

IRS Issues 2023 Cumulative List for Defined Contribution Qualified Pre-Approved Plans

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IRS Notice 2024-3 (Dec. 20, 2023)

Available at <https://www.irs.gov/pub/irs-drop/n-24-03.pdf>

The IRS has issued Notice 2024-3, setting forth the 2023 Cumulative List of changes in plan qualification requirements for defined contribution pre-approved plans—i.e., the list of statutory, regulatory, and guidance changes that the IRS has identified for review when issuing opinion letters regarding defined contribution pre-approved plan documents. The 2023 Cumulative List is to be used for opinion letter applications submitted by providers of pre-approved plan documents for defined contribution plans (including 401(k) plans) during the fourth six-year remedial amendment cycle, which began February 1, 2023. (The remedial amendment cycle for pre-approved plans is explained in Revenue Procedure 2023-37.) The fourth-cycle submission period for defined contribution pre-approved plans begins February 1, 2024, and ends January 31, 2025.

The 2023 Cumulative List includes specific items that the IRS has identified for review in determining whether the form of a defined contribution pre-approved plan that is submitted during the fourth cycle has been properly updated since the plan was submitted for a third-cycle opinion letter. The items include several changes made by the SECURE 2.0 Act. Where applicable, each item is accompanied by a reference to the Code section where a change was made and includes the date on which the provision is effective. Certain items specific to 401(k) plans include: (1) changes made to the hardship distribution rules under the Bipartisan Budget Act of 2018, (2) final hardship distribution regulations issued in 2019, (3) the establishment of starter 401(k) plans under the SECURE 2.0 Act, (4) changes to rules relating to long-term, part-time employees made by the SECURE Act, the SECURE 2.0 Act, and proposed regulations upon which taxpayers may rely, and (5) changes to the rules for SIMPLE 401(k) plans made by the SECURE 2.0 Act. The Notice also cautions that the 2023 Cumulative List does not extend the deadline for amending a plan to comply with any change in the qualification requirements applicable to the plan.

EBIA Comment: Defined contribution pre-approved plan providers and their advisors should carefully review the 2023 Cumulative List to ensure that their plan documents and opinion letter applications address all of the issues that the IRS has identified. (Of course, to be qualified, plans must comply with all relevant qualification requirements, whether or not listed.) To assist plan providers, the IRS provides an [Operational Compliance List](#) on its website that is updated periodically to identify changes in qualification requirements that are effective during a calendar year. For more information, see EBIA's 401(k) Plans manual at Sections XXVII.G.2 ("Six-Year Remedial Amendment Cycle for Pre-Approved Plans"), XXVII.K ("Adopting a Pre-Approved Plan"), and XXVII.L ("Pre-Approved Plan: Opinion Letter Program").

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