



**North Carolina**  
Total Retirement Plans



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9/20/2023

**VIA REGULATIONS.GOV**

Docket ID No.: IRS-2023-0039

Office of Associate Chief Counsel  
Employee Benefits, Exempt Organizations, and Employment Taxes  
Internal Revenue Service

Re: Request for comments on *Guidance on Section 603 of the SECURE 2.0 Act with Respect to Catch-Up Contributions* (Notice 2023-52)

Dear Sir/Madam,

Section 603 of the SECURE 2.0 Act of 2022 ("Section 603") requires that employees' catch-up contributions to a defined contribution plan under Section 414(v) of the Internal Revenue Code ("Code") be made on a Roth basis by employees who earned more than \$145,000 (as adjusted) in the prior calendar year from the employer sponsoring the plan. In Notice 2023-62 (the "Notice"), issued on August 25, 2023, the Department of the Treasury (the "Treasury Department") and the Internal Revenue Service (the "IRS") provided guidance and an administrative transition period for Section 603. The Notice also requested comments on several items, including Section 603 guidance that is under consideration by the Treasury Department and the IRS.

The North Carolina Department of State Treasurer (the "Department") appreciates the responsiveness of the Treasury Department and the IRS to the concerns of plan sponsors and administrators regarding Section 603 and offers the comments below on the guidance in Section V.3 of the Notice regarding the application of Section 603 to multiple employer and multi-employer plans.

**The NC 401(k) and NC 457 Plans**

The State of North Carolina sponsors two defined contribution plans for state and local governmental employees – a qualified Code Section 401(k) plan (the "NC 401(k) Plan") and an eligible Code Section 457(b) plan (the "NC 457 Plan," and with the NC 401(k) Plan, the "Plans"). The Plans, which are jointly administered by the Department and the North Carolina Supplemental Retirement Board of Trustees, offer low-cost options for the state's public employees to supplement their defined benefit plan and Social Security benefits.

The Plans are large, multiple employer plans serving more than 300,000 current and former public employees and more than 1,000 eligible state agencies, community colleges, school districts, cities, counties, and other state and local governmental entities across the State of North Carolina.

**Guidance under consideration**

The Notice describes, and requests comments on, expected guidance from the Treasury



Department and the IRS on Section 603, including guidance on plans serving more than one employer, such as the NC 401(k) and NC 457 Plans. According to the expected guidance in Section V.3 of the Notice, Section 603 would apply separately and individually for each participating employer in a multiple employer or multi-employer plan. Specifically, the determination of an employee's prior year wages would not require the aggregation of wages across more than one participating employer, and an employee could make pre-tax catch-up contributions from wages received from a participating employer, even if the employee's wages from another participating employer exceeded \$145,000 (as adjusted) in the prior year.

#### Comments

The Department strongly supports this reasonable, pragmatic approach to applying Section 603 in a manner that promotes cost efficiency and retirement savings for the many multiple employer and multi-employer plans throughout the country.

Absent the guidance in Section V.3 of the Notice, Section 603 could lead to a significant increase in the cost of operating the NC 401(k) and NC 457 Plans – costs that would be borne by the current and former public employees who rely on the Plans to prepare for a secure retirement.

The Department would be required to collect and aggregate employees' wages from over 1,000 state and local governmental units throughout North Carolina. No entity, including the Department, currently collects and aggregates this information. Therefore, the Department would need to implement a new, statewide data collection and aggregation system and a new compliance process in order to comply with Section 603. The scope of such undertaking would extend far beyond the participants who currently contribute to the Plans. Any of the hundreds of thousands of eligible, but non-contributing, public employees in the state could elect to begin contributions in any given year, thereby making it necessary to have these employees' prior year wages already collected and aggregated. Furthermore, the number of eligible employees would increase as more employers elected to participate in the Plans.

The new information systems and operational processes would need to accommodate, and be implemented by, over 1,000 state and local governmental employers of all sizes across the state, with different payroll systems and different levels of internal resources. This would be a significant additional compliance burden for many governmental units, especially some of the state's small local governments. And, as noted above, the number of governmental units covered by the new compliance framework would increase as new employers chose to participate in the Plans.

In effect, absent the guidance described in Section V. 3 of the Notice, the Department would need to create information systems and processes capable of covering every employee at every state or local governmental unit throughout the State of North Carolina.

The Department likely would need to retain the Plans' recordkeeper to develop and operate the systems and processes needed to collect, aggregate, and monitor wages according to Section 603. This compliance obligation likely would raise the costs of the Plans' recordkeeping services, which are paid (in the form of a fixed fee) entirely by the current and former public employees who participate in the Plans. A higher recordkeeping fee may discourage some current participants from continuing in the Plans and may discourage some eligible non-participants from joining in the first place.





Alternatively, depending on how high the compliance costs run, the Department and the Board may need to consider eliminating catch-up contributions altogether instead of requiring participants to absorb the costs.

North Carolina's state and local governmental employees have access to Social Security and well-funded defined benefit plans; nonetheless, our employees' retirement readiness increases significantly when they add the Plans to their pension and Social Security benefits. Seventy-seven percent of employees who participate in the Plans, versus 52% of non-participants, are on track to replace at least 80% of their pre-retirement income when they retire. Therefore, anything that discourages participation in the Plans, or raises the cost of participation, directly affects our employees' opportunity to save for a secure retirement.

Finally, it is worth noting that the Roth restriction in Section 603 is likely to apply only to a very small number of governmental employees, yet the costs described above would be borne by all of the more than 300,000 participants in the Plans. In effect, the lowest paid governmental employees would be required to subsidize the cost of catch-up contributions for the highest paid employees.

Requested guidance

For the reasons discussed above, the Department respectfully requests that the Treasury Department and IRS adopt the guidance in Section V.3 of the Notice, which applies Section 603 separately and individually for each participating employer in a multiple employer or multi-employer plan. Specifically, the guidance should provide the following:

1. For purposes of determining whether an employee's prior year wages exceeded \$145,000 (as adjusted) under Code Section 414(v)(7)(a), a plan would not be required to aggregate the wages from one participating employer with the wages from another participating employer; and
2. An employee could make pre-tax catch-up contributions under Code Section 414(v)(1) from compensation received from a participating employer, even if the employee's wages from another participating employer exceeded \$145,000 (as adjusted) in the prior year.

Please contact me at [Thomas.Causey@nctreasurer.com](mailto:Thomas.Causey@nctreasurer.com) with any questions regarding these comments.

Sincerely,

Thomas Causey  
Executive Director  
Retirement Systems Division