisions included in the final regulations. Rules under the proposed regulations that are included in the final regulations without change generally are not discussed in this Summary of Comments and Explanation of Revisions.

I. *Amendments to Regulations Under Sections 401(k) and 403(b) – Deemed Roth Catch-up Election*

In order to facilitate compliance with the Roth catch-up requirement under section 414(v)(7)(A), proposed §1.401(k)-1(f)(5)(iii) generally would permit a plan to provide, for taxable years beginning after December 31, 2023, that a participant who is subject to the Roth catch-up requirement is deemed to have irrevocably designated any catch-up contributions as designated Roth contributions in accordance with the requirements of existing §1.401(k)-1(f)(1)(i). However, in accordance with section 414(v)(7)(D), proposed §1.401(k)-1(f)(5)(iv) would provide that the application of a deemed Roth catch-up election to a participant would be conditioned on the participant having an effective opportunity (determined in accordance with existing §1.401(k)-1(e)(2)(ii), which applies a facts and circumstances test) to make a new election that is different than the deemed election. The proposed regulations also proposed to amend §1.403(b)-3(c)(1) to incorporate proposed §1.401(k)-1(f)(5)(iii) and (iv), among other provisions.

Commenters requested that the final regulations permit a plan to continue applying a deemed Roth catch-up election to a participant in certain circumstances in which the participant is no longer subject to the Roth catch-up requirement. One

commenter requested that, in the case of a participant who ceases to be subject to the Roth catch-up requirement during a taxable year due to a transfer of employment to another participating employer, a plan be permitted to continue applying the deemed Roth catch-up election to the participant until the end of the taxable year. Similarly, commenters requested that the final regulations permit a plan to continue applying the deemed Roth catch-up election to a participant for a taxable year based on the FICA wages reported on the participant's Form W-2 (Wage and Tax Statement) for the preceding calendar year, even if the participant's FICA wages for the preceding calendar year are later determined not to exceed the Roth catch-up wage threshold.

In response to these comments, the final regulations clarify the conditions set forth in proposed §1.401(k)-1(f)(5)(iv) by providing that the deemed election described in §1.401(k)-1(f)(5)(iii) must cease to apply to an employee within a reasonable period of time following the date on which: (1) the employee ceases to be subject to the requirement under section 414(v)(7) to make any catch-up contributions as designated Roth contributions, or (2) an amended Form W-2 is filed or furnished to the employee indicating that the employee is not subject to the requirement under section 414(v)(7) to make any catch-up contributions as designated Roth contributions. Accordingly, catch-up contributions that were designated as Roth contributions pursuant to the deemed election before the end of the reasonable period of time referred to in the prior sentence do not need to be recharacterized as pre-tax catch-up contributions.

One commenter requested clarification regarding the effective opportunity requirement under proposed §1.401(k)-1(f)(5)(iv), including whether a notice requirement applies and how any notice requirement could be satisfied. The final regulations retain the proposed rule providing that whether a participant has an effective opportunity is determined under existing §1.401(k)-1(e)(2)(ii), which applies a facts and circumstances test. However, the determination of whether certain facts and

circumstances would satisfy the requirements of §1.401(k)-1(e)(2)(ii) is outside the scope of the final regulations.

One commenter requested that the final regulations permit a plan to apply a deemed Roth catch-up election to a participant who is subject to the Roth catch-up requirement if the participant's elective deferrals for the taxable year have reached the section 401(a)(30) limit without regard to any designated Roth contributions that the participant made earlier in the taxable year.

The final regulations retain the proposed rule that a plan may provide that an employee who is subject to the Roth catch-up requirement is deemed to have irrevocably designated any elective deferrals that are catch-up contributions as designated Roth contributions. As described in section III.B.1 of this Summary of Comments and Explanation of Revisions ("Designated Roth contributions that are treated as catch-up contributions for purposes of the Roth catch-up requirement"), the final regulations also retain the proposed rule in §1.414(v)-2(b)(1), which provides that an elective deferral that is treated as a catch-up contribution at the time of deferral (for example, an elective deferral that is a catch-up contribution because it exceeds the section 401(a)(30) limit on elective deferrals) is required to be a designated Roth contribution only to the extent the participant has not previously made elective deferrals that are designated Roth contributions during the taxable year equal to the applicable dollar catch-up limit under §1.414(v)-1(c)(2). However, this commenter's request to be permitted to deem elective deferrals as designated Roth contributions once total elective deferrals have reached the section 401(a)(30) limit has been incorporated into the final rules in §1.414(v)-2(c)(3)(i)(B) regarding the practices and procedures that are necessary in order for a plan to use the Form W-2 or in-plan Roth rollover correction method to correct a pre-tax elective deferral that exceeds a statutory limit, as explained further in sections III.B.1 and III.C.3.a of this Summary of Comments and Explanation of

Revisions (“Prerequisite to correct certain section 414(v)(7) failures under the new correction methods”).

One commenter requested that a plan be permitted to apply a deemed Roth catch-up election in the case of a participant who is permitted under the plan to make a separate election to treat a portion of the participant’s elective deferrals as catch-up contributions during each payroll period without regard to whether the participant has already made elective deferrals equal to the section 401(a)(30) limit (referred to as a separate election plan). Assuming this deeming is permitted, the commenter also requested that no correction be required if such an elective deferral is deemed to be made as a designated Roth contribution but is later determined not to be a catch-up contribution.

Under existing §1.414(v)-1(c)(3), the determination of whether an elective deferral is a catch-up contribution is made as of the last day of the plan year (or in the case of section 415, as of the last day of the limitation year), except that, with respect to elective deferrals in excess of an applicable limit that is tested on the basis of the taxable year or calendar year (for example, the section 401(a)(30) limit on elective deferrals), the determination of whether such elective deferrals are treated as catch-up contributions is made at the time they are deferred. Thus, an additional elective deferral that exceeds an employer-provided limit (for example, a plan limit on the amount of a participant’s compensation that may be deferred for each payroll period) would not be determined to be a catch-up contribution under the existing regulations until the last day of the plan year (regardless of any earlier treatment as catch-up contributions pursuant to a participant election). The final regulations do not make changes to §1.414(v)-1(c)(3).

However, for a separate election plan (including a plan utilizing the proration-of-limit design described in existing §1.414(v)-1(e)(1)(ii)(A)), §1.401(k)-1(f)(5)(v) of the final

regulations permits the plan to apply a separate-election deemed Roth catch-up election to a participant's elective deferrals that the participant elects to treat as catch-up contributions. As with any application of a deemed Roth catch-up election to a participant, the application in this case would be conditioned on the participant having an effective opportunity (determined in accordance with existing §1.401(k)-1(e)(2)(ii)) to make a new election that is different than the deemed election. Thus, in the case of a participant who is made subject to a separate-election deemed Roth catch-up contribution election and does not make a different election, the plan is not required to recharacterize as pre-tax any of the participant's elective deferrals treated as Roth catch-up contributions pursuant to the deemed Roth election, even if these amounts are determined not to be catch-up contributions under §1.414(v)-1(c)(3).

One commenter requested that the final regulations provide guidance on whether, in order to apply a deemed Roth catch-up election to a participant, the deemed Roth catch-up election must be set forth in a plan amendment (and, if so, requested additional time following the publication of the final regulations for an employer to adopt the plan amendment). Under the final regulations, as under the proposed regulations, a plan generally may provide that an employee who is subject to the Roth catch-up requirement is deemed to have irrevocably designated any elective deferrals that are catch-up contributions as designated Roth contributions. Thus, in order for a plan to apply a deemed Roth catch-up election to a participant, the deemed Roth catch-up election must be set forth in the plan document.

Although the final regulations do not address the deadline for this plan amendment, under Q&A J-1 of Notice 2024-2, the deadline under section 501 of the SECURE 2.0 Act to amend a plan (for required, integral, and discretionary plan amendments) with respect to the applicable provisions of section 603 of the SECURE 2.0 Act, or any regulations thereunder, generally is extended to December 31, 2026.

Further extensions apply in the case of: (1) a qualified plan that is an applicable collectively bargained plan or a governmental plan within the meaning of section 414(d); (2) a section 403(b) plan that is an applicable collectively bargained plan of a tax-exempt organization described in section 501(c)(3) of the Code or maintained by a public school; or (3) an eligible governmental 457(b) plan.

While proposed §1.401(k)-1(f)(5)(iii) would permit a deemed Roth election with respect to a participant who is subject to the Roth catch-up requirement, the proposed regulations did not include a rule permitting a plan to require that all participants' catch-up contributions be designated Roth contributions. Footnote 16 of the preamble to the proposed regulations explained that, for a participant who is not subject to the Roth catch-up requirement, allowing a plan design that requires all participants' catch-up contributions to be designated Roth contributions would be inconsistent with the language of section 402A(b)(1), which provides that a designated Roth contribution must be elected by an employee "in lieu of all or a portion of elective deferrals the employee is otherwise eligible to make."[8]

Notwithstanding the explanation in footnote 16 of the preamble to the proposed regulations, commenters requested that the final regulations permit a plan to require that all participants' catch-up contributions be made as designated Roth contributions, regardless of a participant's FICA wages for the preceding calendar year. Commenters argued that permitting this plan design would simplify implementation of the Roth catch-up requirement, would reduce section 414(v)(7) failures, and, in some cases, could avoid a perception of unfairness (for example, in the case of a participant who is not subject to the Roth catch-up requirement under section 414(v)(7)(A) because the

[8] Section 402A(b)(1) provides that "[t]he term 'qualified Roth contribution program' means a program under which an employee may elect to make, or to have made on the employee's behalf, designated Roth contributions in lieu of all or a portion of elective deferrals the employee is otherwise eligible to make, or of matching contributions or nonelective contributions which may otherwise be made on the employee's behalf, under the applicable retirement plan."

participant did not have FICA wages in the prior year, but had wages from self-employment for the preceding calendar year that exceeded the Roth catch-up wage threshold). With respect to section 402A(b)(1), commenters argued that provision merely defines the term “qualified Roth contribution program,” does not explicitly prohibit a plan from requiring that all catch-up contributions be made as designated Roth contributions, and permits an employee to have designated Roth contributions “made on the employee's behalf” under the plan.

The Treasury Department and the IRS do not agree with the commenters’ characterization of the language in section 402A(b)(1) as merely a definition. In addition, the language of section 402A(b)(1) permitting an employee to have designated Roth contributions “made on the employee’s behalf” under a plan was added to section 402A(b)(1) by section 604(b) of the SECURE 2.0 Act. Section 604 of the SECURE 2.0 Act permits certain nonelective contributions and matching contributions that are made after December 29, 2022, to be designated Roth contributions. Thus, this language reflects the distinction between designated Roth contributions that are made in lieu of pre-tax elective deferrals and those that are made in lieu of nonelective or matching contributions.

Further, section 414(v)(7)(A) refers to designated Roth contributions as defined under section 402A(c)(1), and, under section 402A(c)(1), the term “designated Roth contribution” includes “any elective deferral…which is excludable from gross income of an employee without regard to [section 402A], and the employee designates (at such time and in such manner as the Secretary may prescribe) as not being so excludable.” Thus, under section 402A(c)(1), an employee must be permitted to make a pre-tax elective deferral in order for the employee to designate such a pre-tax elective deferral as a designated Roth contribution.

Although the requirement under section 402A(b)(1) and (c)(1) that an employee be eligible to make pre-tax elective deferrals in order to elect to make designated Roth contributions in lieu of all or a portion of those pre-tax elective deferrals is not consistent with the Roth catch-up requirement under section 414(v)(7)(A) in the case of a participant who is subject to the Roth catch-up requirement, final regulation §1.414(v)-2(b)(6) resolves this inconsistency by providing that the Roth catch-up requirement applies notwithstanding section 402A(b)(1) and (c)(1). However, there is no inconsistency in the case of a participant who is not subject to the Roth catch-up requirement. Accordingly, the final regulations do not include a rule permitting a plan to require that all participants' catch-up contributions be designated Roth contributions.

II. *Revisions to §1.414(v)-1*

A. Increased applicable dollar catch-up limit during the year of attainment of age 60 through 63 under section 109 of the SECURE 2.0 Act

The proposed regulations generally would retain the existing rules in §1.414(v)-1(c)(2)(i) and (ii) setting forth the applicable dollar catch-up limit that applies to a catch-up eligible participant in an applicable employer plan that is not a SIMPLE plan and a catch-up eligible participant in a SIMPLE plan, respectively (to be adjusted annually under §1.414(v)-1(c)(2)(iii) for changes in the cost of living). In accordance with section 109 of the SECURE 2.0 Act, for a taxable year beginning after 2024, the proposed regulations also noted the existence of a higher applicable dollar catch-up limit for an individual attaining age 60, 61, 62, or 63 that is 150 percent of the applicable dollar catch-up limit that applies to the individual under §1.414(v)-1(c)(2)(i) or (ii) (as applicable) during a taxable year beginning in 2024, adjusted for changes in the cost of living for years after 2025.

Some commenters asked that the Treasury Department and the IRS clarify whether a plan term that incorporates the catch-up contribution limit under section 414(v) of the Code by reference also incorporates the optional higher catch-up

contribution limit for participants attaining age 60, 61, 62, or 63 permitted under section 414(v)(2)(B)(i) and (ii) in accordance with section 109 of the SECURE 2.0 Act. The Treasury Department and the IRS expect that a plan's terms will be made clear as to whether or not a reference to the catch-up contribution limit under section 414(v) in the plan document includes the optional higher limit for participants attaining age 60, 61, 62, or 63. This ensures that a plan is operated in accordance with its terms. See Q&A J-1 of Notice 2024-2 for a discussion of the deadline under section 501 of the SECURE 2.0 Act to adopt a plan amendment with respect to a provision of the SECURE 2.0 Act.

One commenter requested that the final regulations permit the increased catch-up contribution limit to continue until at least the taxable year in which a catch-up eligible participant attains age 65. The final regulations do not incorporate this comment because, pursuant to section 414(v)(2)(B)(i) and (ii), the higher catch-up contribution limits under section 414(v)(2)(E) apply only to a catch-up eligible participant "who would attain age 60 but would not attain age 64 before the close of the taxable year."

Another commenter requested confirmation that catch-up eligible participants attaining age 60, 61, 62, or 63 who are eligible to make special section 403(b) catch-up contributions are permitted to make those contributions in addition to catch-up contributions under section 414(v), as increased under section 414(v)(2)(E). As explained in section III.B.3 of this Summary of Comments and Explanation of Revisions ("Coordination with other catch-up contributions"), the catch-up contributions described in section 414(v) may apply in a year in which a participant also qualifies for the special section 403(b) catch-up contributions. Thus, the Treasury Department and the IRS agree that catch-up eligible participants attaining age 60, 61, 62, or 63 who are eligible to make the special section 403(b) catch-up contributions are permitted to make those contributions in addition to catch-up contributions under section 414(v), as increased under section 414(v)(2)(E).

B. Interaction of the adjusted applicable dollar catch-up limits under sections 109 and 117 of the SECURE 2.0 Act

In accordance with section 117 of the SECURE 2.0 Act, for a taxable year beginning in 2024, proposed §1.414(v)-1(c)(2)(ii)(C) would set forth a higher applicable dollar catch-up limit for a participant in a SIMPLE plan that is sponsored by an eligible employer described in section 408(p)(2)(E)(iv) of the Code and for which the higher applicable dollar catch-up limit under section 414(v)(2)(B)(iii) applies automatically or by election. The higher applicable dollar catch-up limit under proposed §1.414(v)-1(c)(2)(ii)(C) would be 110 percent of the applicable dollar catch-up limit that applied to the individual under proposed §1.414(v)-1(c)(2)(ii)(A) during a taxable year beginning in 2024. For taxable years after 2024, proposed §1.414(v)-1(c)(2)(iii)(C) would provide that this higher applicable dollar catch-up limit is to be adjusted for changes in the cost of living.

With respect to an individual who attains age 60 through 63 in a year in which the individual participates in a SIMPLE plan to which the higher applicable dollar catch-up limit under section 117 of the SECURE 2.0 Act applies, commenters requested that the final regulations clarify whether the SIMPLE plan may provide that the applicable dollar catch-up limit that applies to the individual is an amount equal to the general applicable dollar catch-up limit for SIMPLE plans under section 414(v)(2)(B) of the Code, increased pursuant to section 109 of the SECURE 2.0 Act to an amount equal to 150% of the applicable dollar catch-up limit that would otherwise be in effect and increased further pursuant to section 117 of the SECURE 2.0 Act to an amount equal to 110% of the applicable dollar catch-up limit that would otherwise be in effect. As in the proposed regulations, §1.414(v)-1(c)(2)(ii)(C) in the final regulations provides that the 10% increase under section 117 of the SECURE 2.0 Act applies to the applicable dollar catch-up limit in effect under §1.414(v)-1(c)(2)(ii)(A). Section 1.414(v)-1(c)(2)(ii)(A) sets forth the otherwise applicable dollar catch-up limit for SIMPLE plans, without regard to

the higher limit under section 109 of the SECURE 2.0 Act (which is set forth in §1.414(v)-1(c)(2)(ii)(B)). Thus, under the final regulations, the 10% increase under section 117 of the SECURE 2.0 Act applies only to participants in affected SIMPLE plans who are not permitted to make the increased catch-up contributions under section 109 of the SECURE 2.0 Act.

Section 414(v)(2)(B)(iii) of the Code provides that the higher limit pursuant to section 117 of the SECURE 2.0 Act is "an amount equal to 110 percent of the dollar amount in effect under [section 414(v)(2)(B)(ii) of the Code] for calendar year 2024." Since section 109 of the SECURE 2.0 Act is effective for taxable years beginning after December 31, 2024, the 50% increase for individuals attaining age 60 through 63 did not apply for calendar year 2024, and the dollar amount in effect under section 414(v)(2)(B)(ii) of the Code for calendar year 2024 was the same for all catch-up eligible individuals. Thus, the applicable dollar amount under section 414(v)(2)(B)(iii) for calendar year 2024 did not take into account the 50% increase under section 109 of the SECURE 2.0 Act. Similarly, the applicable dollar amount that applies under section 414(v)(2)(B)(iii) of the Code for any calendar year after 2024 does not reflect the 50% increase under section 109 of the SECURE 2.0 Act.

Although a SIMPLE plan cannot provide for an applicable dollar catch-up limit that reflects increases under both sections 109 and 117 of the SECURE 2.0 Act, a SIMPLE plan that generally provides for the 10% increase under section 117 of the SECURE 2.0 Act may provide that the 50% increase under section 109 of the SECURE 2.0 Act applies instead to a participant in a year in which the participant attains age 60 through 63. This is because section 414(v)(2)(B)(ii) of the Code provides that the applicable dollar catch-up limit that applies to a SIMPLE plan participant for a year is the general applicable dollar catch-up limit or, where applicable, the adjusted applicable dollar catch-up limit for individuals attaining age 60 through 63, "except as provided in

section 414(v)(2)(B)(iii).” The Treasury Department and the IRS interpret that exception to apply only if applying section 414(v)(2)(B)(iii) would increase the applicable dollar catch-up limit for a participant. Thus, beginning with the 2025 calendar year, a SIMPLE plan that is generally subject to the 10% increase under section 117 of the SECURE 2.0 Act may instead permit participants attaining age 60 through 63 to contribute catch-up contributions up to an amount equal to 150% of the applicable dollar catch-up limit that would otherwise be in effect (pursuant to section 109).

C. Different applicable dollar catch-up limits and universal availability

In accordance with the universal availability requirement in section 414(v)(4) of the Code, existing §1.414(v)-1(e)(1)(i) sets forth a general rule that an applicable employer plan that offers catch-up contributions and that is otherwise subject to section 401(a)(4) (including a plan that is subject to section 401(a)(4) pursuant to section 403(b)(12)) will not satisfy the requirements of section 401(a)(4) unless all catch-up eligible participants who participate under any applicable employer plan maintained by the employer are provided with an effective opportunity to make the same dollar amount of catch-up contributions.

The proposed regulations did not propose to amend the general rule set forth in §1.414(v)-1(e)(1)(i) of the existing regulations. However, the preamble to the proposed regulations explained that the Treasury Department and the IRS do not believe that a plan should fail to satisfy the universal availability requirement merely because the plan utilizes the increased limit for catch-up eligible participants attaining age 60 through 63 that is permitted under section 414(v)(2)(E). Thus, proposed §1.414(v)-1(e)(1)(iii) would provide an exception to the general rule in §1.414(v)-1(e)(1)(i) if each catch-up eligible participant who participates under any applicable employer plan maintained by an employer is permitted to make elective deferrals up to the statutory maximum dollar amount of catch-up contributions permitted with respect to the participant under

section 414(v). Under this new exception, an applicable employer plan would not fail to satisfy the requirements of section 401(a)(4) merely because the plan allows catch-up eligible participants who are subject to the increased applicable dollar catch-up limit for participants attaining age 60 through 63 under section 414(v)(2)(E) to make catch-up contributions up to that increased limit, while permitting other catch-up eligible participants to make catch-up contributions only up to the applicable dollar catch-up limit that applies generally under section 414(v)(2)(B)(i) or (ii), as applicable.[9]

One commenter requested that the final regulations clarify that an applicable employer plan does not fail to satisfy the universal availability requirement merely because it permits non-collectively bargained employees who are subject to the increased applicable dollar catch-up limit for participants attaining age 60 through 63 under section 414(v)(2)(E) to make catch-up contributions up to that increased limit, while retaining the regular applicable dollar catch-up limit under section 414(v)(2)(B)(i) or (ii), as applicable, for its collectively bargained employees. Another commenter requested that the final regulations clarify whether flexibility is available in relation to the increased applicable dollar catch-up limit for participants attaining age 60 through 63 under section 414(v)(2)(E) that would enable a plan to permit fewer catch-up eligible participants to make catch-up contributions up to that increased limit or to limit the increase so that it is below the statutory maximum dollar amount.

The final regulations retain the exception in proposed §1.414(v)-1(e)(1)(iii) with only minor modification. Thus, under the final regulations, an applicable employer plan generally must satisfy the rule in existing §1.414(v)-1(e)(1)(i) or permit each participant to make catch-up contributions equal to the statutory maximum that applies to the

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[9] Similarly, under proposed §1.414(v)-1(e)(1)(iii), an applicable employer plan that covers employees in both the United States and Puerto Rico would not fail to satisfy the requirements of section 401(a)(4) merely because the plan allows catch-up eligible participants whose catch-up contributions are subject to the limit set forth in section 1081.01(d)(7) of the Puerto Rico Internal Revenue Code of 2011 (13 L.P.R.A. section 30391(d)(7)), as amended (Puerto Rico Code), to make catch-up contributions only up to the amount of that limit ($1,500 for 2025).

participant. However, with respect to employees described in section 410(b)(3), the final regulations amend §1.414(v)-1(e)(2) to provide that an applicable employer plan also does not fail to satisfy the universal availability requirement of §1.414(v)-1(e) merely because employees described in section 410(b)(3) are provided the opportunity to make catch-up contributions to a lesser extent than other employees.[10] Thus, for example, an applicable employer plan does not fail to satisfy the universal availability requirement merely because it permits non-collectively bargained employees who are subject to the increased applicable dollar catch-up limit for participants attaining age 60 through 63 under section 414(v)(2)(E) to make catch-up contributions up to that increased limit, while permitting collectively bargained employees to make catch-up contributions only up to the applicable dollar catch-up limit that applies generally under section 414(v)(2)(B)(i) or (ii), as applicable.

One commenter requested clarification that the phrase "make the maximum amount of catch-up contributions permitted" in proposed §1.414(v)-1(e)(1)(iii) would not preclude an employer from utilizing the permitted practices described in §1.414(v)-1(e)(1)(ii) of the existing regulations, including the cash availability rule in §1.414(v)-1(e)(1)(ii)(B).[11] Under §1.414(v)-1(e)(1)(ii), an applicable employer plan does not fail to satisfy the universal availability requirement of §1.414(v)-1(e) merely because of the practices described in §1.414(v)-1(e)(1)(ii). Accordingly, the Treasury Department and the IRS agree that the phrase "make the maximum amount of catch-up

[10] The proposed regulations did not propose to amend §1.414(v)-1(e)(2). Prior to amendment by these final regulations, §1.414(v)-1(e)(2) provided that an applicable employer plan does not fail to satisfy the universal availability requirement of §1.414(v)-1(e) merely because employees described in section 410(b)(3) (for example, collectively bargained employees) are not provided the opportunity to make catch-up contributions.

[11] Under §1.414(v)-1(e)(1)(ii)(B), an applicable employer plan does not fail to satisfy the universal availability requirement of §1.414(v)-1(e) merely because it restricts the elective deferrals of any employee (including a catch-up eligible participant) to amounts available after other withholding from the employee's pay (for example, after deduction of all applicable income and employment taxes). For this purpose, an employer limit of 75% of compensation or higher will be treated as limiting employees to amounts available after other withholdings.

contributions permitted" in §1.414(v)-1(e)(1)(iii) of the final regulations does not preclude an employer from utilizing the permitted practices described in §1.414(v)-1(e)(1)(ii).

One commenter requested relief from the universal availability requirement in the case of a plan that permits catch-up eligible participants attaining age 60 through 63 under section 414(v)(2)(E) to make catch-up contributions up to that increased limit but another plan maintained by a related employer does not, provided that all plans maintained under the same controlled group of employers are amended before the applicability date of the final regulations to permit catch-up eligible participants attaining age 60 through 63 under section 414(v)(2)(E) to make catch-up contributions up to that increased limit. As explained in footnote 6 of the preamble to the proposed regulations, the higher applicable dollar catch-up limit for participants attaining age 60 through 63 may, but is not required to be, included in an applicable employer plan. However, if an applicable employer plan provides for this higher applicable dollar catch-up limit, then any applicable employer plan maintained by an employer within the same controlled group must also provide for this higher applicable dollar catch-up limit, except to the extent that the exception for employees described in section 410(b)(3) applies under §1.414(v)-1(e)(2) of these regulations. The final regulations do not address the application of the universal availability requirement before the applicability date of the final regulations.

III. *Section 1.414(v)-2*

A. General rules relating to the requirements of section 414(v)(7)

1. Roth catch-up requirement under section 414(v)(7)(A)

Proposed §1.414(v)-2(a) would set forth general rules relating to the Roth catch-up requirement under section 414(v)(7)(A). Under proposed §1.414(v)-2(a)(2), if a catch-up eligible participant in an applicable employer plan had FICA wages for the preceding calendar year from the employer sponsoring the plan (as defined in proposed

§1.414(v)-2(b)(3)) that exceeded the Roth catch-up wage threshold, then section 414(v)(1) would apply with respect to the participant's elective deferrals that are catch-up contributions only if they are designated Roth contributions (as defined in section 402A(c)(1)). Under proposed §1.414(v)-2(a)(3), the initial $145,000 Roth catch-up wage threshold would be subject to cost-of-living adjustments, in accordance with section 414(v)(7)(E).[12] Under proposed §1.414(v)-2(a)(4), the Roth catch-up requirement would not apply to a participant in a SEP arrangement or a SIMPLE IRA plan, in accordance with section 414(v)(7)(C). As further discussed in this Section III.A.1, there are no substantive changes to these provisions in the final regulations.

Consistent with section 414(v)(7)(A) and the description of anticipated guidance in Notice 2023-62, proposed §1.414(v)-2(a)(2) would provide that a participant who did not have FICA wages exceeding $145,000 (as adjusted) from the employer sponsoring the plan for the preceding calendar year would not be subject to the Roth catch-up requirement under the plan for the current year. Proposed §1.414(v)-2(a)(2) would define FICA wages by reference to the FICA taxes imposed by sections 3101(a) and 3111(a), not sections 3101(b) and 3111(b), and would provide that the wages are taken into account for this purpose in the same year that they are taken into account for FICA tax purposes. Accordingly, an individual who did not have any FICA wages from the employer sponsoring the plan for the preceding calendar year (for example, a partner who had only self-employment income; an individual who had wages under section 3231(e) that are subject to taxation under the Railroad Retirement Tax Act, codified at title 45, chapter 9 of the United States Code, rather than FICA; or a State or

[12] Under proposed §1.414(v)-2(a)(2), the Roth catch-up wage threshold of $145,000 would be applied to a catch-up eligible participant's 2023 FICA wages to determine whether the Roth catch-up requirement applies to the participant's catch-up contributions made for 2024. In accordance with Notice 2024-80, 2024-47 IRB 1120, the Roth catch-up wage threshold to be applied to a catch-up eligible participant's 2024 FICA wages to determine whether the Roth catch-up requirement applies to the participant's catch-up contributions made for 2025 would remain $145,000.

local government employee whose services were excluded from the definition of employment under section 3121(b)(7) without regard to section 3121(u)) would not be subject to the Roth catch-up requirement under the plan in the current year. Similarly, an individual who received cash compensation from the employer sponsoring the plan in the preceding calendar year but nevertheless did not have any FICA wages from the employer for that year (for example, because the compensation was taxed in an earlier year pursuant to section 3121(v)(2)) would not be subject to the Roth catch-up requirement under the plan in the current year.

One commenter requested clarification as to why applicability of the Roth catch-up requirement would be determined under the proposed regulations on the basis of prior year FICA wages for purposes of sections 3101(a) and 3111(a) (that is, FICA wages that are Social Security wages reported in Box 3 of Form W-2), as opposed to sections 3101(b) and 3111(b) (that is, FICA wages that are Medicare wages reported in Box 5 of Form W-2). Section 1.414(v)-2(a)(2) retains the rule defining FICA wages by reference to the FICA taxes imposed by sections 3101(a) and 3111(a) due to the impact that referencing the FICA taxes imposed by sections 3101(b) and 3111(b) might have on employees of State and local governments. Section 3121(a) defines “wages” for FICA purposes as all remuneration for employment (subject to certain exceptions). Under section 3121(b), which defines “employment” for FICA purposes, the services of certain employees are excluded from the definition of employment (including, under section 3121(b)(7), the services of employees of State and local governments unless an exception applies) and, therefore, these employees generally do not have wages under section 3121(a) and consequently are not subject to section 414(v)(7) of the Code.[13]

[13] If a state and local government employee does have wages under section 3121(a) that are subject to the taxes imposed by sections 3101(a) and 3111(a) pursuant to an exception to section 3121(b)(7) (for example, under section 3121(b)(7)(E), an employee who is subject to an agreement entered into pursuant to section 218 of the Social Security Act, or, under section 3121(b)(7)(F), an employee who is not a member of a state retirement system), that employee is subject to section 414(v)(7) of the Code.

However, as a result of section 3121(u)(2), wages subject to the taxes imposed by sections 3101(b) and 3111(b) are reported in Box 5 for State and local government employees who are covered by Medicare even if no wages are reported in Box 3. The Treasury Department and the IRS do not interpret the Box 5 wages reported in accordance with the exception in section 3121(u)(2) to be section 3121(a) FICA wages for purposes of section 414(v)(7) because Box 5 wages do not relate to Social Security coverage. Therefore, the final regulations retain the rule that applicability of the Roth catch-up requirement to a participant is based on the prior year FICA wages reported in Box 3 of Form W-2 for the participant. The use of this rule achieves the intended result of excepting those State and local government employees who do not have wages subject to the taxes imposed by sections 3101(a) and 3111(a) relating to Social Security coverage from the application of section 414(v)(7).

The commenter also asked whether a plan could rely on the Social Security wages reported in Box 3 of a catch-up eligible participant's Form W-2 for the preceding calendar year for purposes of determining whether the participant is subject to the Roth catch-up requirement, and whether the Social Security wage base could have any impact on the Roth catch-up wage threshold. The Treasury Department and the IRS do not expect that the limitation of an employee's wages under sections 3101(a) and 3111(a) to the maximum Social Security wage base would affect the ability to determine applicability of the Roth catch-up wage threshold on the basis of those wages. For 2024, the Social Security wage base limit was $168,600, which is significantly higher than the $145,000 threshold for 2024 wages on which applicability of the Roth catch-up requirement in 2025 was based. As both dollar amounts are adjusted annually for cost-of-living increases under current law, the Treasury Department and the IRS do not expect that applying the Social Security wage base limit will ever affect the determination of whether a participant is subject to the Roth catch-up wage threshold.

Commenters also requested that, until the applicability date of the final regulations, a plan be permitted to rely on Medicare wages reported in Box 5 of a catch-up eligible participant's Form W-2 for the preceding calendar year for purposes of determining whether the participant is subject to the Roth catch-up requirement. In response to these comments, §1.414(v)-2(e)(2)(i) clarifies that, for contributions in taxable years prior to the applicability date of the final regulations, a reasonable, good faith interpretation standard applies with respect to section 414(v)(7). For a discussion of the application of this standard, see the Applicability Dates section later in this preamble.

2. Availability of Roth catch-up contributions under section 414(v)(7)(B)

Section 414(v)(7)(B) provides that, in the case of an applicable employer plan with respect to which section 414(v)(7)(A) applies to any participant for a plan year, section 414(v)(1) shall not apply to the plan unless the plan provides that any catch-up eligible participant may make catch-up contributions as designated Roth contributions.

Proposed §1.414(v)-2(a)(5)(ii) would set forth a rule to address the application of section 414(v)(7)(B) to a plan that is subject to the qualification requirements of both section 401(a) and section 1081.01 of the Puerto Rico Code (dual-qualified plan).[14] As explained in the preamble to the proposed regulations, if a dual-qualified plan that covers both employees in the United States and employees in Puerto Rico permits any catch-up eligible participant who is subject to the Roth catch-up requirement to make catch-up contributions as designated Roth contributions for a plan year, then, in accordance with section 414(v)(7)(B), the plan generally would be required to permit all catch-up eligible participants to make catch-up contributions as designated Roth contributions for the plan year. However, the Puerto Rico Code currently does not

[14] For purposes of this Treasury decision, a dual-qualified plan includes a plan for which an election under section 1022(i)(2) of the Employee Retirement Income Security Act of 1974 (Public Law 93-406, 88 Stat. 829), as amended (ERISA), has been made.

provide for designated Roth contributions. In order to address this issue, the proposed regulations would provide that, in the case of a catch-up eligible participant who is subject to the Roth catch-up requirement of section 414(v)(7)(A) of the Code and is subject to section 1081.01 of the Puerto Rico Code, the requirements of section 414(v)(7)(B) of the Code would be treated as satisfied if, under the applicable employer plan, that participant is permitted to make catch-up contributions as after-tax contributions within the meaning of section 1081.01(a)(15) of the Puerto Rico Code.

Commenters requested that the final regulations permit a dual-qualified plan to offer a participant who is subject to both section 414(v)(7)(A) of the Code and section 1081.01 of the Puerto Rico Code the opportunity to make catch-up contributions as pre-tax contributions (rather than after-tax catch-up contributions), and that the plan need not offer after-tax catch-up contributions in order to satisfy section 414(v)(7)(B) of the Code. These commenters argued that the Roth catch-up requirement of section 414(v)(7)(A), and the related Roth catch-up availability requirement of section 414(v)(7)(B), should not apply in the case of a participant who, under the Puerto Rico Code, is not permitted to make designated Roth contributions.

The Treasury Department and the IRS have determined that providing transition relief for dual-qualified plans is consistent with the historical approach taken with respect to plans qualified under the Puerto Rico Code if there is a difference in the United States and Puerto Rico Codes that does not allow for the same treatment of contributions made by participants in the United States and Puerto Rico.[15] Therefore, in response to these comments, the final regulations do not include the rule set forth in

[15] *See, e.g.*, Notice 2002-4, 2002-1 CB 298, and TD 9072, 68 FR 40510, 40514 (July 8, 2003), which addressed the fact that catch-up contributions were not permitted under the Puerto Rico Code but were permitted under the United States Code ("These final regulations do not affect the transitional relief granted in Notice 2002-4 that provides that an applicable employer plan will not fail to satisfy the universal availability requirement solely because another applicable employer plan of the employer that is qualified under Puerto Rico law does not provide for catch-up contributions."). In a September 28, 2015, report (JCX-132-15), the Joint Committee on Taxation explained that, as a general matter, "Federal law does not require that the income tax laws in force in the United States also be in force in…Puerto Rico."

proposed §1.414(v)-2(a)(5)(ii). Instead, §1.414(v)-2(a)(6) provides that the Roth catch-up requirement of section 414(v)(7)(A) and the Roth catch-up availability requirement of section 414(v)(7)(B) are treated as satisfied for a taxable year with respect to a catch-up eligible participant who is subject to section 1081.01 of the Puerto Rico Code, if that taxable year begins before the effective date of any future amendment to the Puerto Rico Code to provide for designated Roth contributions.

Another commenter requested that the final regulations clarify how the catch-up contribution rules apply to employees who move between the mainland and Puerto Rico during the year. The final regulations do not address this comment as it involves an interpretation of the Puerto Rico Code and, therefore, is outside the scope of the final regulations.

B. Rules of operation for implementing the Roth catch-up requirement

1. Designated Roth contributions that are treated as catch-up contributions for purposes of the Roth catch-up requirement

Under proposed §1.414(v)-2(b)(1), an elective deferral that is determined to be a catch-up contribution at the time of contribution under the timing rules in §1.414(v)-1(c)(3) of the existing regulations (for example, an elective deferral that is a catch-up contribution because it exceeds the section 401(a)(30) limit on elective deferrals) would be required to be made as a designated Roth contribution by a participant who is subject to the Roth catch-up requirement only to the extent the participant has not previously made elective deferrals as designated Roth contributions during the calendar year or taxable year equal to the applicable dollar catch-up limit. Thus, if a catch-up eligible participant's total elective deferrals that are designated Roth contributions over the course of a calendar year or taxable year (including, if applicable, contributions to a pension-linked emergency savings account described in section 402A(e) of the Code) equal or exceed the total elective deferrals that are

determined to be catch-up contributions, then the participant would satisfy the Roth catch-up requirement.[16]

One commenter requested that the final regulations provide that designated Roth contributions that are made prior to a participant's elective deferrals for the calendar year reaching the section 401(a)(30) limit may, but are not required to, be taken into account for purposes of determining whether the participant has satisfied the Roth catch-up requirement. The commenter explained that some employers have indicated that taking into account designated Roth contributions that are made earlier in a calendar year would create administrative burden and complexity.

In order to maintain flexibility for participants, §1.414(v)-2(b)(1) of the final regulations retains the proposed rule that, for a participant who is subject to the Roth catch-up requirement, an elective deferral that is treated as a catch-up contribution at the time of deferral is required to be a designated Roth contribution only to the extent the participant has not previously made elective deferrals that are designated Roth contributions during the taxable year equal to the applicable dollar catch-up limit. However, as explained in sections I and III.C.3.a of this Summary of Comments and Explanation of Revisions ("Amendments to Regulations Under Sections 401(k) and 403(b) – Deemed Roth Catch-up Election" and "Prerequisite to correct certain section 414(v)(7) failures under the new correction methods"), in order to ease administrative burden for plans, in determining when during the year to implement a deemed Roth election under final regulation §1.401(k)-1(f)(5)(iii), a plan is not required to take into account elective deferrals made by a participant earlier in the year as designated Roth contributions. Thus, a plan may provide that a deemed Roth election

[16] This is also the case with respect to elective deferrals that are determined to be catch-up contributions because the plan would fail the actual deferral percentage (ADP) test under section 401(k)(3) if the plan did not correct under section 401(k)(8). The determination of elective deferrals that are catch-up contributions because they are in excess of the ADP limit in §1.414(v)-1(b)(1)(iii) occurs in the plan year following the plan year for which the elective deferrals are made.

will be implemented with respect to a participant once a participant's total elective deferrals for the year (including any designated Roth contributions) equal the section 401(a)(30), 402(g)(7), or 457(b) limit, as applicable. Further, after implementing the deemed Roth election, the plan would not be required to recharacterize any designated Roth catch-up contributions made pursuant to the deemed election as pre-tax for the purpose of counting any designated Roth contributions made earlier in the year by the participant toward satisfaction of the Roth catch-up requirement. However, since the plan must also provide such a participant an effective opportunity to make a new election that is different than the deemed election, if a participant who is subject to the Roth catch-up requirement makes an affirmative election to make pre-tax catch-up contributions, the plan would be required to take into account any elective deferrals made by the participant earlier in the year as designated Roth contributions when determining the amount of the pre-tax catch-up contributions to be corrected in order to comply with section 414(v)(7) (such that the pre-tax catch-up contributions must be corrected – that is, either distributed from the plan or corrected in accordance with a correction method set forth in final regulation §1.414(v)-2(c)(2) – only to the extent that a participant's catch-up contributions for the year exceed the participant's designated Roth contributions made over the course of the year).

Another commenter requested clarification as to whether an in-plan Roth rollover that is elected voluntarily by a participant under section 402A(c)(4)(E) could be used to satisfy the Roth catch-up requirement. The Treasury Department and the IRS have determined that an in-plan Roth rollover that is elected by a participant voluntarily under section 402A(c)(4)(E) may not be used to satisfy the Roth catch-up requirement because the amount of the in-plan Roth rollover could be attributable to contributions other than elective deferrals. However, as described in section III.C.2 of this Summary of Comments and Explanation of Revisions ("Additional permissible correction methods

for elective deferrals that exceed an applicable limit"), §1.414(v)-2(c)(2)(iii) of the final regulations generally retains the provision of the proposed regulations permitting a plan to use the in-plan Roth rollover correction method to correct a pre-tax elective deferral that exceeds an applicable limit but does not satisfy the Roth catch-up requirement.

2. Plans that do not include a qualified Roth contribution program

In accordance with section 402A(a), an applicable employer plan may, but is not required to, include a qualified Roth contribution program within the meaning of section 402A(b). In addition, under the proposed regulations, an applicable employer plan that allows catch-up contributions, but does not have a qualified Roth contribution program, would not be required to adopt such a program. The plan would be allowed to permit catch-up eligible participants who are not subject to the Roth catch-up requirement to make catch-up contributions but not permit catch-up eligible participants who are subject to the Roth catch-up requirement to make catch-up contributions.

With respect to the universal availability requirement of §1.414(v)-1(e), proposed §1.414(v)-2(b)(2) would provide that an applicable employer plan that does not include a qualified Roth contribution program would not fail to satisfy the universal availability requirement merely because the plan (or another applicable employer plan maintained by the employer that does not include a qualified Roth contribution program) does not permit catch-up eligible participants who are subject to the Roth catch-up requirement to make catch-up contributions. However, proposed §1.414(v)-2(b)(2)(ii) also would provide that existing §1.414(v)-1(d)(4)[17] would not apply to an applicable employer plan that does not include a qualified Roth contribution program and permits only catch-up eligible participants who are not subject to the Roth catch-up requirement to make catch-up contributions. As explained in the preamble to the proposed regulations,

[17] Generally, under §1.414(v)-1(d)(4), an applicable employer plan does not violate §1.401(a)(4)-4 merely because the group of employees for whom catch-up contributions are currently available is not a group of employees that would satisfy the minimum coverage requirements of section 410(b).

§1.414(v)-1(d)(4) would not apply to such a plan because not all catch-up eligible employees under the plan would be able to make catch-up contributions.

Because the Roth catch-up wage threshold is slightly lower than the wage threshold used in the definition of highly compensated employee (HCE) under section 414(q)(1)(B), some non-HCEs may be subject to the Roth catch-up requirement,[18] and some HCEs may not be subject to the Roth catch-up requirement (for example, because they did not receive FICA wages for the preceding year). Thus, if a plan that does not include a qualified Roth contribution program prohibits catch-up eligible participants who are subject to the Roth catch-up requirement from making catch-up contributions, while permitting other catch-up eligible participants to make catch-up contributions, then the plan might fail to satisfy the nondiscrimination test with respect to the availability of catch-up contributions performed under §1.401(a)(4)-4. Accordingly, proposed §1.414(v)-2(b)(2)(ii) would provide that such a plan would be permitted to also preclude one or more catch-up eligible participants who are HCEs and who are not subject to the Roth catch-up requirement (for example, because they did not receive FICA wages from the employer sponsoring the plan for the preceding year) from making catch-up contributions if doing so facilitates satisfaction of §1.401(a)(4)-4 with respect to the availability of catch-up contributions.

Commenters generally requested that the final regulations provide that a plan will not be treated as failing to satisfy benefits, rights, and features testing under section 401(a)(4) with respect to catch-up contributions merely because the plan does not include a qualified Roth contribution program. These commenters argued that, although some non-HCEs (those who are subject to the Roth catch-up requirement) would not be permitted to make catch-up contributions under such a plan design, HCEs

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[18] If an employer makes the top-paid group election under section 414(q)(1)(B)(ii), the number of non-HCEs that are over the wage threshold used in the definition of HCE will be higher, and thus the number of non-HCEs subject to the Roth catch-up requirement will be higher.

also generally would be excluded from making catch-up contributions, and that it would be impractical to satisfy §1.401(a)(4)-4 by precluding one or more catch-up eligible participants who are HCEs and who are not subject to the Roth catch-up requirement from making catch-up contributions. One of these commenters requested that, if the final regulations retain the approach in the proposed regulations, the final regulations clarify how a plan that fails to satisfy benefits, rights, and features testing with respect to catch-up contributions could preclude one or more HCEs who are not subject to the Roth catch-up requirement from making catch-up contributions in a timely manner. Another commenter requested that, if the final regulations do not treat §1.414(v)-1(d)(4) as applying, then nondiscrimination testing for a plan that does not include a qualified Roth contribution program should be based only on participants who are age 50 and above, and not on the entire employee population.

The final regulations generally retain the rules of proposed §1.414(v)-2(b)(2) (although §1.414(v)-2(b)(2)(ii) is renumbered as §1.414(v)-2(b)(3) in the final regulations). However, in response to these comments, the final regulations clarify that, in the case of a plan that does not include a qualified Roth contribution program (and, therefore, may need to preclude one or more catch-up eligible participants who are HCEs and who are not subject to the Roth catch-up requirement from making catch-up contributions to facilitate satisfaction of §1.401(a)(4)-4 with respect to the availability of catch-up contributions), the plan will be deemed to satisfy §1.401(a)(4)-4 with respect to the availability of catch-up contributions if the plan provides that all catch-up eligible participants who are HCEs with net earnings from self-employment for the preceding calendar year from the employer sponsoring the plan above the Roth catch-up wage threshold are not permitted to make catch-up contributions. This safe harbor provision may be used even if a plan does not have any participants with net earnings from self-employment for the preceding calendar year. In addition, §1.414(v)-2(b)(3) of the

final regulations provides that this safe harbor provision may be used by a plan that includes a qualified Roth contribution program and, in accordance with §1.414(v)-2(b)(4)(ii), (b)(4)(iii), or (b)(4)(iv)(A), does not permit pre-tax catch-up contributions for one or more employees who are not subject to section 414(v)(7) (that is, one or more non-HCEs who are determined to be subject to the Roth catch-up requirement solely due to an optional plan term providing for aggregation of wages in accordance with §1.414(v)-2(b)(4)(ii), (b)(4)(iii), or (b)(4)(iv)(A) of these regulations).

3. Coordination with other catch-up contributions

One commenter requested examples to illustrate the interaction between the requirement that certain catch-up contributions be designated Roth contributions and the rule permitting special catch-up contributions for section 403(b) plans under section 402(g)(7) for employees with at least 15 years of service. Two other commenters requested clarification that the requirement that certain catch-up contributions be designated Roth contributions does not apply to the special section 403(b) catch-up contributions.

As described in §1.403(b)-4(c)(2) of the existing regulations, the catch-up contributions described in section 414(v) may apply in a year in which a participant also qualifies for the special section 403(b) catch-up contributions. In addition, §1.403(b)-4(c)(3)(iv) provides that any catch-up amount contributed by an employee who is eligible for both types of catch-up contributions is treated first as a special section 403(b) catch-up contribution and then as a catch-up contribution under section 414(v). Accordingly, the special section 403(b) catch-up contributions are not subject to section 414(v), including the requirement under section 414(v)(7) that certain catch-up contributions be designated Roth contributions.

One commenter requested examples to illustrate the application of section 457(e)(18)(A)(ii), and another commenter requested clarification that the

requirement that certain catch-up contributions be designated Roth contributions does not apply to the special section 457(b)(3) catch-up contributions permitted for the last three taxable years ending before an individual attains normal retirement age. As described in the Background section of this Treasury decision, if a catch-up eligible participant's limit under section 457(e)(18) is greater than the limit under section 457(b)(3) (determined without regard to section 457(e)(18)), then a portion of the catch-up contributions made to the eligible governmental 457(b) plan by the participant is required to be designated Roth contributions. As noted in footnote 5 of the preamble to the proposed regulations, proposed regulations relating to the inclusion of a qualified Roth contribution program in an eligible governmental 457(b) plan were published in the **Federal Register** (81 FR 40548) and those proposed regulations have not been finalized.

4. Determination of employer sponsoring the plan

The determination as to whether the Roth catch-up requirement applies to a catch-up eligible participant is based on the amount of the participant's FICA wages for the preceding year "from the employer sponsoring the plan," but that phrase is not defined in section 414(v)(7). For purposes of determining an individual's FICA wages, the term "employer" generally means the person for whom the individual performs service as an "employee" (determined under the common law standards for employee status set forth in §31.3121(d)-1(c)). Thus, for purposes of determining the individual's FICA wages, the term "employer" generally refers solely to an individual's common law employer.[19] Because the phrase "from the employer sponsoring the plan" modifies the

[19] In general, FICA wages are determined separately by related employers. *See* §31.3121(a)(1)-1(a)(3) ("If during a calendar year the employee receives remuneration from more than one employer, the annual wage limitation does not apply to the aggregate remuneration received from all of such employers, but instead applies to the remuneration received during such calendar year from each employer."). *See also* §31.3121(s)-1(a) ("For purposes of section…3121(a)(1), except as otherwise provided…, when two or more related corporations concurrently employ the same individual and compensate that individual…, each of the corporations is considered to have paid only the remuneration it actually disburses to that individual.").

reference to FICA wages in section 414(v)(7)(A), the determination of whether the Roth catch-up requirement applies to a participant would generally follow the FICA rules and be based on the FICA wages from the participant's common law employer.

Proposed §1.414(v)-2(b)(3) would provide that, with respect to each catch-up eligible participant who is subject to the Roth catch-up requirement, the term "employer sponsoring the plan" refers only to the participant's common law employer contributing to the plan. Under the proposed regulation, the employer sponsoring the plan would 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). Some commenters agreed with the approach in the proposed regulation. Other commenters requested that the final regulation provide an option to aggregate FICA wages from different employers in certain situations, in order to ease plan administration by aligning determination of applicability of the Roth catch-up requirement with the employers' general payroll practices. These commenters argued that this aggregation option would be particularly helpful in situations involving entities that are aggregated with the participant's common law employer under section 414(b), (c), (m), or (o) and situations involving a common paymaster in accordance with section 3121(s).

Section 1.414(v)-2(b)(4)(i) of the final regulations, which is renumbered from proposed §1.414(v)-2(b)(3), provides that, with respect to each catch-up eligible participant who is subject to the Roth catch-up requirement, the term "employer sponsoring the plan" refers to the participant's common law employer contributing to the plan. However, in response to comments, §1.414(v)-2(b)(4)(ii) provides that if the common law employer uses a common paymaster in accordance with section 3121(s), the plan may provide that the employee's common law employer is aggregated with one or more other employers using that common paymaster and treat the aggregated employers as a single employer sponsoring the plan for purposes of section 414(v)(7)

and §1.414(v)-2. Section 1.414(v)-2(b)(4)(iii) also provides that if the common law employer is a member of a group of employers that are treated as a single employer under the rules of section 414(b), (c), (m), or (o), the plan may provide that the employee's common law employer is aggregated with one or more other employers in that group of employers and treat the aggregated employers as a single employer sponsoring the plan for purposes of section 414(v)(7) and §1.414(v)-2. For example, a plan could provide for aggregation of selected related employers for purposes of section 414(v)(7) by listing the employers being aggregated in the plan document. In cases of aggregation in accordance with §1.414(v)-2(b)(4)(ii) or (iii), the employee's wages from the common law employer and from the one or more other employers that are aggregated with the common law employer are treated as wages from the employer sponsoring the plan.

One commenter requested that the final regulations address how applicability of the Roth catch-up requirement is determined for a calendar year for which wages paid to an employee by a predecessor employer are attributed to the employee's common law employer who is a successor employer on account of an asset purchase in accordance with §31.3121(a)(1)-1(b). Specifically, the commenter requested that the final regulations provide a safe harbor permitting plan administrators to rely on wage information as reported on a Form W-2 issued by the successor employer for the calendar year of the asset purchase in accordance with the standard or alternate procedure for Form W-2 reporting set forth in Rev. Proc. 2004-53, 2004-34 IRB 320.[20]

[20] Under the standard procedure set forth in Rev. Proc. 2004-53, the predecessor and successor employers report the wages each pays during the calendar year in which the asset purchase occurs on a separate Form W-2. Despite the separate Form W-2 reporting, the wages reported by the successor employer in Box 3 of the Form W-2 cannot exceed the difference between the Social Security wage base limit for the year and the wages paid by the predecessor employer during the calendar year. Under the alternate procedure, the successor employer reports all of the wages paid by both the predecessor employer and the successor employer in the calendar year in which the asset purchase occurs on a single Form W-2 (with the wages reported in Box 3 limited to the Social Security wage base limit for the calendar year).

Section 1.414(v)-2(b)(4)(iv) of the final regulations provides such a safe harbor. Thus, pursuant to §1.414(v)-2(b)(4)(iv)(A), if a successor employer files a Form W-2 for the calendar year of the asset purchase in accordance with the alternate procedure set forth in Rev. Proc. 2004-53, then a plan that is sponsored by the successor employer (or an entity that is aggregated with the successor employer in accordance with final regulation §1.414(v)-2(b)(4)(ii) or (iii)) may provide that all of the wages reported in Box 3 of the Form W-2 are treated as wages from the employer sponsoring the plan for purposes of determining applicability of the Roth catch-up requirement. So, too, pursuant to §1.414(v)-2(b)(4)(iv)(B), if a successor employer files a Form W-2 for the calendar year of the asset purchase in accordance with the standard procedure set forth in Rev. Proc. 2004-53, then a plan that is sponsored by the successor employer (or an entity that is aggregated with the successor employer in accordance with final regulation §1.414(v)-2(b)(4)(ii) or (iii)) may provide that the wages paid by the successor employer for the year that are treated as wages from the employer sponsoring the plan for purposes of determining applicability of the Roth catch-up requirement are limited to the wages reported in Box 3 of the Form W-2.

One commenter requested that the final regulations address the treatment, for purposes of section 414(v)(7), of an employee who receives wages from an entity that is disregarded as an entity separate from its owner in accordance with §301.7701-2(c)(2)(i) (that is, the entity has not made an election under §301.7701-3(b)(1)(ii) to be classified as a corporation). The commenter noted that a disregarded entity is generally disregarded for Federal income tax purposes but is treated as a separate entity for employment tax purposes. Section 1.414(v)-2(b)(4)(v) of the final regulations provides that the owner of the disregarded entity is treated as the employer sponsoring the plan and the employee’s wages from the employer sponsoring the plan include the employee’s wages from the disregarded entity and from its owner.

One commenter suggested that, for purposes of the Roth catch-up requirement as applied to a multiemployer plan, the employer sponsoring the plan is the joint board of trustees because section 3(16)(B) of ERISA defines the "plan sponsor" of a multiemployer plan as the joint board of trustees (rather than the contributing employers). Under the interpretation of section 414(v)(7)(A) suggested by the commenter, the employees of those other employers would not be subject to section 414(v)(7)(A) (because those other employers are merely signatories of the collective bargaining agreement pursuant to which their employees participate in the multiemployer plan and are contributors to that plan, but would not be employees of the employer sponsoring the plan).[21] As explained in the preamble to the proposed regulations, the Treasury Department and the IRS do not agree that this is a reasonable interpretation of section 414(v)(7)(A) because the rules in title 29 of the United States Code, which includes section 3(16)(B) of ERISA, are separate from the rules of the Internal Revenue Code in title 26 of the United States Code, and title 29 of the United States Code does not include any provisions that directly apply to, or are parallel to, the Code's catch-up contribution rules. Rather, in the context of the Roth catch-up requirement, the employer sponsoring the plan is the common law employer that is the source of the participant's FICA wages and contributions to the multiemployer plan (but the plan may provide for aggregation of FICA wages from certain related employers as described earlier in this preamble section).

5. Plans with more than one employer sponsoring the plan

For a plan that has more than one employer sponsoring the plan, proposed §1.414(v)-2(b)(4) would apply the Roth catch-up requirement on the basis of FICA wages (if any) for the preceding calendar year solely from a participant's common law

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[21] Even under the commenter's interpretation, an employee of the joint board of trustees who has wages from that employer in excess of the Roth catch-up wage threshold would be subject to section 414(v)(7)(A) because the joint board of trustees is the employer sponsoring the plan.

employer without aggregating those wages with the FICA wages from other employers, including employers that participate in the same plan or employers that are treated as a single employer together with the common law employer under section 414(b), (c), (m), or (o). Thus, under the proposed regulations, a catch-up eligible participant who had FICA wages exceeding $145,000 (as adjusted) in the preceding calendar year from any employer other than the employer sponsoring the plan (as defined with respect to the participant in accordance with proposed §1.414(v)-2(b)(3)) would not be subject to the Roth catch-up requirement under the plan in the current year if the participant did not also have more than $145,000 (as adjusted) of FICA wages for the preceding year from the employer sponsoring the plan. Section 1.414(v)-2(b)(5) of the final regulations, which was renumbered from proposed §1.414(v)-2(b)(4), includes that same rule related to wages from an employer other than the employer sponsoring the plan, except that the rule takes into account the new optional aggregation rules of §1.414(v)-2(b)(4) for determining the employer sponsoring the plan (that is, the rules allowing for aggregation of wages in situations involving controlled groups and common paymasters).

C. Treatment of pre-tax catch-up contributions that are required to be designated Roth contributions under section 414(v)(7)

1. Correcting a violation of the section 414(v)(7) Roth catch-up requirement

As explained in the Background section of the preamble to the proposed regulations, section 414(v)(7)(A) provides that section 414(v)(1) applies to catch-up contributions made by a participant who is subject to the Roth catch-up requirement only if the catch-up contributions are designated Roth contributions. If a participant who is subject to the Roth catch-up requirement makes a pre-tax elective deferral in excess of an applicable limit, then section 414(v)(1) will not apply to that elective deferral and the plan will fail to be qualified unless the plan corrects the failure. A plan is permitted to correct this type of error by distributing the additional elective deferrals that are not

catch-up contributions under section 414(v)(1) from the plan in accordance with a permitted correction method specific to the limit on elective deferrals that the additional elective deferrals exceeded (for example, the correction method in §1.402(g)-1(e) for elective deferrals that exceeded the section 401(a)(30) limit, the correction method in section 6.06(1) and (2) of Revenue Procedure 2021-30, 2021-31 IRB 172, for elective deferrals that resulted in the participant's annual additions exceeding the section 415(c) limit, or the correction method in §1.401(k)-2(b)(2) or Appendix B, section 2.01, of Revenue Procedure 2021-30 for elective deferrals that exceeded the ADP limit).

One commenter requested clarification regarding the treatment of excess contributions (as defined in Code section 401(k)(8)(B)) as catch-up contributions that are not required to be distributed under §1.401(k)-2(b)(4)(v) in the case of a plan with a plan year other than the calendar year and an HCE who is not subject to the Roth catch-up requirement for part of the plan year and is subject to the Roth catch-up requirement for the remainder of the plan year. Under §1.401(k)-2(b)(1)(ii), a plan may permit an HCE with elective contributions for a year that includes both pre-tax elective contributions and designated Roth contributions to elect whether the excess contributions are to be attributed to pre-tax elective contributions or designated Roth contributions. Consistent with that rule, a plan may permit an HCE who was subject to the Roth catch-up requirement for only part of the plan year to elect whether the excess contributions that are treated as catch-up contributions are contributions that were subject to the Roth requirement or were permitted to be pre-tax contributions.

2. Additional permissible correction methods for elective deferrals that exceed an applicable limit

As an alternative to making a corrective distribution, proposed §1.414(v)-2(c)(2) would permit a plan to use either of two new methods to correct a section 414(v)(7) failure.

a. Form W-2 correction method

Under the correction method set forth in proposed §1.414(v)-2(c)(2)(ii), a plan would be permitted to correct a participant's pre-tax catch-up contribution that was required to be a designated Roth contribution by transferring the elective deferral (adjusted for allocable gain or loss) from the participant's pre-tax account to the participant's designated Roth account and reporting the contribution (not adjusted for allocable gain or loss) as a designated Roth contribution on the participant's Form W-2 for the year of the deferral (that is, reporting the contribution as if it had been correctly made as a designated Roth contribution). As explained in Section III.C.2.a of the preamble to the proposed regulations ("Form W-2 Correction Method"), the contribution (not adjusted for allocable gain or loss) would be includible in the participant's gross income for the year of the deferral as if the contribution had been correctly made as a designated Roth contribution. However, this method would not be permitted to be used if the participant's Form W-2 for that year has already been filed or furnished to the participant.

One commenter requested that the final regulations permit a correction under the Form W-2 correction method to be reported on a participant's amended Form W-2 for the year of the deferral (in other words, permit the Form W-2 correction method to be used even if the participant's Form W-2 for the year of the deferral has already been filed or furnished to the participant). The final regulations do not reflect this request because the Treasury Department and the IRS have determined that such an approach would be overly burdensome to affected participants, who might be required to file amended income tax returns to reflect the amended Forms W-2, and create additional administrative burden for the IRS, which would be required to process any amended Federal income tax returns.

Another commenter explained that the Form W-2 correction method is unlikely to be effectively implemented by multiemployer plans because those plans do not have access to or control over their contributing employers' payroll systems. However, as described in section III.C.2.b of this Summary of Comments and Explanation of Revisions ("In-plan Roth rollover correction method"), these final regulations also include an in-plan Roth rollover correction method as an alternative to distribution.

Accordingly, the final regulations generally retain the Form W-2 correction method as set forth in proposed §1.414(v)-2(c)(2)(ii) without modification. However, the final regulations clarify the method for calculating earnings and losses for purposes of determining the amount to be transferred from a participant's pre-tax account to the participant's designated Roth account, as described in section III.C.2.b of this Summary of Comments and Explanation of Revisions ("In-plan Roth rollover correction method").

b. In-plan Roth rollover correction method

Under proposed §1.414(v)-2(c)(2)(iii), a plan would be permitted to correct a participant's pre-tax catch-up contribution that was required to be a designated Roth contribution through an in-plan Roth rollover in accordance with section 402A(c)(4)(E). As explained in Section III.C.2.b of the preamble to the proposed regulations ("In-Plan Roth Rollover Correction Method"), a plan would directly roll over the elective deferral (adjusted for allocable gain or loss) from the participant's pre-tax account to the participant's designated Roth account and report the amount of the in-plan Roth rollover on Form 1099-R (Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.) for the year of rollover. The provisions of Notice 2010-84, 2010-51 IRB 872, and Notice 2013-74, 2013-52 IRB 819, would generally apply to an in-plan Roth rollover used to correct a section 414(v)(7) failure. Thus, the amount directly rolled over to the participant's designated Roth account would be the same as the amount reported on Form 1099-R, and the contribution (adjusted for

allocable gain or loss) would be includible in the participant's gross income for the year of the rollover.

One commenter requested that the final regulations not require that an amount directly rolled over to a participant's designated Roth account be adjusted for allocable gain or loss. The final regulations do not reflect this comment because the amount directly rolled over to the participant's designated Roth account would be includible in the participant's gross income for the year of the rollover, which may be a later year than the year the contribution would have been includible if it had been made correctly as a designated Roth contribution. Thus, the adjustment for any allocable gain would serve to balance any delayed inclusion in gross income.

The commenter also requested that, if the final regulations require that the amount directly rolled over to a participant's designated Roth account be adjusted for allocable gain or loss, the final regulations maintain flexibility as to the method a plan uses to calculate the gain or loss. Another commenter requested that, with respect to both the Form W-2 and in-plan Roth rollover correction methods, the final regulations provide a rule similar to §1.401(k)-2(b)(2)(iv), under which a plan generally may use any reasonable method for computing the income allocable to excess contributions or use the alternative method under §1.401(k)-2(b)(2)(iv)(C). In response to these comments, §1.414(v)-2(c)(2)(ii) and (iii) of the final regulations clarifies that the adjustment for earnings or losses for an in-plan Roth rollover correction must be calculated in accordance with the flexible standard provided under §1.402(g)-1(e)(5). A similar clarification applies for purposes of determining the amount to be transferred to the participant's designated Roth account if a section 414(v)(7) failure is corrected under the Form W-2 method.

Commenters also requested clarification regarding the extent to which an in-plan Roth rollover that is used to correct a section 414(v)(7) failure is different than an in-plan

Roth rollover under section 402A(c)(4)(E). One commenter requested that the final regulations clarify that the participant election provision of section 402A(c)(4)(E)(i) does not apply to an in-plan Roth rollover that is used to correct a section 414(v)(7) failure. The Treasury Department and the IRS agree that an in-plan Roth rollover correction is permitted to be made only by a plan and may not be elected voluntarily by a participant. Therefore, in response to these comments, §1.414(v)-2(c)(2)(iii) requires that the rules of section 402A(c)(4)(E)(ii) and (iii) (rather than section 402A(c)(4)(E) in its entirety) apply to the correction.

Similarly, some commenters requested clarification that a plan may provide for the use of the in-plan Roth rollover method to correct a section 414(v)(7) failure even if the plan does not permit participants to elect in-plan Roth rollovers under section 402A(c)(4)(E). As explained in Q&A-2 of Notice 2010-84, a participant may elect an in-plan Roth rollover only if the plan provides for such rollovers. However, the Treasury Department and the IRS agree that, because an in-plan Roth rollover correction for a section 414(v)(7) failure is implemented pursuant to plan terms rather than a participant's voluntary election, a plan may provide for the use of the in-plan Roth rollover correction method even if the plan does not permit participants to elect in-plan Roth rollovers under section 402A(c)(4)(E).

One commenter requested clarification that the use of the in-plan Roth rollover correction method is not a benefit, right, or feature that is subject to section 401(a)(4). Under existing §1.401(a)(4)-4(e)(3)(iii)(I), the right to make rollover contributions and transfers to and from a plan (which would include the right to make an in-plan Roth rollover) is a right or feature. However, a plan's use of the in-plan Roth rollover correction method is an administrative detail not reasonably expected to be of meaningful value to an employee under §1.401(a)(4)-4(e)(3)(ii)(C) and not a benefit, right, or feature for purposes of section 401(a)(4) and §1.401(a)(4)-4.

Commenters also requested clarification regarding the taxable year in which the 5-taxable-year period for a qualified distribution under section 402A(d)(2)(B) begins if an amount that is transferred pursuant to the Form W-2 correction method, or directly rolled over pursuant to the in-plan Roth rollover correction method, is the first contribution to a participant's designated Roth account. One commenter requested that the final regulations provide that, under either correction method, the 5-taxable-year period begins in the year in which the pre-tax elective deferral was made, and another commenter requested confirmation that an amount directly rolled over to a participant's designated Roth account pursuant to an in-plan Roth rollover correction is treated in the same manner as a participant-initiated Roth contribution for purposes of determining the 5-taxable-year period.

Under section 402A(d)(2)(B), for purposes of determining whether a payment or distribution from a designated Roth account is treated as a qualified distribution, the 5-taxable-year period generally begins with "the first taxable year for which the individual made a designated Roth contribution to any designated Roth account established for such individual under the same applicable retirement plan…."[22] If an amount that is transferred pursuant to the Form W-2 correction method or directly rolled over pursuant to the in-plan Roth rollover correction method is the first contribution to a participant's designated Roth account, then the 5-taxable-year-period begins with the taxable year for which the amount transferred or directly rolled over is includible in the participant's gross income (which, depending on the circumstances, could be the same taxable year in which the pre-tax elective deferral was made or the next taxable year).

[22] As explained in Q&A-8 of Notice 2013-74, if an in-plan Roth rollover is the first contribution made to an employee's designated Roth account, the 5-taxable-year period begins on the first day of the first taxable year in which the employee makes the in-plan Roth rollover.

Commenters also requested that the final regulations provide that an in-plan Roth rollover that is made as a correction for a section 414(v)(7) failure and distributed within the 5-taxable-year period that begins on January 1 of the year of the correction is not subject to the 5-year recapture rule under sections 402A(c)(4)(D) and 408A(d)(3)(F).[23] Commenters argued that the 5-year recapture rule should not apply in this circumstance because, if the pre-tax elective deferral had been correctly made as a designated Roth contribution, then the 5-year recapture rule would not apply to a later distribution of that designated Roth contribution.

The final regulations do not reflect these comments with respect to the 5-taxable-year period and the 5-year recapture rule because the Treasury Department and the IRS have determined that aligning the in-plan Roth rollover correction method with the existing provisions of section 402A(c)(4)(E)(ii) and (iii) would facilitate sound tax administration (for example, by requiring that the correction be consistently treated as an in-plan Roth rollover for purposes of Form 1099-R reporting). Thus, for example, if an in-plan Roth rollover that is made as a correction for a section 414(v)(7) failure is distributed within the 5-taxable-year period that begins on January 1 of the year in which the in-plan Roth rollover is made, then the distribution would be subject to a 10 percent additional tax under section 72(t) unless an exception applies under section 72(t)(2).

c. Consistency requirements for choice of correction method

Under proposed §1.414(v)-2(c)(2)(i), a plan would be permitted to provide for either correction method but, with respect to a plan year, the plan would be required to

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[23] Under section 402A(c)(4)(D), the 5-year recapture rules of section 408A(d)(3)(F) apply for purposes of section 402A(c)(4). Q&A-12 of Notice 2010-84 explains that, pursuant to sections 402A(c)(4)(D) and 408A(d)(3)(F), if an amount allocable to the taxable amount of an in-plan Roth rollover is distributed within the 5-taxable-year period beginning with the first day of the participant's taxable year in which the rollover was made, the amount distributed is treated as includible in gross income for the purpose of applying section 72(t). Therefore, if a plan distributes any part of an in-plan Roth rollover within this 5-taxable-year period, the distribution is subject to a 10 percent additional tax under section 72(t) unless an exception applies under section 72(t)(2), or the distribution is allocable to any nontaxable portion of the in-plan Roth rollover.

apply the same correction method for all participants with elective deferrals in excess of the same applicable limit.

Commenters requested that the final regulations not include the requirement that, with respect to a plan year, a plan apply the same correction method for all participants with elective deferrals in excess of the same applicable limit. Commenters argued that this requirement would discourage the use of the Form W-2 correction method due to the possibility that elective deferrals for some participants might be corrected using the Form W-2 correction method but other participants with elective deferrals in excess of the same applicable limit might not be identified until after the Forms W-2 for the year of the deferral have been filed or furnished to the participants. In such case, the in-plan Roth rollover correction method could not be used with respect to those later identified participants and their additional elective deferrals would be required to be distributed from the plan in accordance with a permitted correction method specific to the limit on elective deferrals that the additional elective deferrals exceeded.

In response to these comments, the final regulations do not require that, with respect to a plan year, a plan apply the same correction method for all participants with elective deferrals in excess of the same applicable limit. Instead, §1.414(v)-2(c)(2)(i) provides flexibility by merely requiring that a plan apply the same correction method for similarly situated participants. Section 1.414(v)-2(c)(2)(i) provides further that the selection of which correction method applies may not be based on the investment returns earned in participants' accounts. For example, a plan may provide for correction using the Form W-2 correction method for all participants for whom the Forms W-2 for that year have not been filed or furnished and for correction using the in-plan Roth rollover correction method for all other participants.

3. General correction requirements and deadlines to correct

a. Prerequisite to correct certain section 414(v)(7) failures under the new correction methods

Under proposed §1.414(v)-2(c)(3)(i), a plan would be eligible to use the Form W-2 or in-plan Roth rollover correction method with respect to pre-tax elective deferrals that exceed a statutory limit described in §1.414(v)-1(b)(1)(i) (such as contributions that exceed the section 401(a)(30) limit or that result in the participant's annual additions exceeding the section 415(c) limit) only if the plan sponsor or plan administrator has in place practices and procedures designed to result in compliance with section 414(v)(7) at the time an elective deferral is made.[24] A plan would not meet this requirement unless the plan provides for a deemed Roth catch-up election in accordance with proposed §1.401(k)-1(f)(5)(iii) and (iv). Under the deemed Roth catch-up election approach, if a participant who is subject to the Roth catch-up requirement has made pre-tax elective deferrals for a calendar year that equal the section 401(a)(30) limit for the taxable year that begins in the calendar year, then subsequent elective deferrals made by the participant in the calendar year would automatically be made as designated Roth contributions, even if the participant has not made an affirmative election to make catch-up contributions as designated Roth contributions. Similarly, if such a participant has made pre-tax elective deferrals for a limitation year that result in the participant's annual additions for the limitation year equaling the section 415(c) limit, then subsequent elective deferrals made by the participant in the limitation year would automatically be treated as designated Roth contributions.

[24] A plan would not be required under proposed §1.414(v)-2(c)(3)(i) to have such practices and procedures in place in order to correct a pre-tax catch-up contribution that is a catch-up contribution because it exceeds an employer-provided limit as described in §1.414(v)-1(b)(1)(ii). A plan would also not be required to have such practices and procedures in place in order to correct a pre-tax elective deferral that is a catch-up contribution because it exceeds the ADP limit as described in §1.414(v)-1(b)(1)(iii). This is because these elective deferrals are not determined to be catch-up contributions under §1.414(v)-1(c)(3) until the last day of the plan year of deferral or in the following plan year.

Although commenters generally agreed that a plan should be permitted to provide for a deemed Roth catch-up election, commenters requested that the final regulations not include the proposed requirement that a plan provide for the deemed Roth catch-up election in order for the Form W-2 or in-plan Roth rollover correction method to be used to correct a pre-tax elective deferral that exceeds a statutory limit. Commenters argued that a deemed Roth catch-up election could be viewed as impractical or less efficient than collecting affirmative designated Roth contribution elections, would need to be negotiated with respect to collectively bargained plans, and potentially could be prohibited under State or local law.

Section 1.414(v)-2(c)(3)(i)(B) of the final regulations generally retains the requirement that a plan provide for a deemed Roth catch-up election in order for the Form W-2 or in-plan Roth rollover correction method to be used to correct a pre-tax elective deferral that exceeds a statutory limit.[25] However, the Treasury Department and the IRS note that §1.401(k)-1(f)(5)(iv) of the final regulations also retains the requirement that a plan offer to a participant who is subject to a deemed Roth catch-up contribution election an effective opportunity to make a different election (that is, an election to make pre-tax catch-up contributions or to make no catch-up contributions). The Treasury Department and the IRS believe that concerns relating to compliance with the terms of a collective bargaining agreement or applicable State or local law would be mitigated by a participant's ability to make an election to override any deemed Roth treatment by the plan.

In addition, in response to commenters and as noted previously in section III.B.1. of this preamble, the final regulations reduce the potential administrative burden of this

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[25] The final regulations do not include the proposed requirement that if a participant who is subject to the deemed Roth catch-up election has made pre-tax elective deferrals for a limitation year that result in the participant's annual additions for the limitation year equaling the section 415(c) limit, then subsequent elective deferrals made by the participant in the limitation year must automatically be treated as designated Roth contributions.

requirement by removing the requirement that a plan take into account any designated Roth contributions that a participant made earlier in a calendar year for purposes of applying the deemed Roth catch-up election. Thus, under the final regulations, in order for a plan to use the Form W-2 or in-plan Roth rollover correction method to correct a pre-tax elective deferral that exceeds a statutory limit, the plan must provide that the elective deferrals of a participant who is subject to the Roth catch-up requirement are automatically treated as designated Roth contributions either: (1) after the participant's total elective deferrals made during the calendar year (including elective deferrals made as designated Roth contributions) exceed the section 401(a)(30) limit on elective deferrals for the taxable year that begins in the calendar year, or (2) after the participant's pre-tax elective deferrals made during the calendar year exceed the section 401(a)(30) limit on elective deferrals for the taxable year that begins in the calendar year.

In addition, §1.414(v)-2(c)(3)(i)(B) clarifies that, although a plan must provide a participant who is subject to the deemed Roth catch-up election with an effective opportunity to make a new election that is different than the deemed election, if a plan implements a participant's affirmative pre-tax catch-up contribution election, the plan must then determine whether the participant's affirmative pre-tax catch-up contribution election is permissible (taking into account any designated Roth contributions made by the participant earlier in the calendar year). If the participant's affirmative pre-tax catch-up contribution election is impermissible, then the section 414(v)(7) failure generally must be corrected.

The final regulations also provide that, in the case of an employee participating in a section 403(b) plan for whom the section 402(g) limit is increased pursuant to section 402(g)(7), the plan is permitted to provide that the automatic treatment of additional elective deferrals as designated Roth contributions applies either: (1) after the

employee's elective deferrals under the plan for the calendar year exceed the section 401(a)(30) limit on elective deferrals for the taxable year that begins in the calendar year, increased by the amount described in section 402(g)(7)(A), or (2) after the employee's pre-tax elective deferrals under the plan for the calendar year exceed the section 401(a)(30) limit on elective deferrals for the taxable year that begins in the calendar year, increased by the amount described in section 402(g)(7)(A).

Similarly, the final regulations provide that, in the case of an eligible governmental 457(b) plan, the automatic treatment of additional elective deferrals as designated Roth contributions generally applies with respect to the corresponding limit of section 457(b)(2). However, a plan is permitted to provide that the automatic treatment of additional elective deferrals as designated Roth contributions applies once the amount deferred under the plan for the taxable year exceeds the section 457(b)(3) limit for the participant.

Under proposed §1.414(v)-2(c)(3)(ii), a plan would not fail to meet the requirement to have in place practices and procedures that are designed to result in compliance with the Roth catch-up requirement at the time an elective deferral is made merely because the plan determines the applicability of the Roth catch-up requirement to a participant solely on the basis of the participant's FICA wages from the employer sponsoring the plan for the preceding calendar year as reported on a timely-filed Form W-2 with respect to the participant. However, as explained in section III.C.3.a of the preamble to the proposed regulations ("Prerequisite to Correct Certain Section 414(v)(7) Failures Under the New Correction Methods"), the fact that a plan would not fail to meet the requirement to have in place practices and procedures did not mean that the plan would not have to correct any pre-tax catch-up contributions that should have been designated Roth contributions if the amount of a participant's FICA wages for the preceding calendar year that is timely reported on a Form W-2 is later determined to be

incorrect. The Treasury Department and the IRS invited comments on whether there are scenarios in which it would not be appropriate to require correction of pre-tax catch-up contributions that are required to be designated Roth contributions on the basis of a subsequent determination that the amount of FICA wages reported on the Form W-2 was incorrect. The final regulations retain the rule included in proposed §1.414(v)-2(c)(3)(ii). However, in response to comments received and as explained in section III.C.4 of this Summary of Comments and Explanation of Revisions ("Correction not required in certain circumstances"), the final regulations do not require the correction of a section 414(v)(7) failure if a participant became subject to section 414(v)(7)(A) solely because the participant's FICA wages for the calendar year preceding the calendar year in which the taxable year begins were not determined to exceed the Roth catch-up wage threshold until after the deadline for correction in §1.414(v)-2(c)(3)(iii).

b. Deadline to correct section 414(v)(7) failures

Under proposed §1.414(v)-2(c)(3)(iii), the deadline to correct a section 414(v)(7) failure would depend on which limit is the basis for the pre-tax elective deferral being designated a catch-up contribution. For example, if the elective deferral is a catch-up contribution because it exceeds the section 401(a)(30) limit on elective deferrals, then, consistent with §1.402(g)-1(e), the deadline to complete the corrective steps under proposed §1.414(v)-2(c)(2) would be April 15 of the calendar year following the calendar year for which the elective deferral was made. Further, the proposed regulations would include separate deadlines with respect to the section 415(c) limit and with respect to the ADP limit or an employer-provided limit.

Commenters generally recommended that the correction deadlines set forth in the proposed regulations be simplified and that a later deadline should be provided under the final regulations. Commenters provided various suggestions for a single

correction deadline (for example, the close of the calendar year following the calendar year in which the pre-tax elective deferrals were made) or for extended correction deadlines in certain circumstances (for example, with respect to the ADP limit, 12 months after the close of the plan year in which the excess contribution arose). One commenter also requested the consideration of correction options that would limit administrative burden to plans and prevent double taxation for participants (for example, by not requiring the inclusion of a pre-tax deferral in excess of the section 401(a)(30) limit in a participant's gross income for the year in which the deferral was made and for the year in which the participant receives a corrective distribution).

In response to these comments, §1.414(v)-2(c)(3)(iii) of the final regulations provides that, if a section 414(v)(7) failure arises with respect to an elective deferral that is a catch-up contribution because it exceeds a statutory limit within the meaning of §1.414(v)-1(b)(1) (which would include, for example, the section 401(a)(30) limit and the section 415(c) limit), the deadline to complete all corrective steps required under §1.414(v)-2(c)(2) in order to avoid a qualification failure is the last day of the taxable year following the taxable year for which the elective deferral was made. If the section 414(v)(7) failure arises with respect to an elective deferral that is a catch-up contribution because it exceeds an employer-provided limit as described in §1.414(v)-1(b)(1)(ii) or the ADP limit, the deadline to complete the corrective steps required under §1.414(v)-2(c)(2) in order to avoid a qualification failure is the last day of the plan year following the plan year for which the catch-up contribution was made.

However, a pre-tax elective deferral that must be corrected due to a section 414(v)(7) failure is not treated as a catch-up contribution prior to the date that the failure is corrected under §1.414(v)-2(c)(2). This means that if there are consequences for failing to be a catch-up contribution which apply before the deadline for making the correction in §1.414(v)-2(c)(3)(iii), those consequences will apply with

respect to the additional elective deferral (even if the correction is made by that deadline).

For example, under §1.414(v)-2(c)(3)(iii)(A), in the case of an elective deferral that is a catch-up contribution because it exceeds the section 401(a)(30) limit on elective deferrals, if all corrective steps required under §1.414(v)-2(c)(2) are not completed by April 15 following the close of the taxable year for which the elective deferral was made, then the excess deferral will not be treated as having been corrected by the deadline in §1.402(g)-1(e)(2)(ii). Thus, the excess deferral will be subject to the tax treatment rules of §1.402(g)-1(e)(8)(iii). Similarly, if a section 414(v)(7) failure arises with respect to an elective deferral that is a catch-up contribution because it exceeds an employer-provided limit, the contribution is not excluded from being taken into account as a catch-up contribution for purposes of the ADP test of section 401(k)(3) pursuant to §1.401(k)-2(a)(5)(iii) before the correction for the section 414(v)(7) failure occurs.

Section 1.414(v)-2(c)(3)(iii)(C) of the final regulations provides that if a section 414(v)(7) failure arises with respect to an elective deferral that is a catch-up contribution because it exceeds the ADP limit, the contribution is not excluded from the requirement to distribute excess contributions as a catch-up contribution pursuant to §1.401(k)-2(b)(4)(v) before the correction for the section 414(v)(7) failure occurs. The final regulations align with the existing section 401(k) regulations for the correction of an excess contribution by clarifying that, if a plan does not correct excess contributions within 2-1⁄2 months after the close of the plan year for which the excess contributions are made (as extended to 6 months under §1.401(k)-2(b)(5)(iii) in the case of certain applicable employer plans that include an eligible automatic contribution arrangement within the meaning of section 414(w)), then the employer will be liable for a 10% excise

tax under section 4979 on the amount of the excess contributions that were not distributed timely.

4. Correction not required in certain circumstances

Commenters requested that Treasury and the IRS address whether there are circumstances in which a pre-tax elective deferral in excess of an applicable limit that fails to comply with section 414(v)(7)(A) would not need to be corrected in order for section 414(v)(1) to apply and requested that correction not be required in certain circumstances. Commenters requested that the final regulations include a de minimis exception under which pre-tax elective deferrals that do not exceed a specified threshold (for example, $250) would not need to be corrected. One commenter also requested that the final regulations permit a plan to rely on a participant's final Form W-2 for a year when determining whether the participant is subject to the Roth catch-up requirement and not require correction in the event that the participant's FICA wages are later adjusted. An example would be a participant whose Form W-2 for the preceding calendar year indicates that FICA wages did not exceed the Roth catch-up wage threshold, but whose FICA wages are later adjusted as a result of an employment tax examination, if the adjusted FICA wages for the participant exceed the Roth catch-up wage threshold.

In response to these comments, §1.414(v)-2(c)(4) sets forth two circumstances in which a pre-tax elective deferral in excess of an applicable limit that fails to comply with section 414(v)(7)(A) would not need to be corrected in order for the elective deferral to be treated as a catch-up contribution. First, correction is not required if the amount of the pre-tax elective deferral that was required to be a designated Roth contribution does not exceed $250. For purposes of applying this $250 threshold, earnings and losses on the pre-tax elective deferral are not taken into account. Second, correction is not required if the participant became subject to section 414(v)(7)(A) solely because the

participant's FICA wages for the calendar year preceding the calendar year in which the taxable year begins were not determined to exceed the Roth catch-up wage threshold until after the deadline for correction in §1.414(v)-2(c)(3)(iii).

One commenter requested that the final regulations not require a correction after a significant passage of time (for example, after the statute of limitations has run on the participant's tax return for the taxable year in which the pre-tax elective deferral should have been made as a designated Roth contribution) or after the amount that would otherwise be required to be transferred or directly rolled over to the participant's designated Roth account has been distributed from the plan. As a general matter, in order to remain qualified, any failure to meet the qualification requirements must be corrected even if all applicable statutes of limitations on assessment for the year in which the failure occurred have closed. The final regulations do not alter this general principle.

Another commenter requested that the final regulations address the correction method for a participant who is subject to the Roth catch-up requirement, is permitted to make pre-tax catch-up contributions, and subsequently takes a distribution of the participant's entire account balance before the plan has an opportunity to correct the failure. Distribution of such an amount would satisfy the qualification requirements without the need for any additional rules in these final regulations. However, under §1.402(c)-2(c)(3)(i) through (iii), the portion of the distribution attributable to the pre-tax catch-up contributions would not be an eligible rollover distribution.

D. Other issues related to applicable employer plans

1. Safe harbor section 401(k) plans

One commenter requested confirmation that a plan amendment that is made pursuant to section 603 of the SECURE 2.0 Act would not be a prohibited mid-year

change described in section III.D of Notice 2016-16, 2016-7 IRB 318.[26] The Treasury Department and the IRS have determined that, for purposes of section III.D of Notice 2016-16, a plan amendment that is made pursuant to section 603 of the SECURE 2.0 Act, or any regulation relating to that provision, is not a prohibited mid-year change.

2. Eligible governmental 457(b) plans

One commenter requested clarification that correction methods similar to the in-plan Roth rollover correction method would be available to an eligible governmental 457(b) plan for a violation of section 457(c). The commenter noted that, in the proposed regulations, the deadlines for using the in-plan Roth rollover correction method would refer to violations of section 401(a)(30), which does not apply to section 457(b) plans. As described in section III.C.3.b of this Summary of Comments and Explanation of Revisions ("Deadline to correct section 414(v)(7) failures"), a single correction deadline applies for all section 414(v)(7) failures that arise with respect to an elective deferral that is a catch-up contribution because it exceeds a statutory limit within the meaning of §1.414(v)-1(b)(1). A statutory limit within the meaning of §1.414(v)-1(b)(1) includes the limit provided in section 457(b)(2) (without regard to section 457(b)(3)).

Commenters also requested that eligible governmental 457(b) plans be permitted to include a deemed Roth catch-up election, as permitted for section 401(k) and section 403(b) plans. These final regulations do not make any revisions to the regulations relating to eligible governmental 457(b) plans because those regulations do

[26] Section 1.401(k)-3(e)(1) provides that a plan will fail to satisfy the requirements of section 401(k)(12) and 401(k)(13) and §1.401(k)-3 unless plan provisions that satisfy the safe harbor plan rules of §1.401(k)-3 are adopted before the first day of the plan year and remain in effect for an entire 12-month plan year. However, the safe harbor plan regulations set out several exceptions to this requirement and permit additional exceptions to be provided in guidance of general applicability published in the Internal Revenue Bulletin. Notice 2016-16 provides guidance regarding mid-year changes (as defined in section III.A of Notice 2016-16) to a safe harbor plan. Under that guidance, with the exception of certain amendments that are subject to regulatory conditions (as described in section III.B of Notice 2016-16) and certain prohibited mid-year changes described in section III.D of Notice 2016-16, a mid-year change is permitted provided that, if it changes a plan's required safe harbor notice content, the notice and election opportunity conditions in section III.C of Notice 2016-16 are satisfied.

not currently provide for the inclusion of a qualified Roth contribution program in an eligible governmental 457(b) plan.[27]

IV. *Applicability Date Issues*

The proposed amendments to §§1.401(k)-1 and 1.403(b)-3 were proposed to apply for taxable years beginning after December 31, 2023. The proposed amendments to §1.414(v)-1 generally were proposed to apply with respect to contributions in taxable years that begin more than 6 months after the date that final regulations amending §1.414(v)-1 are issued. However, under the proposed regulations, a taxpayer would have been permitted to elect to apply the regulatory provisions relating to sections 109 and 117 of the SECURE 2.0 Act as early as the statutory applicability dates.

For a plan that is not maintained pursuant to a collective bargaining agreement, proposed §1.414(v)-2 was proposed to apply with respect to contributions in taxable years beginning more than 6 months after the date that final regulations adding §1.414(v)-2 to the Code of Federal Regulations are issued. For a plan that is maintained pursuant to one or more collective bargaining agreements, proposed §1.414(v)-2 was proposed to apply with respect to contributions in taxable years beginning after the later of the first taxable year described in the preceding sentence, or the first taxable year that begins after the date on which the last collective bargaining agreement related to the plan that is in effect on December 31, 2025, terminates (determined without regard to any extension of those agreements). However, under the proposed regulations, a plan would be permitted to apply §1.414(v)-2 with respect to contributions in taxable years beginning after December 31, 2023.

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[27] On June 22, 2016, proposed regulations relating to the inclusion of a qualified Roth contribution program in an eligible governmental 457(b) plan were published in the **Federal Register** (81 FR 40548) and those proposed regulations have not been finalized. The comments received regarding eligible governmental 457(b) plans in response to the proposed regulations under section 414(v) will be taken into account for purposes of future regulations under section 457(b).

Many commenters requested a later applicability date for the final regulations and a reasonable, good-faith standard for interpretation of the statute in advance of the applicability date of the final regulations. Some of these commenters specifically requested delays for governmental plans or for plans that are maintained pursuant to one or more collective bargaining agreements. Other commenters requested an extension of the administrative transition period provided under Notice 2023-62.

In general, the applicability dates under the final regulations are based on the applicability dates set forth in the proposed regulations. Thus, for example, §1.414(v)-2 is generally applicable for taxable years beginning after December 31, 2026. The Treasury Department and the IRS have determined that this regulatory applicability date provides an adequate period for implementation of the provisions of the final regulations. The final regulations do not extend or modify the administrative transition period provided under Notice 2023-62.

However, in response to comments, §1.414(v)-2(e)(2)(iii) of the final regulations extends the regulatory applicability date of §1.414(v)-2 in the case of a governmental plan within the meaning of section 414(d), as described in the Applicability Dates section of this preamble. In addition, the Treasury Department and the IRS understand that multiemployer plans would benefit from a further extended applicability date for the Roth catch-up requirement because of the unique issues faced by those plans. For example, multiemployer plans do not have access to or control over their contributing employers' payroll systems and thus must implement complex administrative coordination procedures to comply with the Roth catch-up requirement. Therefore, in response to comments, §1.414(v)-2(e)(2)(ii) of the final regulations provides that if that plan is a multiemployer plan as defined in section 414(f), section 414(v)(7) is deemed satisfied until the first taxable year described in the Applicability Dates section of this preamble.

Applicability Dates

The amendments to §§1.401(k)-1 and 1.403(b)-3 apply for taxable years beginning after December 31, 2023. The amendments to §1.414(v)-1 apply with respect to contributions in taxable years beginning after December 31, 2026. However, the regulations permit a taxpayer to elect to apply (1) §1.414(v)-1(c)(2)(ii)(C) and (c)(2)(iii)(C) (relating to the higher catch-up limit for certain newly-established SIMPLE plans) with respect to taxable years beginning after December 31, 2023, and (2) §1.414(v)-1(c)(2)(i)(B), (c)(2)(ii)(B), and (c)(2)(iii)(B) (relating to the higher catch-up limit applicable during the taxable year of attainment of age 60 through 63) with respect to taxable years beginning after December 31, 2024.

For a plan that is not maintained pursuant to a collective bargaining agreement and not a governmental plan within the meaning of section 414(d), §1.414(v)-2 applies with respect to contributions in taxable years beginning after December 31, 2026. For a plan that is maintained pursuant to one or more collective bargaining agreements, §1.414(v)-2 applies with respect to contributions in taxable years beginning after the later of the first taxable year described in the preceding sentence, or the first taxable year that begins after the date on which the last collective bargaining agreement related to the plan that is in effect on December 31, 2025, terminates (determined without regard to any extension of those agreements). Further, if that plan is a multiemployer plan as defined in section 414(f), section 414(v)(7) is deemed satisfied until the first taxable year beginning after the date on which the last collective bargaining agreement related to the plan that is in effect on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** terminates (determined without regard to any extension to those agreements). In the case of a governmental plan within the meaning of section 414(d), §1.414(v)-2 applies with respect to contributions in taxable years beginning after the later of the first taxable year beginning after December 31,

2026, or the first taxable year beginning after the close of the first regular legislative session of the legislative body with the authority to amend the plan that begins after December 31, 2025. However, a plan is permitted to apply §1.414(v)-2 with respect to contributions in taxable years beginning after December 31, 2023.

Prior to the applicability date of the final regulations, a reasonable, good faith interpretation standard applies with respect to the statutory provisions reflected in the final regulations. For example, with respect to contributions in taxable years prior to the applicability date of the final regulations, this standard would be met if the determination of whether a participant's FICA wages for the preceding calendar year exceeded the Roth catch-up wage threshold is made by referencing the FICA taxes imposed by sections 3101(b) and 3111(b) (rather than sections 3101(a) and 3111(a)).

Special Analyses

I. *Regulatory Planning and Review--Economic Analysis*

These final regulations are not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (July 4, 2025) between the Treasury Department and the Office of Management and Budget regarding review of tax regulations.

II. *Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) requires that a Federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

These regulations contain reporting requirements, contained in §1.414(v)-2(c), that relate to corrections of pre-tax elective deferrals that are catch-up contributions

subject to the requirement under section 414(v)(7)(A) of the Code to be designated Roth contributions. These collections of information generally will be used by the IRS for tax compliance purposes and may involve submission of a Form 1099-R or a Form W-2 to the IRS. The Form 1099-R and its associated burden are approved by the OMB under 1545-0119. The Form W-2 and its associated burden are approved by the OMB under 1545-0029. The regulation does not change the reporting procedures already established for these forms.

The regulations also contain a recordkeeping requirement that plan administrators maintain written practices and procedures designed to result in real-time compliance with certain requirements of section 414(v)(7)(A). These recordkeeping requirements are expected to be usual and customary business practices that impose no additional burden on respondents. Therefore, the recordkeeping requirement does not require OMB approval under 5 CFR 1320.3(b)(2).

III. *Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. These regulations will affect individuals and businesses, some of which may be small entities.

Even if a substantial number of small entities will be affected, the economic impact of these regulations is not expected to be significant. As discussed in the Paperwork Reduction Act section of this preamble, these regulations may involve reporting and ordinary recordkeeping but are not expected to result in an increase in estimated burden. Any additional recordkeeping or administrative costs resulting from the changes relating to catch-up contributions that apply to certain section 401(k) plans, section 403(b) plans, and eligible governmental 457(b) plans sponsored by small entities are consistent with existing procedures and are not expected to be significant.

Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses and no comments were received.

IV. *Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. The regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector, in excess of that threshold.

V. *Executive Order 13132: Federalism*

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. The regulations do not have federalism implications, impose substantial direct compliance costs on State and local governments, or preempt State law within the meaning of the Executive order.

VI. *Congressional Review Act*

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as a major rule, as defined by 5 U.S.C. 804(2).

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings notices, and other guidance cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at http://www.irs.gov.

Drafting Information

The principal authors of these regulations are Kara M. Soderstrom, Christina M. Cerasale, and Jessica S. Weinberger of the Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes (EEE)). However, other personnel from the Treasury Department and the IRS participated in the development of the proposed regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries, in numerical order, for §§1.401(k)-1 and 1.414(v)-2 to read in part, as follows:

Authority: 26 U.S.C. 7805 * * *

* * * * *

Section 1.401(k)-1 also issued under 26 U.S.C. 401(m)(9).

* * * * *

Section 1.414(v)-2 also issued under 26 U.S.C. 414(v)(7)(D).

* * * * *

Par. 2. Section 1.401(k)-1 is amended by adding paragraphs (f)(5)(iii) through (v) to read as follows:

§1.401(k)-1 Certain cash or deferred arrangements.

* * * * *

(f) * * *

(5) * * *

(iii) *Deemed Roth catch-up contribution elections*. For taxable years beginning after December 31, 2023, a plan that satisfies the requirements of paragraph (f)(5)(iv) of this section may provide that an employee who is subject to the requirement under section 414(v)(7) to make any catch-up contributions as designated Roth contributions is deemed to have irrevocably designated any elective deferrals that are catch-up contributions as designated Roth contributions in accordance with paragraph (f)(1)(i) of this section. In such a case, the elective deferrals must be--

(A) Treated by the employer as not excludible from the employee's gross income, in accordance with paragraph (f)(2) of this section; and

(B) Maintained by the plan in a separate account, in accordance with paragraph (f)(3) of this section.

(iv) *Election for employees subject to section 414(v)(7)(A).* A plan satisfies the requirements of this paragraph (f)(5)(iv) only if under the plan—

(A) An employee who is described in paragraph (f)(5)(iii) of this section is provided an effective opportunity (as determined under paragraph (e)(2)(ii) of this section) to make a new election that is different than the deemed election described in paragraph (f)(5)(iii) of this section; and

(B) The deemed election described in paragraph (f)(5)(iii) of this section ceases to apply to an employee within a reasonable period of time following the date—

(*1*) The employee ceases to be subject to the requirement under section 414(v)(7) to make any catch-up contributions as designated Roth contributions; or

(*2*) An amended Form W-2 (Wage and Tax Statement) is filed or furnished to the employee indicating that the employee is not subject to the requirement under section 414(v)(7) to make any catch-up contributions as designated Roth contributions.

(v) *Separate election plans.* Subject to the rules in paragraphs (f)(5)(iii) and (iv) of this section, a plan utilizing a plan design that permits a participant to make a separate election to treat certain elective deferrals as catch-up contributions during each payroll period (without regard to whether the catch-up contributions are catch-up contributions under §1.414(v)-1(c)(3)), including a plan design described in §1.414(v)-1(e)(1)(ii)(A), is permitted to provide that a participant who is subject to the requirement under section 414(v)(7) to make any catch-up contributions as designated Roth contributions is deemed to have irrevocably designated as Roth contributions any elective deferrals that are made pursuant to the separate election.

* * * * *

§1.403(b)-3 [Amended]

Par. 3. Section 1.403(b)-3 is amended in paragraph (c)(1) by:

a. Removing the reference “§1.401(k)-1(f)(1) and (2)” and adding, in its place, the reference “§1.401(k)-1(f)(1), (2), (3), and (5)”;

b. Adding the language “(or is deemed to be so irrevocably designated in accordance with §1.401(k)-1(f)(5)(iii))” immediately following the language “otherwise eligible to make under the plan”; and

c. Removing the language “(within the meaning of §1.401(k)-1(f)(2))” and adding, in its place, the language “(within the meaning of §1.401(k)-1(f)(3))”.

Par. 4. Section 1.414(v)-1 is amended by:

a. In the last sentence of paragraph (a)(1), removing the language “this section and §1.402(g)-2” and adding, in its place, the language “this section and §§1.414(v)-2 and 1.402(g)-2”;

b. Adding paragraph (a)(4);

c. Revising and republishing paragraph (c)(2);

d. Adding paragraph (e)(1)(iii); and

e. Revising and republishing paragraphs (e)(2) and (i).

The additions and revisions read as follows:

§1.414(v)-1 Catch-up contributions.

(a) * * *

(4) *Catch-up contributions must be designated Roth contributions for certain participants*. For provisions relating to the requirement under section 414(v)(7) that catch-up contributions made by certain catch-up eligible participants must be designated Roth contributions, *see* §1.414(v)-2.

* * * * *

(c) * * *

(2) *Applicable dollar catch-up limit*—(i) *Plans other than SIMPLE Plans*—(A) *In general*. Except as provided in paragraph (c)(2)(i)(B) of this section, the applicable dollar catch-up limit that applies under an applicable employer plan, other than a SIMPLE 401(k) plan described in section 401(k)(11) or a SIMPLE IRA plan described in section 408(p), for a taxable year is $5,000, as adjusted for changes in the cost of living under paragraph (c)(2)(iii)(A) of this section.

(B) *Higher limit applicable during the taxable year of attainment of age 60 through 63*. For a taxable year beginning after 2024, with respect to a catch-up eligible participant who would attain age 60, 61, 62, or 63 during the taxable year, the applicable dollar catch-up limit for the taxable year under an applicable employer plan described in paragraph (c)(2)(i)(A) of this section is $11,250 (which is 150 percent of the applicable dollar catch-up limit described in paragraph (c)(2)(i)(A) of this section for a

taxable year beginning in 2024), as adjusted for changes in the cost of living under paragraph (c)(2)(iii)(B) of this section.

(ii) *SIMPLE plans*—(A) *In general*. Except as provided in paragraph (c)(2)(ii)(B) or (C) of this section, the applicable dollar catch-up limit that applies under a SIMPLE 401(k) plan described in section 401(k)(11) or a SIMPLE IRA plan described in section 408(p) for a taxable year is $2,500, as adjusted for changes in the cost of living under paragraph (c)(2)(iii)(A) of this section.

(B) *Higher limit applicable during the taxable year of attainment of age 60 through 63*. For a taxable year beginning after 2024, with respect to a catch-up eligible participant who would attain age 60, 61, 62, or 63 during the taxable year, the applicable dollar catch-up limit for the taxable year under an applicable employer plan described in paragraph (c)(2)(ii)(A) of this section is $5,250 (which is 150 percent of the applicable dollar catch-up limit under paragraph (c)(2)(ii)(A) of this section for a taxable year beginning in 2025), as adjusted for changes in the cost of living under paragraph (c)(2)(iii)(B) of this section.

(C) *Higher limit for certain SIMPLE plans*. For a taxable year beginning after 2023, the applicable dollar catch-up limit under an applicable employer plan described in paragraph (c)(2)(ii)(A) of this section that is maintained by an eligible employer meeting the requirements in section 408(p)(2)(E)(iv) is $3,850 (which is 110 percent of the applicable dollar catch-up limit in effect under paragraph (c)(2)(ii)(A) of this section for a taxable year beginning in 2024), as adjusted for changes in the cost of living under paragraph (c)(2)(iii)(C) of this section. The preceding sentence applies with respect to a taxable year only if the taxable year begins in a calendar year for which the eligible employer is described in section 408(p)(2)(E)(i)(I) or makes the election described in section 408(p)(2)(E)(i)(II).

(iii) *Cost-of-living adjustments*—(A) *In general*. For a taxable year beginning after 2006, the applicable dollar catch-up limit under paragraph (c)(2)(i)(A) or (c)(2)(ii)(A) of this section (whichever applies to the plan) is the initial amount ($5,000 or $2,500, respectively), increased for changes in the cost of living. The increase is made at the same time and in the same manner as adjustments under section 415(d), except that the base period is the calendar quarter beginning July 1, 2005, and any increase that is not a multiple of $500 is rounded to the next lower multiple of $500.

(B) *Adjustments to higher limit applicable during the taxable year of attainment of age 60 through 63*. For a taxable year beginning after 2025, the applicable dollar catch-up limit under paragraph (c)(2)(i)(B) or (c)(2)(ii)(B) of this section (whichever applies to the plan) is the initial amount ($11,250 in the case of paragraph (c)(2)(i)(B) of this section and $5,250 in the case of paragraph (c)(2)(ii)(B) of this section), increased for changes in the cost of living. The increase is made at the same time and in the same manner as adjustments under section 415(d), except that the base period is the calendar quarter beginning July 1, 2024, and any increase that is not a multiple of $500 is rounded to the next lower multiple of $500.

(C) *Adjustments to higher limit for certain SIMPLE plans*. For a taxable year beginning after 2024, the applicable dollar catch-up limit under paragraph (c)(2)(ii)(C) of this section is the initial amount ($3,850), increased for changes in the cost of living. The increase is made at the same time and in the same manner as adjustments under section 415(d), except that the base period is the calendar quarter beginning July 1, 2023, and any increase that is not a multiple of $500 is rounded to the next lower multiple of $500.

* * * * *

(e) * * *

(1) * * *

(iii) *Plans providing the statutory maximum catch-up contributions*. An applicable employer plan that provides each catch-up eligible participant who participates under any applicable employer plan maintained by the employer with an effective opportunity to make the maximum amount of catch-up contributions permitted for that participant under section 414(v) or, if applicable, section 1081.01(d)(7) of the Puerto Rico Internal Revenue Code of 2011 (13 L.P.R.A. section 30391(d)(7)), as amended, does not fail to satisfy the universal availability requirement of this paragraph (e) merely because of differences among catch-up eligible participants as to the dollar amount of catch-up contributions they are permitted to make. For example, an applicable employer plan does not fail to satisfy the universal availability requirement of this paragraph (e) merely because the plan permits catch-up eligible participants who would attain age 60, 61, 62, or 63 during a taxable year to make catch-up contributions up to the increased applicable dollar catch-up limit in section 414(v)(2)(E) while only permitting other catch-up eligible participants to make catch-up contributions up to the applicable dollar catch-up limit in section 414(v)(2)(B) without regard to section 414(v)(2)(E).

(2) *Certain employees disregarded.* An applicable employer plan does not fail to satisfy the universal availability requirement of this paragraph (e) merely because employees described in section 410(b)(3) (for example, collectively bargained employees) are not provided the opportunity to make catch-up contributions (or are provided the opportunity to make catch-up contributions to a lesser extent than other employees).

* * * * *

(i) *Applicability dates*—(1) *In general*. Except as described in paragraph (i)(2) of this section or §1.414(v)-2(e), section 414(v) applies to contributions in taxable years beginning on or after January 1, 2002. Except as provided in paragraph (i)(2) of this

section, paragraphs (a) through (h) of this section apply to contributions in taxable years beginning on or after January 1, 2004.

(2) *Increases in applicable dollar catch-up limit under section 414(v)(2)*—(i) *Higher limit during the taxable year of attainment of age 60 through 63*. The amendments to section 414(v)(2) made by section 109 of Division T of the Consolidated Appropriations Act, 2023, Public Law 117-328, 136 Stat. 4459 (2022), known as the SECURE 2.0 Act of 2022 (SECURE 2.0 Act) to provide for a higher applicable dollar catch-up limit for individuals who attain age 60, 61, 62, or 63 during the taxable year apply to contributions in taxable years beginning after December 31, 2024. Paragraphs (c)(2)(i)(B), (c)(2)(ii)(B), and (c)(2)(iii)(B) of this section apply to contributions in taxable years beginning after December 31, 2026 (or, at the election of the taxpayer, taxable years beginning after December 31, 2024). Except as provided in paragraph (i)(2)(ii) of this section, for taxable years beginning on or before December 31, 2024, the applicable dollar catch-up limit is determined under §1.414(v)-1(c)(2) as it appeared in the April 1, 2025, edition of 26 CFR part 1.

(ii) *Higher limit for certain SIMPLE plans*. The amendments to section 414(v)(2) made by section 117 of the SECURE 2.0 Act to provide for a higher applicable dollar catch-up limit for certain SIMPLE plans apply to contributions in taxable years beginning after December 31, 2023. Paragraphs (c)(2)(ii)(C) and (c)(2)(iii)(C) of this section apply to contributions in taxable years beginning after December 31, 2026 (or, at the election of the taxpayer, taxable years beginning after December 31, 2023). For taxable years beginning on or before December 31, 2023, the applicable dollar catch-up limit for a SIMPLE 401(k) plan described in section 401(k)(11) or a SIMPLE IRA plan described in section 408(p) is determined under §1.414(v)-1(c)(2)(ii) as it appeared in the April 1, 2025, edition of 26 CFR part 1.

Par. 5. Section 1.414(v)-2 is added to read as follows:

§1.414(v)-2 Catch-up contributions required to be designated Roth contributions under section 414(v)(7).

(a) *Section 414(v)(7) Roth catch-up contribution requirement*—(1) *Organization of this section*. Paragraphs (a)(2) through (6) of this section provide general rules relating to the requirements of section 414(v)(7). Paragraph (b) of this section provides certain rules of operation for implementing the requirements of section 414(v)(7) addressed in this paragraph (a). Paragraph (c) of this section provides rules relating to the treatment of pre-tax catch-up contributions that were required to be designated Roth contributions under section 414(v)(7). Paragraph (d) of this section provides examples illustrating the application of the rules of this section. Paragraph (e) of this section sets forth the statutory and regulatory applicability dates relating to the section 414(v)(7) Roth catch-up requirement.

(2) *Roth catch-up contribution requirement in general*. For a taxable year beginning on or after January 1, 2024, if, for the calendar year preceding the calendar year in which the taxable year begins, a catch-up eligible participant in an applicable employer plan had wages from the employer sponsoring the plan (as determined under paragraph (b)(4) of this section) that exceeded the Roth catch-up wage threshold for the calendar year preceding the calendar year in which the taxable year begins, then §1.414(v)-1(a)(1) applies only if that participant's catch-up contributions (as described in §1.414(v)-1(a)(1)) under the plan are designated Roth contributions (as defined in section 402A(c)(1)). For this purpose, wages taken into account are wages as defined in section 3121(a) for purposes of the taxes imposed by sections 3101(a) and 3111(a) for the year the wages are required to be taken into account for purposes of chapter 21 of the Internal Revenue Code. The Roth catch-up wage threshold that applies for a

calendar year is $145,000, as adjusted for changes in the cost of living under paragraph (a)(3) of this section.

(3) *Cost-of-living adjustment*. For a calendar year beginning after December 31, 2024, the Roth catch-up wage threshold in paragraph (a)(2) of this section is the initial amount ($145,000), increased for changes in the cost of living. The increase is made at the same time and in the same manner as adjustments under section 415(d), except that the base period is the calendar quarter beginning July 1, 2023, and any increase that is not a multiple of $5,000 is rounded to the next lower multiple of $5,000.

(4) *Certain plans not subject to section 414(v)(7).* Paragraph (a)(2) of this section does not apply to a plan described in section 408(k) or (p).

(5) *Availability of designated Roth catch-up contributions*. If, under an applicable employer plan, any catch-up eligible participant who is subject to the Roth catch-up requirement under paragraph (a)(2) of this section is permitted to make catch-up contributions as designated Roth contributions for a plan year, then all catch-up eligible participants in the plan must be permitted to make catch-up contributions as designated Roth contributions for the plan year.

(6) *Special rule for participants subject to the Puerto Rico Code*. Paragraphs (a)(2) and (5) of this section are treated as satisfied for a taxable year with respect to a catch-up eligible participant who is subject to section 1081.01 of the Puerto Rico Internal Revenue Code of 2011 (13 L.P.R.A. section 30391), as amended (Puerto Rico Code), if that taxable year begins before the effective date of an amendment to the Puerto Rico Code to provide for designated Roth contributions.

(b) *Rules of operation*—(1) *Determination of catch-up contributions subject to section 414(v)(7) Roth requirement*. For a participant who is subject to the Roth catch-up requirement under paragraph (a)(2) of this section for a plan year, an elective deferral that, in accordance with §1.414(v)-1(c)(3), is treated as a catch-up contribution

at the time of deferral (for example, an elective deferral that is a catch-up contribution because it exceeds the section 401(a)(30) limit on elective deferrals) is required to be a designated Roth contribution only to the extent the participant has not previously made elective deferrals that are designated Roth contributions during the taxable year equal to the applicable dollar catch-up limit under §1.414(v)-1(c)(2). Thus, for example, if a participant who is subject to the Roth catch-up requirement under paragraph (a)(2) of this section has already made elective deferrals that are designated Roth contributions during the taxable year that equal or exceed the applicable dollar catch-up limit at the time the participant's elective deferrals for the taxable year reach the section 401(a)(30) limit on elective deferrals, section 414(v)(7) would not require the participant's subsequent elective deferrals for the taxable year to be designated Roth contributions even though they are treated as catch-up contributions under §1.414(v)-1(c)(3).

(2) *Treatment of plans without qualified Roth contribution programs*. For purposes of §1.414(v)-1(e)(1)(iii), if an applicable employer plan does not include a qualified Roth contribution program (within the meaning of section 402A(b)), then, for a catch-up eligible participant who is subject to the Roth catch-up requirement under paragraph (a)(2) of this section, the maximum amount of catch-up contributions permitted under section 414(v) is $0. Such a plan does not fail to satisfy the universal availability requirement of §1.414(v)-1(e) merely because the plan (or another applicable employer plan maintained by the employer that does not include a qualified Roth contribution program) does not permit catch-up contributions for participants who are subject to the Roth catch-up requirement under paragraph (a)(2) of this section.

(3) *Application of nondiscrimination requirements*—(i) *Plans without qualified Roth contribution programs*. If an applicable employer plan is described in paragraph (b)(2) of this section, then §1.414(v)-1(d)(4) does not apply to the plan. As a result, a plan that has one or more highly compensated employees (as defined in section 414(q)) who are

not subject to the Roth catch-up requirement under paragraph (a)(2) of this section may need to provide that one or more of those highly compensated employees is not permitted to make catch-up contributions in order to facilitate satisfaction of §1.401(a)(4)-4 with respect to the availability of catch-up contributions. For this purpose, a plan will be deemed to satisfy §1.401(a)(4)-4 with respect to the availability of catch-up contributions if the plan provides that no catch-up eligible participants who are highly compensated employees with net earnings from self-employment for the preceding calendar year from the employer sponsoring the plan above the Roth catch-up wage threshold are permitted to make catch-up contributions. A plan is not treated as failing to satisfy the universal availability requirement of §1.414(v)-1(e) merely because the plan precludes one or more highly compensated employees from making catch-up contributions in accordance with the second sentence of this paragraph (b)(3)(i) or precludes all catch-up eligible participants who are highly compensated employees with net earnings from self-employment for the preceding calendar year from the employer sponsoring the plan above the Roth catch-up wage threshold from making catch-up contributions.

(ii) *Plans limiting pre-tax catch-up contributions for employees not subject to section 414(v)(7)*. The rules of paragraph (b)(3)(i) of this section also apply to a plan that includes a qualified Roth contribution program and, in accordance with an optional plan term providing for aggregation of wages under §1.414(v)-2(b)(4)(ii), (b)(4)(iii), or (b)(4)(iv)(A), does not permit pre-tax catch-up contributions for one or more employees who are not subject to section 414(v)(7).

(4) *Determination of employer sponsoring the plan*—(i) *General rule*. Except as provided in paragraphs (b)(4)(ii) and (iii) of this section, and subject to paragraphs (b)(4)(iv) and (v) of this section, 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.

(ii) *Optional aggregation for employers using a common paymaster*. If the employer described in paragraph (b)(4)(i) of this section uses a common paymaster in accordance with section 3121(s), then the plan may provide that the employee's common law employer is aggregated with one or more other specified employers using that common paymaster and treat the aggregated employers as a single employer sponsoring the plan for purposes of section 414(v)(7) and this section. In such a case, the employee's wages from the common law employer and from the one or more other employers that are aggregated with the common law employer are treated as wages from the employer sponsoring the plan.

(iii) *Optional aggregation for other controlled group members*. If the employer described in paragraph (b)(4)(i) of this section is a member of a group of employers that are treated as a single employer under the rules of section 414(b), (c), (m), or (o), then the plan may provide that the employee's common law employer is aggregated with one or more other specified employers in that group of employers and treat the aggregated employers as a single employer sponsoring the plan for purposes of section 414(v)(7) and this section. In such a case, the employee's wages from the common law employer and from the one or more other employers that are aggregated with the common law employer are treated as wages from the employer sponsoring the plan.

(iv) *Optional aggregation in the year of an asset purchase.* The following optional provisions apply for a calendar year for which wages paid to an employee by a predecessor employer are attributed to the employee's common law employer who is a successor employer in accordance with §31.3121(a)(1)-1(b) of this chapter:

(A) *Successor employer reports all calendar year wages paid by predecessor and successor employers on single Form W-2*. A plan sponsored by the successor employer

(or an entity aggregated with the successor employer in accordance with paragraph (b)(4)(ii) or (iii) of this section) may provide that the wages paid by the predecessor employer to the employee in the calendar year of the asset purchase and attributed to the successor employer are treated as wages from the employer sponsoring the plan for purposes of section 414(v)(7)(A) and paragraph (a)(2) of this section if such wages are reported on a Form W-2 (Wage and Tax Statement) filed by the successor employer for the calendar year in which the asset purchase occurs.

(B) *Predecessor and successor employers report respective wages paid on separate Forms W-2*. If the predecessor employer and the successor employer report the wages each pays to the employee during the calendar year in which the asset purchase occurs on separate Forms W-2, a plan sponsored by the successor employer (or an entity aggregated with the successor employer in accordance with paragraph (b)(4)(ii) or (iii) of this section) may provide that the wages paid by the successor employer that are treated as wages from the employer sponsoring the plan for purposes of section 414(v)(7)(A) and paragraph (a)(2) of this section do not exceed the difference between the Social Security wage base limit for the calendar year and the wages paid in the calendar year by the predecessor employer, as reported on the Form W-2 filed by the successor employer.

(v) *Disregarded entities*. In the case of an employee who receives wages from an entity that is disregarded as an entity separate from its owner in accordance with §301.7701-2(c)(2)(i) of this chapter (that is, the entity has not made an election under §301.7701-3(b)(1)(ii) of this chapter to be classified as a corporation), the owner is treated as the employer sponsoring the plan for purposes of applying this paragraph (b)(4). In such a case, the employee’s wages from the employer sponsoring the plan include the employee’s wages from the disregarded entity and from its owner.

(5) *Plans with more than one employer sponsoring the plan*. If, after application of paragraph (b)(4) of this section, an applicable employer plan has more than one employer sponsoring the plan that are not treated as one employer under paragraph (b)(4)(ii) or (iii), then—

(i) A catch-up eligible participant's wages for the calendar year preceding the calendar year in which the taxable year begins from one employer sponsoring the plan are not aggregated with the wages from another employer sponsoring the plan for purposes of determining whether the participant's wages for that preceding calendar year exceeded the Roth catch-up wage threshold in paragraph (a)(2) of this section; and

(ii) Even if a catch-up eligible participant's wages for the calendar year preceding the calendar year in which the taxable year begins from an employer sponsoring the plan exceeded the Roth catch-up wage threshold in paragraph (a)(2) of this section, elective deferrals made from the participant's compensation from another employer sponsoring the plan that are catch-up contributions are required to be designated Roth contributions only if the participant's wages for that preceding calendar year from that other employer also exceeded that wage threshold.

(6) *Coordination with Code section 402A(b)(1) and (c)(1)*. With respect to an employee who is subject to the Roth catch-up requirement set forth in paragraph (a)(2), the rules of this section apply notwithstanding the requirements regarding elections to make designated Roth contributions in section 402A(b)(1) and (c)(1).

(c) *Treatment of pre-tax catch-up contributions that are required to be designated Roth contributions*—(1) *Permitted correction.* A pre-tax elective deferral in excess of an applicable limit described in §1.414(v)-1(b)(1) that, in accordance with paragraph (a)(2) of this section, is a catch-up contribution only if it is a designated Roth contribution does

not cause an applicable employer plan to fail to satisfy any requirement of the Internal Revenue Code if—

(i) The failure to be a designated Roth contribution is corrected in accordance with paragraph (c)(2) of this section; or

(ii) No correction is required under the rules of paragraph (c)(4) of this section.

(2) *Correction of section 414(v)(7) failures*—(i) *In general*. For purposes of this paragraph (c), if an elective deferral that exceeds a statutory limit, employer-provided limit, or ADP limit (as such terms are defined in §1.414(v)-1(b)(1)) fails to be a catch-up contribution under section 414(v)(1) solely because the elective deferral is not a designated Roth contribution, then the failure to satisfy section 414(v)(7) is referred to as a "section 414(v)(7) failure." In such a case, subject to paragraph (c)(3) of this section, the section 414(v)(7) failure may be corrected in accordance with this paragraph (c)(2). A plan may provide for either of the correction methods described in paragraphs (c)(2)(ii) and (iii) of this section, but must apply the same correction method for similarly situated participants, and the selection of which correction method applies may not be based on the investment returns earned in participants' accounts. For example, a plan may provide that a section 414(v)(7) failure is corrected using the correction method described in paragraph (c)(2)(ii) of this section for all participants for whom the Forms W-2 for that year have not been filed or furnished and is corrected using the correction method described in paragraph (c)(2)(iii) of this section for all other participants.

(ii) *Permitted correction on Form W-2*. A plan may correct a section 414(v)(7) failure by transferring the catch-up contribution (adjusted for earnings and losses in accordance with §1.402(g)-1(e)(5)) from the participant's pre-tax account to the participant's designated Roth account and reporting the contribution (not adjusted for earnings and losses) as an elective deferral that is a designated Roth contribution on

the participant's Form W-2 for the year in which the elective deferral was originally excluded from the participant's gross income. However, this correction method may be used only if the participant's Form W-2 for that year has not been filed or furnished to the participant.

(iii) *Permitted correction by in-plan Roth rollover*. As an alternative to the correction method permitted under paragraph (c)(2)(ii) of this section, a plan may correct a section 414(v)(7) failure by directly rolling over the elective deferrals that would be catch-up contributions if they had been designated Roth contributions (adjusted for earnings and losses in accordance with §1.402(g)-1(e)(5)) from the participant's pre-tax account to the participant's designated Roth account. Under this correction method, the rules of section 402A(c)(4)(E)(ii) and (iii) will apply and the direct rollover must be reported as such on Form 1099-R (Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.) for the year of the rollover.

(3) *General correction requirements*—(i) *Practices and procedures designed to avoid section 414(v)(7) violations*—(A) *In general*. For a plan to be eligible to use either of the correction methods described under paragraph (c)(2) of this section with respect to an elective deferral that is a catch-up contribution because it exceeds a statutory limit described in §1.414(v)-1(b)(1)(i), the plan sponsor or plan administrator must have in place practices and procedures designed to result in compliance with section 414(v)(7) at the time the elective deferral is made.

(B) *Catch-up contributions relating to section 401(a)(30) limit.* As part of the practices and procedures described in paragraph (c)(3)(i)(A) of this section, the plan must provide that a participant who is subject to the Roth catch-up requirement under paragraph (a)(2) of this section is deemed to have irrevocably designated any elective deferrals that are catch-up contributions as designated Roth contributions once the participant's elective deferrals (or, at the option of the plan, only the participant's pre-tax

elective deferrals) made during the calendar year exceed the section 401(a)(30) limit on elective deferrals for the taxable year that begins in the calendar year, provided that the plan provides such an employee an effective opportunity to make a new election that is different than the deemed election. If a plan implements a participant's affirmative pre-tax catch-up contribution election that is not permitted under paragraph (a)(2) of this section (taking into account the application of paragraph (b)(1) of this section), then, except as provided in paragraph (c)(4) of this section, the section 414(v)(7) failure must be corrected in accordance with paragraph (c)(2) of this section.

(C) *Catch-up contributions for employees with higher section 402(g)(7) limit*. In the case of a section 403(b) plan maintained by a qualified organization described in section 402(g)(7)(B), the plan is permitted to provide that the automatic treatment of additional elective deferrals described in section 414(v) as designated Roth contributions applies to a qualified employee described in section 402(g)(7)(C) once the qualified employee's elective deferrals (or, at the option of the plan, only the qualified employee's pre-tax elective deferrals) under the plan for the calendar year exceed the section 401(a)(30) limit on elective deferrals for the taxable year that begins in the calendar year, increased by the amount described in section 402(g)(7)(A).

(D) *Catch-up contributions relating to section 457(b) limit*. In the case of an eligible governmental section 457(b) plan, rules similar to the rules of paragraph (c)(3)(i)(B) of this section apply with respect to the section 457(b)(2) limit, except that a plan is permitted to provide that the automatic treatment of additional elective deferrals described in section 414(v) as designated Roth contributions applies after the amount deferred under the plan for the taxable year exceeds the section 457(b)(3) limit for the employee.

(ii) *Reliance on Form W-2*. A plan sponsor or plan administrator does not fail to have in place practices and procedures in accordance with paragraph (c)(3)(i) of this

section merely because a plan determines the applicability of the section 414(v)(7)(A) Roth catch-up requirement to a participant on the basis of a timely-filed Form W-2 with respect to the participant.

(iii) *Deadlines for corrections of section 414(v)(7) failures under paragraph (c)(2) of this section*—(A) *Elective deferrals in excess of a statutory limit*. If the section 414(v)(7) failure arises with respect to an elective deferral that is a catch-up contribution because it exceeds a statutory limit (within the meaning of §1.414(v)-1(b)(1)), the deadline to complete all corrective steps required under paragraph (c)(2) of this section in order to avoid a qualification failure is the last day of the taxable year following the taxable year for which the elective deferral was made. However, any applicable earlier correction deadline related to other tax consequences continues to apply to the excess deferral. For example, in the case of an elective deferral that is a catch-up contribution because it exceeds the section 401(a)(30) limit on elective deferrals, if all corrective steps required under paragraph (c)(2) of this section are not completed by April 15 following the close of the taxable year for which the elective deferral was made, then the excess deferral will not be treated as having been corrected by the deadline in §1.402(g)-1(e)(2)(ii). Thus, the tax treatment rules of §1.402(g)-1(e)(8)(iii) would apply to the excess deferral.

(B) *Elective deferrals in excess of an employer-provided limit.* If the section 414(v)(7) failure arises with respect to an elective deferral that is a catch-up contribution because it exceeds an employer-provided limit as described in §1.414(v)-1(b)(1)(ii), the deadline to complete the corrective steps required under paragraph (c)(2) of this section in order to avoid a qualification failure is the last day of the plan year following the plan year for which the catch-up contribution was made. However, the contribution is not excluded from being taken into account as a catch-up contribution for purposes of the ADP test of section 401(k)(3) pursuant to §1.401(k)-2(a)(5)(iii) before the correction occurs.

(C) *Elective deferrals in excess of the ADP limit*. If the section 414(v)(7) failure arises with respect to an elective deferral that is a catch-up contribution because it exceeds the ADP limit, the deadline to complete the corrective steps required under paragraph (c)(2) of this section in order to avoid a qualification failure is the last day of the plan year following the plan year for which the catch-up contribution was made. However, the contribution is not excluded from the requirement to distribute excess contributions as a catch-up contribution pursuant to §1.401(k)-2(b)(4)(v) before the correction occurs. Thus, the plan must distribute the excess contribution if the correction for the ADP failure is made before the correction for the section 414(v)(7) failure is made, but the distribution need not be made if the section 414(v)(7) failure is corrected before the excess contribution is distributed. If a plan does not correct excess contributions within 2-1⁄2 months after the close of the plan year for which the excess contributions are made (as extended to 6 months under §1.401(k)-2(b)(5)(iii) in the case of certain applicable employer plans that include an eligible automatic contribution arrangement within the meaning of section 414(w)), then the employer will be liable for a 10% excise tax on the amount of the excess contributions. *See* section 4979 and §54.4979-1 of this chapter.

(4) *Correction not required in certain circumstances*—(i) *De minimis section 414(v)(7) failures*. A section 414(v)(7) failure with respect to a participant does not need to be corrected if the amount of the pre-tax elective deferral that was required to be a designated Roth contribution does not exceed $250. In such a case, the section 414(v)(7) failure is disregarded, and the elective deferral is treated as a catch-up contribution.

(ii) *Failures attributable to an amended Form W-2*. A section 414(v)(7) failure with respect to a participant does not need to be corrected if the participant became subject to section 414(v)(7)(A) solely because the participant's wages taken into account under

paragraph (a)(2) of this section for the calendar year preceding the calendar year in which the taxable year begins were not determined to exceed the Roth catch-up wage threshold until after the deadline for correction in paragraph (c)(3)(iii) of this section. In such a case, the section 414(v)(7) failure is disregarded, and the elective deferral is treated as a catch-up contribution.

(d) *Examples*. The following examples illustrate the application of this section. For purposes of these examples, assume that the participant's elective deferrals under all plans of the employer do not exceed the participant's section 415(c)(3) compensation, the participant's annual additions for a limitation year do not exceed the section 415(c) limit, the taxable year of the participant is the calendar year, the plan includes a qualified Roth contribution program, does not provide for the optional aggregation provision described in paragraph (b)(4)(iii) of this section, and the plan year is the calendar year (except as specifically provided). Assume further that this section applies to contributions in taxable years beginning in 2027, the section 401(a)(30) limit on elective deferrals for 2027 is $25,000, the applicable dollar catch-up limit for 2027 that is applicable to each participant in the examples is $8,000, and the Roth catch-up wage threshold to be applied to 2026 FICA wages for determining applicability of the Roth catch-up requirement under section 414(v)(7)(A) for a taxable year beginning in 2027 is $155,000.

(1) *Example 1*: *Application of Roth catch-up wage threshold*—(i) *Facts*. In January 2026, Participant A became an employee of an accounting firm that is structured as a partnership. Through October 2026, A had $156,000 of FICA wages from the accounting firm. In November 2026, Participant A became a partner in the accounting firm, and, for 2026, Participant A had a $30,000 distributive share of partnership income from the accounting firm, all of which was self-employment income. Participant A is a partner with the accounting firm for all of 2027.

(ii) *Analysis*. Although Participant A is a partner with the accounting firm for the last two months of 2026 and for all of 2027 (and thus has self-employment income rather than FICA wages for that period), Participant A had more than $155,000 in FICA wages from the accounting firm for 2026. Thus, Participant A is subject to section 414(v)(7)(A) for 2027, and if Participant A makes elective deferrals in excess of an applicable limit for 2027 under a plan sponsored by the accounting firm, those elective deferrals must be designated Roth contributions.

(2) *Example 2: Application of Roth catch-up wage threshold*—(i) *Facts*. The facts are the same as in paragraph (d)(1) of this section (*Example 1*), except that Participant A became a partner of the accounting firm in May 2026, and had FICA wages from the firm of $60,000 before becoming partner. In addition, for 2026, Participant A had a $155,000 distributive share of partnership income from the accounting firm, all of which was self-employment income.

(ii) *Analysis*. Although Participant A had total compensation of $215,000 for the services Participant A performed for the accounting firm in 2026, only $60,000 of that amount were FICA wages. Because Participant A did not have more than $155,000 of FICA wages from the accounting firm for 2026, any elective deferrals in excess of an applicable limit that Participant A makes for 2027 under a plan sponsored by the accounting firm are not required to be designated Roth contributions.

(3) *Example 3: Application of section 414(v)(7)(B) to a plan with a plan year other than the calendar year*—(i) *Facts*. Participant B participates in an applicable employer plan sponsored by Employer E. The plan year begins on July 1 and ends on June 30. Participant B had $160,000 in wages within the meaning of section 3121(a) from Employer E for calendar year 2026, and is a catch-up eligible participant for calendar year 2027. For the plan year beginning July 1, 2026, the plan allows all catch-up eligible participants to make catch-up contributions and requires that any elective deferrals in

excess of an applicable limit made by catch-up eligible participants who are subject to the requirements of section 414(v)(7)(A) be designated Roth contributions.

(ii) *Analysis*. Because Participant B's FICA wages from Employer E for calendar year 2026 exceeded $155,000, Participant B is subject to the requirements of section 414(v)(7)(A) for 2027, and any catch-up contributions that Participant B makes under the plan during 2027 (which includes the second half of the plan year beginning July 1, 2026) must be designated Roth contributions. Because Participant B is permitted to make catch-up contributions that are designated Roth contributions under the plan for the plan year beginning July 1, 2026 (after Participant B reaches an applicable limit (as defined in §1.414(v)-1(b)(1)), all catch-up eligible participants under the plan must be permitted to make catch-up contributions that are designated Roth contributions for the plan year. Furthermore, if the plan continues to permit catch-up contributions for the plan year beginning July 1, 2027, then any catch-up contributions that Participant B makes under the plan during the first half of that plan year must be designated Roth contributions (as well as any catch-up contributions in the second half of the plan year if Participant B had wages exceeding the applicable threshold in 2027).

(4) *Example 4: Plans with more than one employer sponsoring the plan*—(i) *Facts*. Employer F and Employer G are members of a controlled group of corporations within the meaning of section 414(b). Participant C was hired by Employer F on January 1, 2026, and remained employed by Employer F through October 31, 2026. Effective November 1, 2026, Participant C transferred to Employer G and was employed by Employer G for the remainder of 2026. Participant C is employed by Employer G for all of 2027, the year in which Participant C attains age 55. Employer F reported $160,000 of FICA wages on a Form W-2 for Participant C for 2026. Employer G reported $35,000 of FICA wages on a Form W-2 for Participant C for 2026. Employers F and G are participating employers in a section 401(k) plan, Plan P. Participant C becomes eligible

to participate in Plan P on January 1, 2027, and all of Participant C's elective deferrals for 2027 are made from compensation paid by Employer G.

(ii) *Analysis*. Employers F and G are common law employers of Participant C during different portions of 2026, and, under paragraph (b)(3) of this section, they are both employers sponsoring the plan. Because Plan P does not provide for the optional aggregation provision described in paragraph (b)(4)(iii) of this section, and Participant C's FICA wages from Employer G in 2026 did not exceed $155,000, Participant C is not subject to the requirements of section 414(v)(7)(A) with respect to elective deferrals that are made from compensation paid by Employer G in 2027. Accordingly, Participant C is not required to designate any catch-up contributions made for 2027 under Plan P as designated Roth contributions. This is the case even though Participant C had wages from Employer F (an employer sponsoring the plan) that exceeded $155,000 for 2026.

(5) *Example 5: Correction of section 414(v)(7) failure*—(i) *Facts*. Participant D, who attains age 55 in 2027, participates in a section 401(k) plan, Plan Q, sponsored by Employer H. Plan Q does not limit elective deferrals except as necessary to comply with sections 401(a)(30) and 415(c). Plan Q does not provide catch-up eligible participants with a separate election for elective deferrals that are in excess of the section 401(a)(30) limit and provides that such a participant is permitted to defer amounts in excess of the section 401(a)(30) limit on elective deferrals up to the applicable dollar catch-up limit for the year. For 2026, Participant D had $156,000 in wages (within the meaning of section 3121(a)) from Employer H. For 2027, Participant D elects to defer $1,250 into Participant D's account in Plan Q for each of 24 pay periods. Employer H has in place practices and procedures that are designed to prevent section 414(v)(7) failures and to result in compliance with the section 414(v)(7) Roth catch-up requirement at the time an elective deferral is made, and Plan Q provides for a deemed Roth catch-up election as described in paragraph (c)(3)(i) of this section.

Nonetheless, Employer H discovers that all of Participant D's elective deferrals under Plan Q during 2027 (a total of $30,000) were pre-tax elective deferrals.

(ii) *Analysis*. Because Participant D had over $155,000 in wages from Employer H for 2026, under section 414(v)(7)(A), Participant D's catch-up contributions under Plan Q for 2027 (that is, the elective deferrals that exceed the section 401(a)(30) limit) are required to be designated Roth contributions. Thus, $5,000 of Participant D's elective deferrals for 2027 (that is, the elective deferrals in excess of the section 401(a)(30) limit of $25,000) are required to be designated Roth contributions. To keep these contributions in the plan, Employer H must correct the section 414(v)(7) failure with respect to $5,000 of Participant D's pre-tax elective deferrals for 2027 using one of the methods set forth under paragraph (c)(2) of this section. If all corrective steps required under paragraph (c)(2) of this section are not completed by April 15, 2028, then the excess deferral will not be treated as having been corrected by the deadline in §1.402(g)-1(e)(2)(ii). Thus, the tax treatment rules of §1.402(g)-1(e)(8)(iii) would apply to the excess deferral.

(6) *Example 6: Designated Roth contributions that can satisfy the section 414(v)(7) Roth catch-up requirement*—(i) *Facts*. The facts are the same as in paragraph (d)(5) of this section (*Example 5*), except that the first $3,750 of the $30,000 total elective deferrals Participant D makes for 2027 are designated Roth contributions. (Thus, during each of the first 3 pay periods in 2027, Participant D makes $1,250 of elective deferrals that are designated Roth contributions, and then subsequently makes $26,250 in pre-tax elective deferrals ratably over the remaining 21 pay periods.) Participant D reaches the section 401(a)(30) limit on elective deferrals during the twentieth pay period of 2027 and does not make any designated Roth contributions after reaching the section 401(a)(30) limit on elective deferrals in 2027.

(ii) *Analysis*. In accordance with paragraph (b)(1) of this section, the $3,750 in elective deferrals that are designated Roth contributions that Participant D made at the beginning of 2027 can be taken into account for purposes of satisfying Participant D's Roth catch-up requirement under section 414(v)(7). Thus, the portion of Participant D's pre-tax elective deferrals that are required to be corrected is $1,250 ($5,000 of elective deferrals that are in excess of the section 401(a)(30) limit, minus $3,750 of elective deferrals that were made as designated Roth contributions within the taxable year), and Employer H must correct the section 414(v)(7) failure with respect to only $1,250 of Participant D's pre-tax elective deferrals. To keep the $1,250 in the plan, Employer H must correct the section 414(v)(7) failure using one of the methods set forth under paragraph (c)(2) of this section. If all corrective steps required under paragraph (c)(2) of this section are not completed by April 15, 2028, then the excess deferral will not be treated as having been corrected by the deadline in §1.402(g)-1(e)(2)(ii). Thus, the tax treatment rules of §1.402(g)-1(e)(8)(iii) would apply to the excess deferral.

(e) *Applicability dates*—(1) *Statutory applicability date*. Section 414(v)(7) applies to contributions in taxable years beginning after December 31, 2023.

(2) *Regulatory applicability dates*—(i) *General rule*. Except as provided in paragraphs (e)(2)(ii) through (iv) of this section, this section applies to contributions in taxable years beginning after December 31, 2026. For prior taxable years, a reasonable, good faith interpretation standard applies with respect to section 414(v)(7).

(ii) *Collectively bargained plans*. In the case of an applicable employer plan maintained pursuant to one or more collective bargaining agreements, paragraphs (a) through (d) of this section shall not apply until the first taxable year described in paragraph (e)(2)(i) of this section, or, if later, the first taxable year beginning after the date on which the last collective bargaining agreement related to the plan that is in effect on December 31, 2025, terminates (determined without regard to any extension

to those agreements). Further, if that plan is a multiemployer plan as defined in section 414(f), section 414(v)(7) is deemed satisfied until the first taxable year beginning after the date on which the last collective bargaining agreement related to the plan that is in effect on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** terminates (determined without regard to any extension to those agreements).

(iii) *Governmental plan*. In the case of a governmental plan within the meaning of section 414(d), paragraphs (a) through (d) of this section shall not apply until the first taxable year described in paragraph (e)(2)(i) of this section, or, if later, the first taxable year beginning after the close of the first regular legislative session of the legislative body with the authority to amend the plan that begins after December 31, 2025.

(iv) *Early implementation permitted*. A plan is permitted to apply the rules of this section to contributions in any taxable year beginning after December 31, 2023.

Edward T. Killen,

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Approved: September 8, 2025.

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