Seyfarth

Ready or Not: Preparing for the Final Roth and Super Catch-Up Rules

Wednesday, October 22, 2025

Seyfarth Shaw LLP

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Speakers

Lisa Loesel
Partner
Chicago

Diane Dygert
Partner
Chicago

Irine Sorser
Partner
Chicago

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Agenda

1 | “Super” Catch-Up Contribution Limit

2 | Mandatory Roth Catch-Up Requirement and Vocabulary

3 | Putting it All Together and Real-World Examples

4 | Corrections

5 | Employer Sponsoring the Plan

“Super” Catch-Up Contribution Limit

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“Super” Catch-Up Contribution Limit

- SECURE 2.0 created a new catch-up contribution limit for 401(k), 403(b) and governmental 457(b) plans:
  - Applies to employees ages 60-63 as of end of calendar year
  - Limit is greater of (i) $10,000 or (ii) 150% of the regular catch-up limit, indexed for inflation
    - For 2025, the “super” catch up limit is $11,250
- Effective for calendar years beginning with 2025 (regardless of plan year)
- This provision is **optional**

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Universal Availability

- The **“universal availability requirement”** generally provides that a plan that offers catch-up contributions must offer them to all catch-up eligible participants in the same dollar amount
  - Final Regulations provide an exception to this rule for these “super” catch-up contributions
- Final Regulations also provide that “super” catch-up contributions must be adopted on a controlled group or affiliated service group basis
  - **Exception:** Collectively bargained participants are permitted to make catch-up contributions at a different level than other participants

InSeyt:

Confirm that super catch-up contributions have been adopted on controlled group/ASG basis.

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Plan Amendment

- A plan amendment may be required by December 31, 2026
  - The IRS stated that it "expects 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…"
  - As a result, a general reference to Code Section 414(v) is not sufficient to adopt the increased limit.

InSeyt:

Review plan document(s) to confirm whether a plan amendment for super catch-ups is required.

Even if the plan is <u>not</u> adopting super catch-ups, a plan amendment may be necessary if the plan incorporates Code Section 414(v) by reference.

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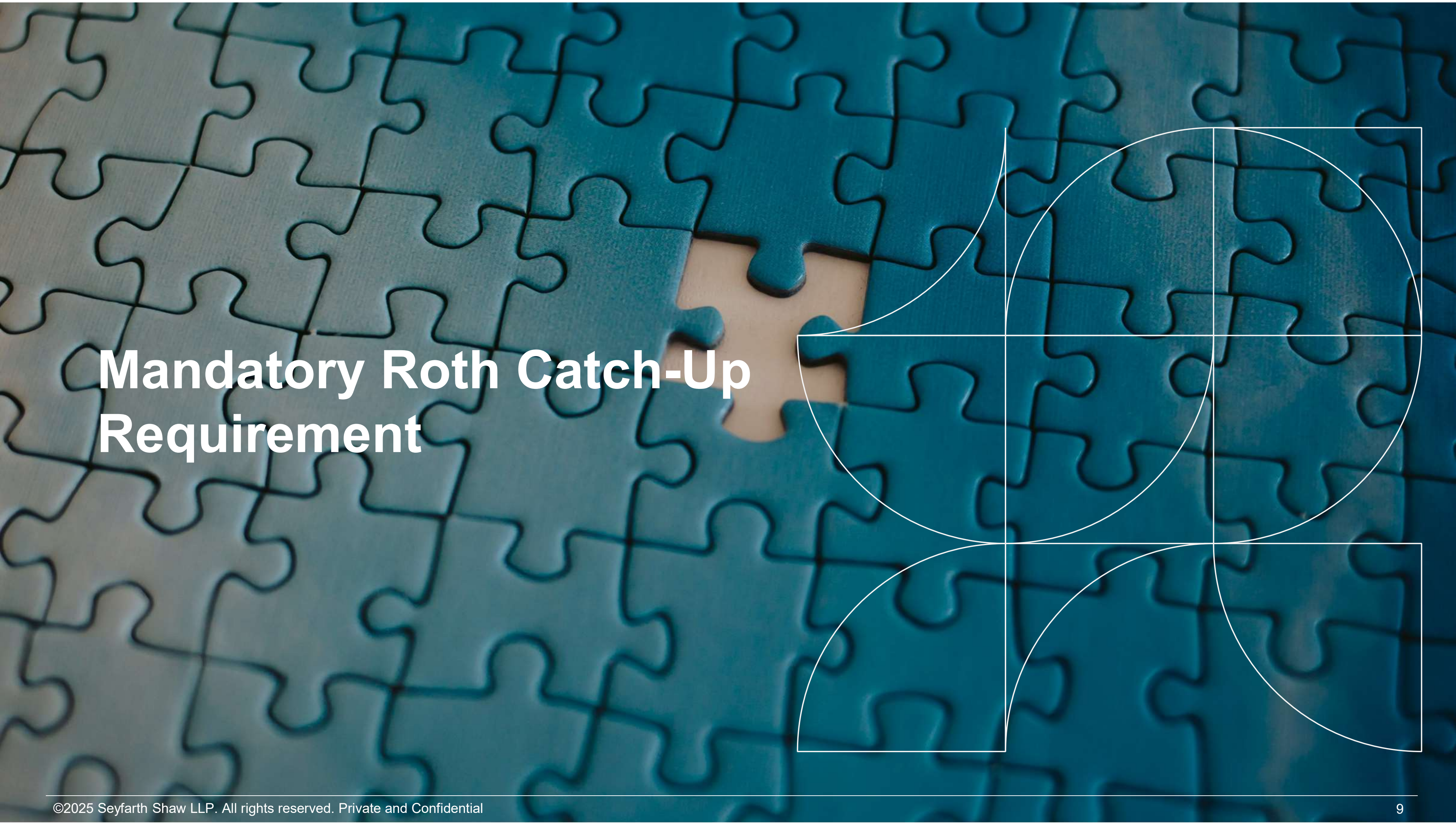

Mandatory Roth Catch-Up Requirement

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Roth Catch-Up Requirement

- 401(k), 403(b) and governmental 457(b) plan participants who earn more than **$145,000 in FICA wages** in the prior calendar year must make catch-up contributions on a Roth basis
- Must be operational on January 1, 2026, but can rely on a good faith interpretation of the Proposed Regulations for 2026
- Compliance with the Final Regulations is required starting in 2027
- Special effective date for collectively bargained plans
- This provision is **mandatory**, but there is no “one-size-fits-all” approach for implementation

InSeyt:

Plans that do not offer catch-up contributions need not worry about this provision.

Plans that offer catch-ups but not Roth will need to either add Roth or eliminate catch-ups for impacted participants.

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Vocabulary Lesson

- "High Earners"
  - Plan participants who earn more than $145,000 in FICA wages (as adjusted) in the prior calendar year
- "Regular Deferrals" vs. "Catch-Up Deferrals"
  - Regular Deferrals: Deferrals prior to reaching the 402(g) limit
  - Catch-Up Deferrals: Deferrals intended to be made in excess of the 402(g) limit
- "Spillover Election" vs. "Separate Election"
  - Spillover Election: Participant makes one deferral election applicable to both Regular and Catch-Up Deferrals
  - Separate Election: Catch-up eligible participants make two separate elections for Regular and Catch-Up Deferrals, which typically run concurrently
- "Spillover Trigger"
  - This is the point at which Regular Deferrals hit the 402(g) maximum and would convert to Catch-Up Deferrals for those eligible participants

Even More Vocabulary

- "Deemed Roth Approach"
  - Participant's pre-tax Regular Deferral election is deemed to be an election to make Catch-Up Deferrals as Roth
  - Final Regulations clarify that the Deemed Roth Approach may be used by plans that use either the Spillover Approach or the Separate Election Approach
- "Zero-Out Approach"
  - Participant's pre-tax contribution election above 402(g) limit is zeroed-out
  - Permitted under the Final Regulations and theoretically could be used with either the Spillover or Separate Election Approach
  - Plans that use the Zero-Out Approach would not have access to the IRS correction relief set forth in the Final Regulations

InSeyt:

Special correction relief is available to plans that use Deemed Roth Approach.

Not specifically available to plans that use Zero-Out Approach.

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Still More Vocabulary

- Final Regulations introduce concept of “effective opportunity”
  - The application of the Deemed Roth Approach is conditioned upon the participant having an “effective opportunity” to make a new election that is different than the deemed election
- What is “effective opportunity”?
  - A participant must be given a real and timely chance to choose something other than “deemed” Roth catch-up contributions, such as:
    - Choosing not to make catch-up contributions at all, or
    - Opting for pre-tax catch-up contributions
  - “Effective opportunity” determination is a facts and circumstances test

InSeyt:

The effective opportunity concept would not apply to the Zero-Out Approach.

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Puerto Rico Plans

- Participants in a “Puerto-Rico Only Plan” are fully exempt from the Roth Catch-Up Requirement
- Puerto Rico participants in a “Dual-Qualified Plan” are not currently subject to the Roth Catch-Up Requirement because the Puerto Rico tax code does not currently allow for Roth 401(k) contributions.
  - However, if the Puerto Rico tax code is later amended to allow for Roth 401(k) contributions, the Roth Catch-Up Requirement will apply on a “go forward” basis with respect to Puerto Rico participants in a Dual-Qualified Plan

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Putting it All Together and Real-World Examples

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Spillover Trigger Decisions

- Final Regulations allow Spillover plans to trigger the Deemed Roth election by counting toward the 402(g) limit either:
  - Only the pre-tax deferrals; or
  - Both the pre-tax deferrals and Roth contributions

InSeyt:

Final Regulations are silent on whether this choice can apply to Zero-Out plans. Such plans will need to determine when the pre-tax election is zeroed-out for purposes of transitioning to the catch-up. Arguably, both approaches listed above would work for Zero-Out plans as well.

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Where Does Your Plan Fit?

	Deemed Roth Approach	Zero-Out Approach
Spillover Approach	Examples 1-3	Examples 4-5
Separate Election Approach	Examples 6-7	Examples 8-10

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Scenario 1: Deemed Roth Approach and Spillover Election

Example 1: Martin makes a pre-tax Regular Deferral election of 15% of eligible pay

– Martin is deemed to have elected to make Roth catch-up contributions of 15% when his pre-tax Regular Deferrals hit the 402(g) limit

Only pre-tax was elected and maximum pre-tax was contributed

InSeyt:

No need to provide an effective opportunity to elect pre-tax here, as pre-tax contributions hit the legal maximum before catch-ups went into effect. But must still provide an effective opportunity to stop making Roth catch-up contributions.

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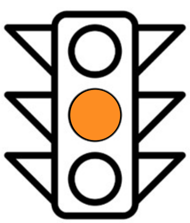
Scenario 1: Deemed Roth Approach and Spillover Election

Example 2: Daphne makes a pre-tax Regular Deferral election of 10% of eligible pay and a Roth Regular Deferral election of 2% of eligible pay

- Daphne is deemed to have elected to make Roth catch-up contributions of 12% when:
  - Her pre-tax deferrals hit the 402(g) limit
    - Under this approach,
      - Daphne will <u>not</u> have an opportunity to change her catch-up election back to pre-tax
      - Daphne will have an opportunity to stop making catch-up contributions completely



Payroll system must be able to track the 402(g) limit against pre-tax deferrals only (as well as the 402(g) limit against combined pre-tax and Roth deferrals)

InSeyt:

The effective opportunity concept in this example is limited to the chance to turn off catch-up contributions, which most administrative platforms already provide.

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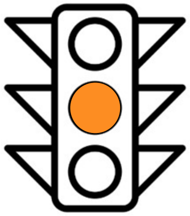
Scenario 1: Deemed Roth Approach and Spillover Election

Example 3: Same facts as Example 2, but trigger for deemed 12% Roth election occurs when Daphne's *combined* pre-tax and Roth Regular Deferrals hit the 402(g) limit

– Under this approach, Daphne must be offered an effective opportunity to

- Change her catch-up election back to pre-tax, factoring in the regular Roth deferrals she had previously made, or
- Stop making catch-up contributions completely



Consider whether the plan can be operated to provide an effective opportunity to re-elect pre-tax

InSeyt:

Effective opportunity concept may cause administrative concerns, as changing mandatory Roth catch-ups to pre-tax catch-ups on a "go forward" basis could implicate programming that blocks pre-tax catch-ups for high earners. Correction may be required if participant exceeds pre-tax limit.

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Where Does Your Plan Fit?

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Scenario 2: Zero-Out Approach and Spillover Election

Example 4: Eddie makes a pre-tax Regular Deferral election of 15% of eligible pay

– Once Eddie hits the 402(g) limit, his Catch-Up Deferral election is zeroed out. Eddie will need to make a new election for his catch-up deferrals, and will only be permitted to make a Roth catch-up deferral

Only pre-tax was elected and maximum pre-tax was contributed

InSeyt:

No administrative issues here as pre-tax contributions hit the legal maximum before catch-ups went into effect.

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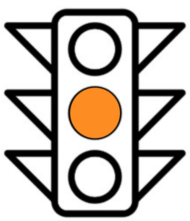
Scenario 2: Zero-Out Approach and Spillover Election

Example 5: Kenny makes a pre-tax Regular Deferral election of 10% of eligible pay and a Roth Regular Deferral election of 2% of eligible pay

– Once Kenny hits the 402(g) limit (whether through pre-tax deferrals only or combined pre-tax and Roth), the participant’s pre-tax Deferral election would be cancelled and only the participant’s Roth Deferral election of 2% of eligible pay would continue



May constrain participants from deferring the maximum amount intended to the plan

InSeyt:

No administrative issue as the effective opportunity concept would not apply to the Zero-Out Approach. However, if the plan zeroes-out an election based on combined pre-tax and Roth deferral reaching the 402(g) limit, it is artificially constraining a participant from making the maximum amount of pre-tax deferrals.

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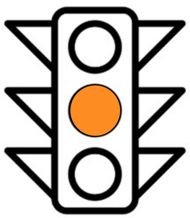
Scenario 3: Deemed Roth Approach and Separate Election

Example 6: Lana makes a 10% pre-tax election for both Regular and Catch-Up Deferrals

– The plan treats Lana's 10% pre-tax catch-up election as a Roth catch-up election even before Lana hits the 402(g) limit
  - Plan must give Lana an effective opportunity to switch her deemed Roth catch-up election back to pre-tax or turn off her catch-up election
  - If Lana's Regular Deferrals do not ultimately exceed the 402(g) limit, the plan is not required to later "recharacterize" any catch-up contributions initially deemed to be made as Roth contributions as pre-tax contributions



Applying the effective opportunity concept to a Separate Election plan can make this Scenario practically difficult to implement.

InSeyt:
The effective opportunity requirement can lead to an error if the participant switches their catch-up election back to pre-tax and their total pre-tax contributions exceed the 402(g) limit. But, potential concern around administrative difficulties are somewhat mitigated by the liberal correction relief available to deemed plans.

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Scenario 3: Deemed Roth Approach and Separate Election

Example 7: Niles makes a 10% Roth Regular Deferral election and a 2% pre-tax Catch-Up Deferral election

– The plan treats Niles' 2% pre-tax catch-up as a Roth catch-up election even before Niles hits the 402(g) limit
  - The plan must give Niles an effective opportunity to switch his deemed Roth catch-up election back to pre-tax
  - If the participant's regular contributions do not ultimately exceed the 402(g) limit, the plan is <u>not</u> required to later "recharacterize" any catch-up contributions initially deemed to be made as Roth contributions as pre-tax contributions

Consider whether the separate election approach can be operated to provide an effective opportunity to re-elect pre-tax

InSeyt:

The effective opportunity requirement can lead to an error if the participant switches their catch-up election back to pre-tax and their total pre-tax contributions exceed the 402(g) limit total. Potential concerns are somewhat mitigated by the liberal correction relief.

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Where Does Your Plan Fit?

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Scenario 4: Concurrent Separate Election and Zero-Out

Example 8: Gil makes a 10% pre-tax election for both Regular and Catch-Up Deferrals

– The plan will “zero-out” Gil’s pre-tax Catch-Up Deferral Election even before he hits the 402(g) limit on his regular contributions

Only catch-up election is impacted, and only if was pre-tax. Regular deferrals would not be constrained

InSeyt:

The plan would not need to provide an effective opportunity to make a different election, because that is only required under the Deemed Approach.

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Scenario 4: Consecutive Separate Election and Zero-Out

- Some Separate Elections do not run concurrently
  - In these cases, the separate catch-up election (if any) does not begin until after the 402(g) limit is reached
- **Example 9**: Frasier makes a 10% pre-tax Regular Deferral election and a 5% pre-tax Catch-Up Deferral election Once Frasier hits the 402(g) limit for his regular contributions, his 5% pre-tax catch-up contribution election would be zeroed out; the participant would then be able to elect Roth catch-up

The maximum pre-tax contributions have been made.

- **Example 10**: Same facts except the Regular Deferral election was for Roth.
  - Once Frasier hits the 402(g) limit for Regular Deferrals, his 5% pre-tax catch-up election would be zeroed-out

May constrain participants from deferring the maximum amount intended to the plan

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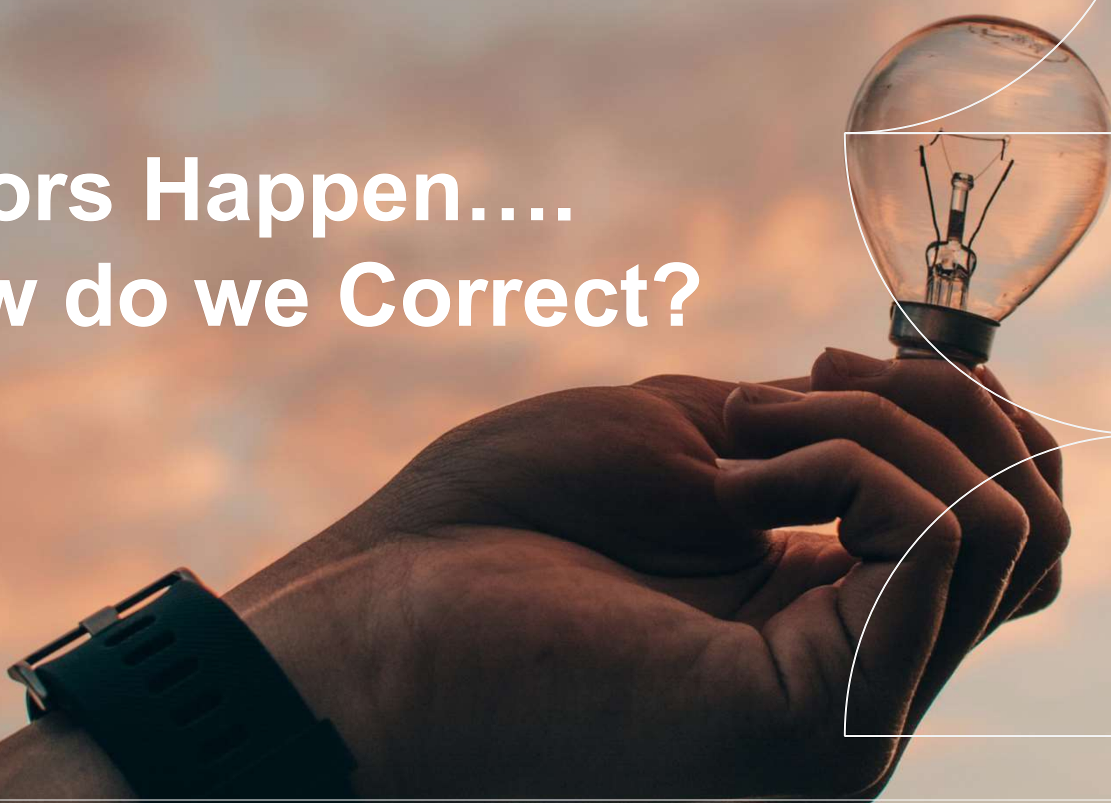
Errors Happen….
How do we Correct?



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For Plans with the Deemed Approach

- Correction relief is more liberal for plans that adopt the Deemed Approach
  - Form W-2 Correction Method
    - Transfer erroneous pre-tax amount (plus earnings) to participant's Roth account
    - Report the erroneous pre-tax amount as Roth (excluding earnings) on the participant's Form W-2 for the year of the contribution
      - Only available before Form W-2 deadline
  - In-Plan Roth Rollover Method
    - Transfer erroneous pre-tax amount (plus earnings) to participant's Roth account
    - Report the erroneous pre-tax amount as Roth (including earnings) on a Form 1099-R for the year of the correction
  - Both corrections result in taxable income to the participant without corresponding withholding
  - Selected correction method must be applied consistently to similarly situated participants

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For Plans without the Deemed Approach

- Correction relief is limited to following options:
  - Corrective distribution of the erroneous pre-tax deferrals to the participant, which is reportable as a taxable distribution on a Form 1099-R for the year of the distribution
    - Also results in the loss of a catch-up contribution opportunity for the participant
  - Correction options otherwise set forth in EPCRS, which are quite limited
    - For participants that do <u>not</u> hit the 402(g) limit, recharacterization of pre-tax catch-ups as regular pre-tax contributions may be possible

Correction Exceptions

- Not all errors require correction
  - If the erroneous pre-tax catch-up deferral does not exceed $250 (excluding earnings and losses), no correction needed!
  - If the participant's FICA wages for the preceding calendar year were not determined to exceed $145,000 until a later date, correction is not required
  - If the participant takes a distribution of their full account prior to correction, no correction needed but the plan will need to notify the participant that the erroneous pre-tax catch-up deferral is ineligible for rollover

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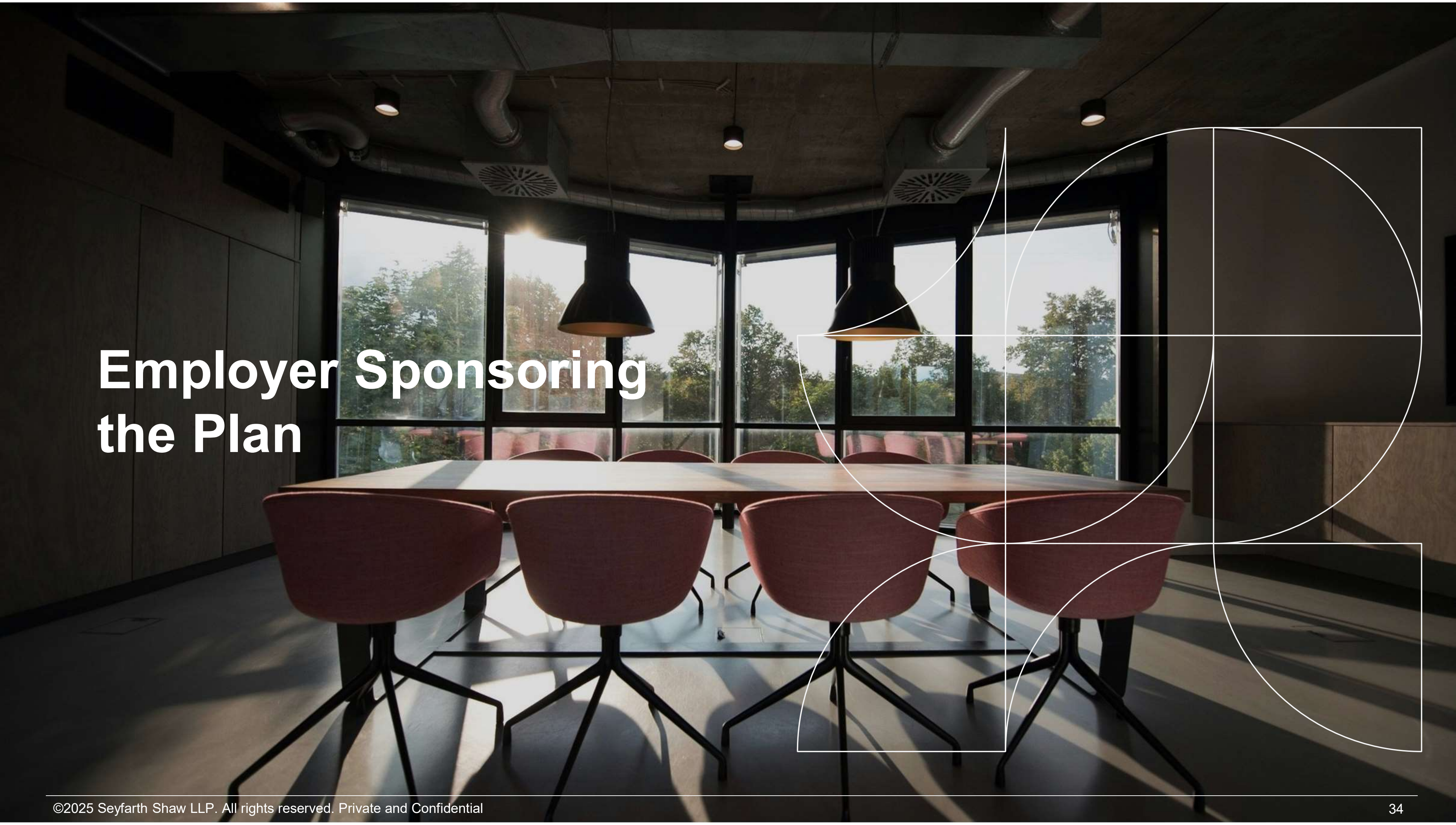

Employer Sponsoring the Plan

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Determination of the $145K Wage Limit

- Under the proposed regulations, the term "employer" referred solely to the participant's common law employer that participates in the plan
  - Wages were not aggregated across related employers
- Under the Final Regulations, the term "employer" can include the employee's common law employer and related employers within the same controlled group
  - Wages <u>can</u> be aggregated across related employers
- Final Regulations also provide that wages can be aggregated for employers using a common paymaster

InSeyt:

The plan document must specify how wages are aggregated for purposes of this limit.

Consider whether wages should be aggregated by payroll system, plan, or on some other basis, keeping in mind the complexity of administering the mandatory Roth Catch-Up Requirement in the case of employee transfers.

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For more information, please contact us:

Lisa Loesel
email: lloesel@seyfarth.com
phone: (312) 460-5725

Diane Dygert
email: ddygert@seyfarth.com
phone: (312) 460-5941

Irine Sorser
email: isorser@seyfarth.com
phone: (312) 460-5629

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