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# Employee Benefits Corner

## Cycle 4 Pre-Approved Defined Benefit Plans—Cumulative List Is Here

By Elizabeth Thomas Dold and David N. Levine

Every six-year cycle, in accordance with Rev. Proc. 2023-37, the Internal Revenue Service (IRS) opens up its opinion letter process to review pre-approved plan documents. This is an important process for document providers to have the IRS sign off on the provisions of their pre-approved documents so that the plan document terms comply with the complex plan qualification provisions under the Internal Revenue Code. To kick off this process, the IRS issued Notice 2026-34, which provides the 2026 cumulative list of changes in plan qualification requirements for defined benefit plans, and officially opens the Cycle 4 filing period to begin August 1, 2026 and end on July 31, 2027.

We anticipate that this guidance will be supplemented with an updated “List of Required Amendments” on the IRS website, which provides sample amendment language that can be used in these plan documents. Notably, individually designed defined benefit plans may also review these lists of required modifications (LRMs) for drafting assistance as well.

A summary of the plan qualification changes that will be reviewed this cycle is summarized below.

1. Required Minimum Distributions (RMD) (Code Sec. 401(a)(9)).
  - Required Beginning Date. The key RMD change for defined benefit plans under the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE) 1.0/2.0 is the change from age 70½ to age 72, 73 and 75 in the definition of required beginning date—*i.e.*, the latest date of when payments must begin to be paid to participants. Therefore, the list includes: (1) the increase in the age with respect to which the required beginning date for RMDs is determined from age 70½ to age 72 for employees born on or after July 1, 1949 but before January 1, 1951, and (2) the increase in the age with respect to which the required beginning date for RMDs is determined from age 72 to age 73, for employees born on or after January 1, 1951. Notably, the change to age 75 under Section 107 of the SECURE 2.0 Act will not be reviewed as part of this cycle.
  - Section 401 of the SECURE Act. This section amended Code Sec. 401(a)(9) to provide new RMD rules for designated beneficiaries, which mostly related to new rules for beneficiaries of defined contribution plans.

- **Final Regulations.** Final 401(a)(9) regulations published on July 19, 2024<sup>1</sup> provide guidance relating to RMDs, which are effective for purposes of determining RMD for calendar years beginning on or after January 1, 2025. The regulations were entirely revamped to eliminate the question and answer (Q&A) format and provide detailed rules and examples of lifetime and post-death RMD requirements.
  - **Notice 2023-54.** The Notice provides relief with respect to certain RMD for 2023, due to the last-minute change to the required beginning date noted above. For example, a payor or plan administrator will not be considered to have failed to satisfy the requirements of Code Secs. 401(a)(31), 402(f), and 3405(c) merely because of a failure to treat certain distributions as eligible rollover distributions. This relief applies with respect to any distribution made from a plan between January 1, 2023 and July 31, 2023 to a participant born in 1951 (or that participant's surviving spouse) that would have been an RMD but for the change in the required beginning date under section 107 of the SECURE 2.0 Act. Moreover, the Notice also explains the lowered excise tax from 50% to 25% (and possibly as low as 10%) for missed RMD payments.
2. **Small Cashouts** (Code Secs. 401(a)(31)(B) and 411(a)(11)). Section 304 of the SECURE 2.0 Act permits (but does not mandate) a plan to increase its involuntary cashout limit from \$5,000 to \$7,000.
  3. **In-Service Distributions** (Code Sec. 401(a)(36)). Section 104 of the Miners Act amended Code Sec. 401(a)(36) to lower the minimum age at which a pension plan may make a distribution to an employee who is not separated from employment at the time of the distribution. For plan years beginning after December 31, 2019, the minimum age is lowered from age 62 to age 59½. Notice 2020-68 provides additional guidance with respect to this optional change.
  4. **Forfeitures** (Code Sec. 401). The IRS issued proposed regulations under Code Sec. 401 on February 27, 2023,<sup>2</sup> which provide rules relating to the use of forfeitures in qualified retirement plans. These regulations are proposed to apply for plan years that begin on or after January 1, 2024, and prior to the final regulations becoming effective, taxpayers may rely on the proposed regulations. Notably, we understand that the final regulations have been held up due to the litigation issues around the use of forfeitures in defined contribution plans, which the regulations also address.
  5. **Witnessing of Spousal Consent** (Code Sec. 401). The IRS issued proposed regulations under Code Sec. 401 on December 30, 2022<sup>3</sup> would provide an alternative to in-person witnessing of spousal consents (either by a notary public or a plan representative). These rules, which sanction certain special rules for the use of an electronic medium for participant elections, also apply to spousal consents. The regulations are proposed to apply beginning on the date that is six months after the publication of final regulations, but, prior to such date taxpayers may rely on the proposed regulations. Notably, the Notice explains that the IRS expects that most plans will not need to be amended to reflect these proposed regulations, as most plans will not include language that contradicts them.
  6. **Nondiscrimination Rules to Protect Older, Longer Service Participants** (Code Secs. 401(a)(26) and 401(o)). The SECURE Act provided important relief for certain closed or frozen defined benefit plans. For example, Section 205 of the SECURE Act added a provision to Code Sec. 401(a)(26) to treat certain closed or frozen defined benefit plans as satisfying the minimum participation requirements therein. This same provision also added Code Sec. 401(o) to the Code to provide special nondiscrimination testing relief for plan sponsors seeking to protect certain participants in a closed defined benefit plan. Moreover, this new Code section also permits nondiscrimination testing relief where a sponsor provides certain “make-whole” contributions to a defined contribution plan.
  7. **Retroactive Plan Amendment** (Code Sec. 401(b)). Section 316 of SECURE 2.0 Act amended Code Sec. 401(b) to provide that if an employer amends a plan to increase accrued benefits effective as of any date during the immediately preceding plan year, the amendment is permitted (and treated as adopted by the last day of the plan year in which it is effective), provided that the amendment (1) would not otherwise cause the plan to fail to meet any of the qualification requirements, and (2) is adopted before the time prescribed by law for filing the return of the employer for the taxable year (including extensions) that includes the effective date of the amendment.
  8. **Wrongful Levy** (Code Sec. 402). Section 41104 of the Bipartisan Budget Act of 2018 added Code Sec. 6343(f) to hold an individual harmless in the case of a wrongful levy upon an eligible retirement plan.

- Specifically, the eligible retirement plan may permit the re-contribution of any property or money returned to the individual as a result of the wrongful levy, and such contribution will be treated as a rollover under Code Sec. 402(c).
9. Final 402(c) Rollover Regulations. Final regulations under Code Sec. 402(c) were published on July 19, 2024, which amended the rules relating to eligible rollover distributions from defined benefit plans. These regulations apply to distributions on or after January 1, 2025.
  10. Governmental Plans—Health Insurance Premiums (Code Sec. 402(l)). Section 328 of SECURE 2.0 Act amended the Code to permit governmental plans to make direct distributions to certain eligible retired public safety officers of amounts necessary to pay for qualified health insurance premiums. Previously, only direct payments to the insurers were permitted. Now, the favorable tax treatment under Code Sec. 402(l)(1) applies to a distribution without regard to whether payment of the premiums is made directly to the provider of the accident or health plan or qualified long-term care insurance contract by deduction from a distribution from the eligible retirement plan, or is made to the employee. The new 402(f) rollover notice (Notice 2026-13) reflects this change.
  11. Partial Plan Termination COVID Relief (Code Sec. 411). Section 209 of the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Relief Act) provides temporary guidance relating to partial plan terminations. Specifically, a plan is not treated as having a partial termination (within the meaning of Code Sec. 411(d)(3)) during any plan year, which includes the period beginning on March 13, 2020 and ending on March 31, 2021, if the number of active participants covered by the plan on March 31, 2021, is at least 80% of the number of active participants covered by the plan on March 13, 2020. Notably, the IRS expects that most plans will not need to be amended to reflect this change, as most plans will not include language contradicting it.<sup>4</sup>
  12. Cash Balance Plans—Variable Interest Crediting Rate (Code Sec. 411). Section 348 of the SECURE 2.0 Act provides welcome relief for certain cash balance plans with a variable interest crediting rate (like a market rate of return interest crediting rate). Specifically, a cash balance plan that provides for pay credits to participants that increase with a participant's age or service and provides for a variable interest crediting rate no longer risks violating the accrual requirements of Code Sec. 411(b)(1) if the interest crediting rate falls below a certain point. Notice 2024-2 (Section H) provides additional guidance with respect to this relief and the related amendments (and if Code Sec. 411(d)(6) relief is available).
  13. Annuities (Code Secs. 411 and 417). Final regulations under Code Secs. 411 and 417 issued on January 19, 2024<sup>5</sup> provide guidance relating to the minimum present value requirements applicable to certain defined benefit pension plans. These regulations provide guidance on Pension Protection Act of 2006 changes to the prescribed interest rate and mortality table and other related guidance, including rules regarding the treatment of pre-retirement mortality discounts and Social Security level income options.
  14. Controlled Group/Affiliated Service Group—Attribution Rules (Code Sec. 414). Section 315 of SECURE 2.0 Act amended Code Sec. 414 to eliminate automatic attribution of ownership between spouses with separate businesses in community property states, and to modify the attribution rules regarding ownership between parents and minor children, for purposes of applying the rules relating to a controlled group of corporations under Code Sec. 414(b) or an affiliated service group under Code Sec. 414(m).
  15. Parent-Subsidiary Controlled Group (Code Sec. 411). Final regulations were issued on December 30, 2024<sup>6</sup> that extended the partnership and trust attribution rules to the determination of whether a parent-subsidiary controlled group exists under Code Sec. 414(c) (trades or businesses under common control). The change applies to plan years beginning on or after January 1, 2025.
  16. Qualified Domestic Relations Order (Code Sec. 414(p)). Section 339 of the SECURE 2.0 Act amended the definition of “domestic relations order” under the Code to include a domestic relations order issued pursuant to an Indian tribal domestic relations law.
  17. Eligible Rural Electric Cooperative Plan (Code Sec. 415(b)). Section 119 of the SECURE 2.0 Act amended the benefit limitations in Code Sec. 415(b) for certain participants in an eligible rural electric cooperative plan.
  18. Qualified Transfer of Excess Pension Assets (Code Sec. 420). Section 606 of the SECURE 2.0 Act amended Code Sec. 420 to provide that a qualified transfer of excess pension assets of a defined benefit plan may be made to a retiree medical account or life insurance account within the plan until December

31, 2032 (rather than December 31, 2025). There is also a special rule for *de minimis* transfers.

19. Cooperative and Small Employer Charity Pension Plan (Code Secs. 430, 436). Section 3609 of the CARES Act added Code Sec. 414(y)(1)(D), which provides that a cooperative and small employer charity pension plan (CSEC plan) is defined to include a defined benefit plan that, as of January 1, 2000, was maintained by a tax-exempt employer that met specific characteristics. However, a CSEC plan is not permitted to include the benefit restrictions of Code Sec. 436.

*Plan document providers have a little over a year to get their pre-approved defined benefit plans updated for these changes and submitted to the IRS. Stay tuned for “LRM” sample language to help with the drafting.*

20. Disaster-Related Rules. A number of disaster-related rules apply to defined benefit plans:

- Section 202 of the Taxpayer Certainty and Disaster Tax Relief Act of 2019, enacted as Division Q of the Further Consolidated Appropriations Act (FCAA), provides special disaster-related rules for the use of retirement

funds. This section provides that a plan may offer participants affected by major disasters declared during the period beginning on January 1, 2018 and ending February 18 2020 (a) new distribution options for “qualified disaster distributions,” which are provided special tax treatment and recontribution options, and (b) plan loans of up to \$100,000, subject to special repayment rules. To take advantage of the options provided under this legislation, the distributions must be made within the period beginning on the first day of an incident period for a qualified disaster and ending June 16, 2020, and the loans must be made within the period beginning December 20, 2019 and ending June 16, 2020.

- Section 2202 of the CARES Act, as modified by section 280 of Division N of the Consolidated Appropriations Act (CAA) 2021, provides special rules for coronavirus-related distributions and plan loans made to qualified individuals.<sup>7</sup>
- Section 302 of the Relief Act provides special disaster-related rules for the use of retirement funds.<sup>8</sup>
- Section 331 of the SECURE 2.0 Act provides permanent special rules governing plan distributions, recontributions, and loans to participants affected by qualified federally declared major disasters.<sup>9</sup>

## Next Steps

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## ENDNOTES

<sup>1</sup> 89 FR 58886.

<sup>2</sup> 88 FR 12282.

<sup>3</sup> 87 FR 80501.

<sup>4</sup> See [www.irs.gov/newsroom/coronavirus-related-relief-for-retirement-plans-and-iras-questions-and-answers](http://www.irs.gov/newsroom/coronavirus-related-relief-for-retirement-plans-and-iras-questions-and-answers).

<sup>5</sup> 89 FR 3552.

<sup>6</sup> 89 FR 106848.

<sup>7</sup> See Notice 2020-50 for guidance relating to the application of these rules.

<sup>8</sup> See Notice 2022-45 and Notice 2024-2 for more information.

<sup>9</sup> For more information. See [www.irs.gov/newsroom/disaster-relief-frequent-asked-questions-retirement-plans-and-iras-under-the-secure-20-act-of-2022](http://www.irs.gov/newsroom/disaster-relief-frequent-asked-questions-retirement-plans-and-iras-under-the-secure-20-act-of-2022).