March 27, 2025

<u>VIA ELECTRONIC SUBMISSION</u>
Internal Revenue Service
Washington DC, 20044

Re: REG-101268-24; Proposed Rule on Catch-Up Contributions

To Whom It May Concern:

SIFMA[1] submits this letter to the IRS in response to the notice of proposed rulemaking on catch-up contributions reflecting statutory changes made by the SECURE 2.0 Act of 2022.[2] While we appreciate the guidance being proposed here, we remind the IRS that our members are still awaiting guidance from Treasury on a variety of SECURE 2.0 provisions, including updates to model forms.[3]

I. Provide Clarification for COLA Adjustment Timing

Please clarify when we can expect cost-of-living adjustment information for purposes of the 110% catch-up. The proposed regulations state that:

> 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.

[1] SIFMA is the leading trade association for BDs, investment banks, and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly one million employees, we advocate on legislation, regulation, and business policy affecting retail and institutional investors, equity and fixed income markets, and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (the "GFMA").

[2] Division T of the Consolidated Appropriations Act, 2023, Public Law 117-328

[3] In particular, we are waiting for guidance on Forms 5305-SEP and 5304-SIMPLE, as well as rollovers from 529 plans to IRAs.

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Our members need clarity with regard to the timing with respect to the COLA information to best prepare systems. Our suggestion is that the IRS include this limit when it publishes its annual revenue procedure for inflation adjusted limits in late October or early November. This will allow custodians time to plan.

The IRS also should address a cost-of-living adjustment for the regular contribution limit for SIMPLEs. Section 117 of SECURE 2.0 increased the regular contributions limits for SIMPLE plans. In this section, for smaller employers, the limit is increased to 110%, but this proposed regulation does not currently address those changes.

II. More Time is Needed for Corrections

The proposed regulations list April 15th as the deadline to complete corrective steps for a Section 414(v)(7) failure. This would give plan sponsors, third-party administrators, trustees and custodians, CPAs, and taxpayers only two-and-a-half months to make any corrections. This is not sufficient time to be able to review all accounts to determine all corrections necessary. We request an extended deadline to October 15th, which would align with the standard extension deadline. Additionally, under the proposed regulations, the deadline to use the in-plan Roth conversion correction depends on the type of limit that was violated, resulting in constant correction timing. We recommend applying one deadline regardless of the reason for the failure to ease reporting burdens. The deadline should be the end of the year following the calendar year of the failure.

III. Provide Clarity on New 10% Nonelective Employer Contribution

The proposed regulations create a new 10% nonelective employer contribution, which can be a maximum of $5,000 per person. Please clarify how this limit intersects with other limitations in the law. Our interpretation is that the employer is able to offer the new 10% nonelective contribution in addition to any other contributions made by an employer. For example, if a larger SIMPLE makes the increased 3% non-elective contribution because they allow the higher deferral limit ($17,600), they are still able to contribute an additional 10% employer contribution. We appreciate confirmation of our interpretation or clarity on any limitations the IRS has in mind for this contribution.

IV. Provide Guidance on 1099R Reporting for Roth SIMPLE

We request guidance on 1099R Reporting for Roth SIMPLEs. SIMPLE IRAs have a 2-year rule, where a participant that does not meet the 2-year rule and does not have an exception to the premature penalty, uses the “S” code. The S code tells IRS the 25% SIMPLE penalty may apply. Roth IRAs use a “J” code used when the participant meets the five-year waiting period, but the distribution is not qualified because the participant is not yet age 59½, has not died, or is not disabled. Because the SIMPLE 2-year rule is tracked just for the first SIMPLE Contribution, and the ROTH 5-year rule is tracked for any ROTH IRA contribution, there will be participants in a Roth SIMPLE who meet the Roth 5-year rule, but have not had any SIMPLE IRA contributions for more than 2 years. In these situations, it is unclear how to code them.

For example, if the first SIMPLE Contribution is made in January 2026, with the 2-year date being January 2028. Suppose a Roth IRA contribution was made in January 2010, with the 5-year date being met January 2015. Roth SIMPLE contributions are then made in February 2026, and the participant met the 5-year Roth rule January 2015 in their Roth IRA. The participant takes a Roth SIMPLE distribution in July 2026. In this case, they have not met the 2-year SIMPLE rule, but have met 5-year Roth IRA rule.

In this situation, it is unclear if custodians would need a JS code to say this premature ROTH distribution is not only taxable (if earnings distributed), but subject to 25% penalty – not just 10%. Using the S code alone for this particular situation does not seem to provide enough information that this is a Roth account with basis not taxable and only earnings taxable and subject to 25%. Using a J code alone ignores the SIMPLE 2-year rule impact. Lastly, the current instructions appear to state that we cannot combine J & S.

This is one example of a scenario where additional clarity, or the ability to combine J&S would be needed.

V. Conclusion

We look forward to working together with the IRS as they consider our comments regarding the notice. Please do not hesitate to contact me at lbleier@sifma.org or (202) 962-7329 if you have any questions.

Respectfully Submitted,

Lisa J. Bleier