

**MEMO# 35608**

February 1, 2024

# IRS Updates Plan Amendment Guidance for Pre-approved Plans and Individually Designed Plans

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TO: ICI Members

Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: IRS Updates Plan Amendment Guidance for Pre-approved Plans and Individually Designed Plans

The IRS recently released updated guidance for amending retirement plan documents to reflect law changes, including various changes made by the SECURE 2.0 Act.[\[1\]](#) For pre-approved plans, the IRS updated the Listings of Required Modifications (LRMs) and the Cumulative List of Changes in Plan Qualification Requirements for DC Qualified Pre-approved Plans ("Cumulative List"). For individually designed plans, the IRS updated the Required Amendments (RA) List.

## Updated LRMs for Pre-approved DC Plans and 401(k)s

The IRS posted on its website revised LRMs for pre-approved defined contribution (DC) plans and cash or deferred arrangements (i.e., 401(k) plans).[\[2\]](#) The LRMs provide sample plan language for pre-approved retirement plans to satisfy requirements in the Internal Revenue Code ("Code"). Although plans are not required to use the sample plan provisions, the LRMs can assist pre-approved plan sponsors in drafting their plan documents to comply with applicable laws and regulations.

The LRMs for DC plans are intended to satisfy certain specific requirements of the Code, taking into account changes in the plan qualification requirements, regulations, revenue rulings, and other guidance in the 2023 Cumulative List of Changes in Plan Qualification Requirements (2023 Cumulative List), as provided in Notice 2024-03 (described below). This includes changes enacted by the Coronavirus Aid, Relief, and Economic Security (CARES) Act,[\[3\]](#) the Setting Every Community Up For Retirement Enhancement (SECURE) Act of 2019,[\[4\]](#) and the SECURE 2.0 Act of 2022.[\[5\]](#)

The LRMs for 401(k) plans are intended to satisfy certain specific requirements of the Code, as amended through the SECURE 2.0 Act and as reflected in the 2023 Cumulative List. The LRMs, however, do not reflect all changes enacted under the SECURE 2.0 Act, to the extent

those changes are not on the current Cumulative List.

## **2023 Cumulative List for Pre-approved DC Plans**

Notice 2024-03 sets forth the 2023 Cumulative List.<sup>[6]</sup> The 2023 Cumulative List is for use by providers of pre-approved plans applying for IRS opinion letters during the fourth remedial amendment cycle (Cycle 4) under the IRS's pre-approved plan program.<sup>[7]</sup> The 2023 Cumulative List identifies recent changes in the qualification requirements under the Code that were not taken into account during the first three remedial amendment cycles for pre-approved DC plans and that will be taken into account by the IRS with respect to the form of a plan submitted to the IRS for Cycle 4. The Cycle 4 submission period begins on February 1, 2024, and ends on January 31, 2025.<sup>[8]</sup>

Section V of the Notice sets forth the items on the 2023 Cumulative List, which include several changes to plan qualification requirements made by the SECURE 2.0 Act. The IRS will review a pre-approved plan document that is submitted for Cycle 4 only for those changes in qualification requirements made by the SECURE 2.0 Act that are listed in section V. Plan documents submitted for review should not include terms reflecting other SECURE 2.0 Act provisions not listed in section V.

The 2023 Cumulative List includes changes related to:

- Required minimum distributions;
- Involuntary distributions (increase in dollar limit to \$7,000);
- Certain in-service distributions;
- Certain early distributions, including qualified birth or adoption distributions, emergency personal expense distributions, and distributions to victims of domestic abuse;
- Use of forfeitures;
- Witnessing of spousal consent;
- Retroactive first year elective deferrals for sole proprietors;
- Hardship distributions;
- Amended definitions of qualified nonelective contributions (QNECs) and qualified matching contributions (QMACs);
- Requirements for safe harbor automatic enrollment arrangements and other safe harbor plans;
- Eligibility of long-term part-time employees;
- SIMPLE 401(k) plans;
- Recontribution of amounts subject to wrongful levy;
- Election to designate nonforfeitable employer contributions as Roth contributions;
- Certain governmental plan distributions to retired public safety officers;
- Partial plan terminations;
- Exception to the unified plan rule for certain multiple employer plans;
- Domestic relations orders;
- Increased catch-up contribution limits for individuals aged 60 - 63;
- Difficulty of care payments treated as compensation for determining contribution limits;
- Rules for determining top-heavy status; and
- Special disaster-related distributions.

## **2023 Required Amendments List for Individually Designed Plans**

Notice 2023-79 provides the 2023 Required Amendments List (RA List) for individually designed plans qualified under Code section 401(a) and individually designed Code section

403(b) plans.<sup>[9]</sup> An RA List will include only those items for which an amendment must be adopted by the end of the second calendar year following the year in which the RA List is published—which, in this case, would be December 31, 2025. Like the 2022 RA List,<sup>[10]</sup> the 2023 RA List contains no items.<sup>[11]</sup>

An RA List for a given year will include statutory and administrative changes in requirements that are first effective during the plan year in which the list is published, but will not include guidance issued or legislative changes enacted after the list is prepared. It also will not include legislative changes for which Treasury and/or IRS expect to issue future guidance (to be included on a future year RA List), changes in requirements that permit (but do not require) new optional plan provisions, or changes in tax laws that do not affect the rules under Code sections 401(a) or 403(b) (such as changes to the tax treatment of plan distributions or changes to funding requirements).<sup>[12]</sup>

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#### Notes

<sup>[1]</sup> For a summary of the SECURE 2.0 Act, see ICI Memorandum No. 34795 (Jan. 12, 2023), available at <https://www.ici.org/memo34795>.

<sup>[2]</sup> All LRMs are available here: <https://www.irs.gov/retirement-plans/listing-of-required-modifications-lrms>. The page includes redlined versions of the DC and 401(k) plan LRMs showing changes from the October 2017 versions. See ICI Memorandum No. 30953, dated November 17, 2017, available at <https://www.ici.org/memo30953>.

<sup>[3]</sup> For a summary of the CARES Act, see ICI Memorandum No. 32328, dated March 27, 2020, available at <https://www.ici.org/memo32328>.

<sup>[4]</sup> For a summary of the SECURE Act, see ICI Memorandum No. 32118, dated December 20, 2019, available at <https://www.ici.org/memo32118>.

<sup>[5]</sup> For a summary of the SECURE 2.0 Act, see ICI Memorandum No. 34795, dated January 12, 2023, available at <https://www.ici.org/memo34795>.

<sup>[6]</sup> Notice 2024-03 is available at <https://www.irs.gov/pub/irs-drop/n-24-03.pdf>.

<sup>[7]</sup> Cycle 4 began on February 1, 2023.

<sup>[8]</sup> See ICI Memorandum No. 35514, dated November 27, 2023, available at <https://www.ici.org/memo35514>.

<sup>[9]</sup> Notice 2023-79 is available at <https://www.irs.gov/pub/irs-drop/n-23-79.pdf>.

<sup>[10]</sup> For the 2022 RA List, see ICI Memorandum No. 34418, dated November 29, 2022,

available at <https://www.ici.org/memo34418>.

[11] As a reminder section 501 of the SECURE 2.0 Act requires adoption of plan amendments on or before the last day of the first plan year beginning on or after January 1, 2025 (2027 in the case of governmental plans), as long as the plan operates in accordance with such amendments as of the effective date of the legislative requirement or amendment. The Act also conforms the plan amendment deadlines under the SECURE Act, the CARES Act, and the Taxpayer Certainty and Disaster Tax Relief Act of 2020 to these new dates. Notice 2024-02 subsequently extended these plan amendment deadlines by an additional year for non-governmental plans (December 31, 2026) and an additional two years for governmental plans (December 31, 2029). For a summary of Notice 2024-02, see ICI Memorandum No. 35590, dated January 22, 2024, available at <https://www.ici.org/memo35590>.

[12] The RA List typically is divided into two parts. Part A covers changes in requirements that generally would require an amendment to most plans or to most plans of the type affected by the change. Part B covers changes in requirements that the Treasury Department and IRS anticipate will not require amendments to most plans, but might require an amendment in a plan with an unusual plan provision (such as a provision relating to a requirement that most other plans incorporate by reference). The Notice specifies that annual, monthly, or other periodic changes to (1) the various dollar limits that are adjusted for cost of living increases as provided in Code section 415(d) or other Code provisions, (2) the spot segment rates used to determine the applicable interest rate under Code section 417(e)(3), and (3) the applicable mortality table under Code section 417(e)(3), are treated as included on the RA List for the year in which such changes are effective even though they are not directly referenced on that RA List. Treasury and IRS anticipate that few plans have language that will need to be amended on account of these changes.