

May 30, 2025

Internal Revenue Service  
Attn: CC:PA:01:PR (Notice 2025-19)  
Room 5203  
P.O. Box 7604  
Ben Franklin Station  
Washington, D.C. 20044

**RE: Notice 2025-19, Recommendations on Items to be Included on the 2025-2026 Priority Guidance Plan**

The American Retirement Association ("ARA") is writing in response to Internal Revenue Service Notice 2025-19 (the "Notice") to provide input on the Retirement Benefits items (and the relative priority of such items) to be included on the 2025-2026 Priority Guidance Plan. ARA thanks the Internal Revenue Service (IRS or the "Service") and the Department of the Treasury ("Treasury") for the opportunity to provide input on these matters.

The ARA is a national organization of nearly 39,000 members who provide consulting and administrative services to American workers, savers, and sponsors of retirement plans and IRAs. ARA members are a diverse group of retirement plan professionals of all disciplines including financial advisers, consultants, administrators, actuaries, accountants, and attorneys. ARA is the coordinating entity for its five underlying affiliate organizations representing the full spectrum of America's private retirement system, the American Society of Pension Professionals and Actuaries ("ASPPA"), the National Association of Plan Advisors ("NAPA"), the National Tax-Deferred Savings Association ("NTSA"), the American Society of Enrolled Actuaries ("ASEA"), and the Plan Sponsor Council of America ("PSCA"). ARA's membership is diverse but united in a common dedication to America's employer-based retirement plan system.

ARA believes that every item on the Priority Guidance Plan will provide clarity and guidance to sponsors of retirement plans and the professionals who assist them. However, we recognize that Treasury and the IRS have limited resources and that pending guidance projects must be prioritized as a practical matter. We have listed the general guidance items in order of priority, beginning with the guidance projects that are most important or immediate to ARA members. We have separately identified and prioritized guidance items that we believe will serve the administration's deregulatory directives.<sup>1</sup>

### **Guidance That Will Reduce Regulatory Burdens**

ARA recommends that the following Retirement Benefits items be considered as guidance that will reduce regulatory burdens:

- **Obsolescence Of Situation 4 Holding in Revenue Ruling 2004-13.** SECURE 2.0 made significant changes to the top heavy rules, including that otherwise excludable employees are not entitled to top heavy contributions and may be excluded from consideration in determining compliance with the top heavy minimum requirements. However, Revenue Ruling 2004-13 continues to provide that the participation of these employees in only the deferral component of the plan will cause a safe harbor plan to lose the top heavy exemption under IRC §416(g)(4)(H). As detailed in ARA's December 15, 2023 letter,<sup>2</sup> this revenue ruling is inconsistent with existing legislation, is not in the public interest of expanding access to employer-based retirement savings, and imposes significant costs on plan

<sup>1</sup> Executive Order 14219. <https://www.whitehouse.gov/presidential-actions/2025/02/ensuring-lawful-governance-and-implementing-the-presidents-department-of-government-efficiency-regulatory-initiative/>

<sup>2</sup> <https://araadvocacy.org/wp-content/uploads/2024/01/ARA-Top-Heavy-Exemption-for-SH-Plans.pdf>

sponsors, particularly small business sponsors. Therefore, ARA recommends the Revenue Ruling be formally revoked or the holding for Section 4 of Rev. Rul. 2004-13 be obsoleted.

- **Long-term Part-time Revisions and Relief.** The Service issued proposed rules relating to the long-term part-time employee (LTPTE) rules under SECURE §112 and SECURE 2.0 §125 only weeks before the rule became effective and proposed interpretations that increased burdens on plan sponsors, particularly small businesses. As suggested in ARA's December 20, 2024 letter<sup>3</sup>, January 26, 2024 letter<sup>4</sup>, November 29, 2023 letter<sup>5</sup>, and November 2, 2020 letter,<sup>6</sup> ARA recommends the Service adopt revisions to the proposed rule and announce transition relief to reduce the regulatory burden of compliance with the LTPTE rules.
- **Annual Report Timing.** Currently the Form 5500 for a retirement plan is due by the end of the 7<sup>th</sup> month following the end of the plan year, but the administrator is entitled to a 2.5-month extension by filing a Form 5558 and is not required to provide a reason or show any need for such an extension. The requirement to file the Form 5558 to receive an extension has created significant burdens in the past as the forms may be processed incorrectly, resulting in incorrect denial letters and late notices to plan sponsors and significant time spent by service providers to remediate the error and assure the plan sponsor. IRC §1024 permits a different deadline to be established in order to reduce duplicative filings. To the extent permitted, exercising this authority to reduce the plan sponsor's filing requirements by eliminating the Form 5558 and permitting all sponsors to simply file by the 15<sup>th</sup> day of the 10<sup>th</sup> month following the end of the plan year would reduce the regulatory burden of compliance and streamline administration of plans.
- **Excise Taxes Owed on Late Contributions.** Treasury has worked with the Department of Labor to provide relief from excise taxes that may be owed on the late remittance of employee deferrals and loan repayments. This relief is greatly appreciated but applies only if certain conditions are met (such as the amount must have been remitted within 180 days). As a result, many late remittances will not currently qualify for relief and the excise tax will still be owed. In practice, it is common to see excise taxes of \$10 or less owed due to late remittances, particularly in the case of small business plans. The cost of completing the Form 5330 to pay this tax will often be at least 25 times the amount of the excise tax and more if the correction was done in a different tax year, necessitating the preparation of multiple Form 5330s. Expanding the relief from excise taxes for self-corrections to eliminate excise tax returns that are below a de minimis threshold would significantly reduce burdens on plan sponsors and eliminate a burden that clearly outweighs the potential income recovered.
- **Electronic Disclosures.** Currently, the majority of plan sponsors must comply with both the Service's rules on electronic disclosure as well as the Department of Labor's rules under ERISA. These rules do not conform, increasing the regulatory burden on the plan sponsor. ARA recommends that the IRS issue guidance on electronic disclosures to reduce this burden by (1) confirming that the Department of Labor safe harbor rules on electronic disclosure satisfy the reasonable access requirement of Treasury Regulation §1.401(a)-21 and (2) specifying which Code-required notices may be combined with the annual notice of availability under the Department of Labor's new safe harbor rules for electronic disclosure to participants.<sup>7</sup> This guidance will support innovation and reduce administrative burdens on the retirement plan system.
- **Guidance on Multiple Employer Plans (MEPs) and Pooled Employer Plans (PEPs).** MEPs and PEPs serve as plan options that may significantly reduce the regulatory burden on plan sponsors, particularly small business plan sponsors. Finalizing the rules regarding application of the "unified

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<sup>3</sup> <https://www.regulations.gov/comment/IRS-2024-0050-0004/>

<sup>4</sup> <https://araadvocacy.org/wp-content/uploads/2024/01/ARA-Comment-on-LTPTE-Proposed-Regulation.pdf>

<sup>5</sup> <https://araadvocacy.org/wp-content/uploads/2023/11/ARA-Relief-re-LTPTE-Rules.pdf>

<sup>6</sup> <https://araadvocacy.org/wp-content/uploads/2020/11/20.11.02-ARA-Comment-Letter-to-IRS-Long-term-part-time-employee-rules.pdf>

<sup>7</sup> 29 CFR 2520.104b-31(i)(4).

plan rule” (as detailed in ARA’s May 27, 2022 letter<sup>8</sup>) and issuance of model plan language required under the SECURE Act for PEPs will facilitate the continued innovation of plans in this market and reduce regulatory burdens.

## **Other Guidance Priorities**

**ARA recommends** the Retirement Benefits items detailed below be included on the 2025-2026 Priority Guidance Plan, in the following order of priority.

### **I. Catch-Up Contributions**

ARA thanks Treasury and the Service for the guidance issued in the proposed regulations regarding catch-up contributions (the “Proposed Catch-up Rules”). ARA recommends that the IRS clarify several items in the Proposed Catch-up Rules, including the following:

- With respect to the requirements in SECURE 2.0 §603, related to the requirement that certain catch-up contributions be made as Roth contributions:
  - Reduce the burden on related employers by accommodating common paymaster arrangements and permitting a related group of employers to determine whether a participant’s FICA wages exceeded the threshold by aggregating the FICA wages paid by the related group of employers;
  - Permit the recharacterization of a pre-tax catch-up contribution that exceeds the ADP limit any time before the ADP testing deadline (12 months after the close of the plan year); and
  - Clarify that the use of the Roth rollover correction is not a Roth conversion and therefore is not treated as subject to the recapture tax and is not a benefit, right, or feature that is subject to IRC §401(a)(4).
- With respect to the universal availability requirements for age 60-63 catch-up contributions, confirm that a plan offering the age 60-63 catch-up contribution may utilize other permitted practices, including limiting total deferrals to 75% of compensation, without violating the universal availability regulations.

These and other recommendations are detailed in ARA’s March 14, 2025 letter.<sup>9</sup>

### **II. Automatic Enrollment Requirements Under IRC §414A.**

ARA thanks Treasury and the Service for the guidance to date on the automatic enrollment requirements under IRC §414A, including thoughtful incorporation of the comments received on Notice 2024-2. ARA recommends that the Service further clarify a number of issues to reduce the burden of compliance with the automatic enrollment mandate, including:

- Revise the rule for redetermining a participant’s initial period to conform with the rules utilized for a qualified automatic contribution arrangement (“QACA”);
- Clarify that the automatic contribution percentage may be escalated sooner than the first day of the plan year and may be greater than 1% of compensation; and
- Extend the deadline to effect a post-transaction plan merger beyond the end of the special transition period under IRC §410(b)(6)(C)(ii) for purposes of the mandatory automatic enrollment exemption.

These and other recommendations are detailed in ARA’s March 17, 2025 letter.<sup>10</sup>

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<sup>8</sup> <https://araadvocacy.org/wp-content/uploads/2022/06/22.05.27-ARA-Comment-Letter-to-IRS-Proposed-Rule-for-MEP-Unified-Plan-Rule.pdf>

<sup>9</sup> <https://araadvocacy.org/wp-content/uploads/2025/03/Comment-re-Proposed-Catch-up-Contributions-Regs.pdf>

<sup>10</sup> <https://araadvocacy.org/wp-content/uploads/2025/03/Comment-re-Proposed-Mandatory-Auto-Enrollment-Regs.pdf>

### III. Employee Plans Compliance Resolution System (EPCRS)

The ability to correct errors on a voluntary basis enhances compliance and encourages employers to sponsor retirement programs for their employees and significantly reduces the regulatory burdens on the industry. ARA thanks the IRS for its commitment to and continuous improvement of EPCRS and for the guidance provided in Notice 2024-77. ARA recommends that the IRS make certain modifications to EPCRS as it fulfills the SECURE 2.0 directive to update the program. These changes include:

- Revising the restriction on use of the favorable overpayment correction to apply only to individuals responsible for plan administration; and
- Including guidance on the correction of issues related to the tax treatment of contributions (such as when a contribution was required to be made as a designated Roth contribution but the participant should have been permitted to elect pre-tax treatment); and
- Guidance related to automatic contribution failures.

These and other recommendations are detailed in ARA's letters dated December 16, 2024;<sup>11</sup> August 23, 2023;<sup>12</sup> October 24, 2023;<sup>13</sup> November 9, 2020;<sup>14</sup> and October 14, 2021.<sup>15</sup>

### IV. Final Regulations for Nonqualified Deferred Compensation Plans under Sections 409A and 457

**ARA recommends** that the IRS issue guidance regarding the impact of the Federal Trade Commission's Non-Compete Clause Rule on nonqualified deferred compensation plans with respect to the substantial risk of forfeiture rule. **ARA also recommends** promulgation of final regulations under §§ 409A and 457(f), particularly due to the potential tax and penalty implications.

### V. Additional Guidance on SECURE Act and SECURE 2.0 Act Provisions

ARA's recommendations for the guidance most immediately needed on SECURE Act and SECURE 2.0 provisions are detailed above. **ARA also recommends** that the IRS issue guidance on the following SECURE Act and SECURE 2.0 provisions, listed in order of priority:

- Relief for closed pension plans under IRC §§ 401(o) and 401(a)(26).
- Treatment of §403(b) plans as not being money purchase plans (and, thus, may satisfy the profit-sharing exemption from ERISA §205), as detailed in ARA's February 3, 2021 letter.<sup>16</sup>
- Plan notice requirements, including guidance on combining required disclosures under SECURE 2.0 §341, and safe harbor recommendations detailed in ARA's February 5, 2021 letter.<sup>17</sup>
- Reduced requirements for plan notices for unenrolled participants under IRC §414(bb).

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<sup>11</sup> December 16, 2024 letter re: overpayment corrections: <https://araadvocacy.org/wp-content/uploads/2025/05/ARA-Government-Affairs-Comment-Letter-2024-12-16-Notice-2024-77.pdf>

<sup>12</sup> August 23, 2023 letter re: conforming changes to EPCRS due to SECURE 2.0: <https://araadvocacy.org/wp-content/uploads/2023/09/23.08.23-ARA-Comment-Letter-to-IRS-IRS-Notice-2023-43.pdf>

<sup>13</sup> October 24, 2023 letter re: conforming changes to EPCRS related to plan corrections involving the tax treatment of catch-up contributions: <https://araadvocacy.org/wp-content/uploads/2023/10/23.10.24-ARA-Comment-Letter-to-IRS-Roth-Catch-Up.pdf>

<sup>14</sup> <https://araadvocacy.org/wp-content/uploads/2020/11/20.11.09-ARA-Comment-Letter-to-IRS-Employee-plan-compliance-resolution-system.pdf>

<sup>15</sup> <https://araadvocacy.org/wp-content/uploads/2021/10/21.10.14-ARA-Comment-Letter-to-IRS-Rev-Proc-2021-30-EPCRS-Improvements.pdf>

<sup>16</sup> <https://araadvocacy.org/wp-content/uploads/2021/02/21.02.03-ARA-Comment-Letter-to-IRS-Notice-2020-80.pdf>

<sup>17</sup> <https://araadvocacy.org/wp-content/uploads/2021/05/ARA-Advocacy-2021-Comment-Letter-2021-02-05.pdf>

- Required minimum distributions (RMDs) including guidance in connection with the July 19, 2024 Notice of Proposed Rulemaking regarding RMDs, as detailed in ARA's September 17, 2024 letter.<sup>18</sup>
- Retroactive plan amendments under SECURE 3.0 §316.
- De minimis financial incentives under SECURE 2.0 §113, including guidance that incentives may be offered to all employees, and the \$250 limit is subject to cost-of-living adjustments, as detailed in ARA's February 20, 2024 letter.<sup>19</sup>
- ARA thanks the IRS for the guidance issued under SECURE 2.0 §110 with respect to matching contributions made on account of Qualified Student Loan Payments (QSLPs), as published in Notice 2024-63. Certain recommendations are detailed in ARA's January 22, 2024<sup>20</sup> letter and October 18, 2024<sup>21</sup> letter.

## VI. W-4P and W-4R Reporting

ARA thanks the IRS for the updated Forms W-4P and W-4R, and the guidance issued in Publications 15-A and 15-T. **ARA recommends** the IRS further revise its requirements, provide additional guidance regarding Forms W-4P and W-4R, and provide an additional delay. Specific recommendations are provided in ARA's joint letter with other industry organizations dated April 26, 2021.<sup>22</sup>

## VII. Determination Letter Programs

The determination letter program, including the preapproved opinion letter program, is an integral part of the industry that serves to meaningfully reduce the regulatory burdens on all plan sponsors. The preapproved program is particularly valuable to small plan sponsors. Expanding the features available on preapproved plans will facilitate continued innovation of plan design and expand access to innovations for small plan sponsors.

ARA also thanks the IRS for its continued evaluation of targeted areas in which determination letters would enhance compliance. ARA recommends that the IRS continue to address issues related to the changes to the determination letter program for individually designed plans, including a window for PEPs (as detailed in ARA's December 14, 2021 letter<sup>23</sup>) and a window for plans to obtain a determination letter on SECURE 2.0 provisions.

## VIII. Missing Participants and Uncashed Checks

ARA notes that this item was included in the 2024-2025 Priority Guidance Plan (as item A.12 under Retirement Benefits); **ARA recommends** that the IRS provide additional guidance and assistance to plan sponsors regarding how to address these participants and issues. Coordinating with other agencies to provide clear guidance to sponsors of ongoing plans on how to address these issues (that generally include small account balances and unresponsive participants) would significantly reduce burdens for most retirement plan sponsors and practitioners and will promote operational compliance. Specific recommendations are detailed in the PSCA's June 25, 2018 letter to the IRS and Department of Labor.<sup>24</sup>

<sup>18</sup> <https://araadvocacy.org/wp-content/uploads/2025/05/ARA-Government-Affairs-Comment-Letter-2024-09-17-Proposed-Regulations-Regarding-Required-Minimum-Distributions-RIN-1545%E2%80%9393BQ66.pdf>

<sup>19</sup> <https://araadvocacy.org/wp-content/uploads/2024/02/ARA-Comment-re-Notice-2024-02-SECURE-2.0-Grab-Bag.pdf>

<sup>20</sup> <https://araadvocacy.org/wp-content/uploads/2024/01/ARA-Guidance-for-Student-Loan-Match-Implementation.pdf>

<sup>21</sup> <https://araadvocacy.org/wp-content/uploads/2024/10/ARA-Comment-on-QSLP-Match-Guidance.pdf>

<sup>22</sup> <https://araadvocacy.org/wp-content/uploads/2021/05/ARA-Advocacy-2021-Comment-Letter-2021-04-26-ARA-Asks-Treasury-to-Improve-Form-W-4P-and-W-4R.pdf>

<sup>23</sup> <https://araadvocacy.org/wp-content/uploads/2022/01/21.12.14-ARA-Comment-Letter-to-IRS-Individually-Designed-Plan-Determination-Letter-Program.pdf>

<sup>24</sup> <https://araadvocacy.org/wp-content/uploads/2020/03/18.06.25-PSCA-Comment-Letter-to-DOL-and-Treasury-Recommendations-for-Missing-Participant-Guidance.pdf>

## **IX. Merger and Acquisition Issues**

**ARA recommends** that the IRS address issues that result from mergers and acquisitions impacting IRC §§ 401(a) and 403(b) plans (including the treatment of safe harbor plans<sup>25</sup>, the determination of highly compensated employees, the determination of years of service credit, and the treatment of single employer plans that become multiple employer plans mid-year pursuant to acquisitions or dispositions).

## **VI. Governmental Plans**

ARA notes that this item was included in the 2024-2025 Priority Guidance Plan (as item A.15 under Retirement Benefits); **ARA recommends** that the IRS publish guidance on the definition of a governmental plan under §414(d).

## **VII. Church Plan Issues**

ARA thanks the IRS for including church plans in the 2022-2023 Priority Guidance Plan, the 2023-2024 Priority Guidance Plan, and again in the 2024-2025 Priority Guidance Plan. ARA notes this item was more broadly included in the 2019-2020 Priority Guidance Plan (as item A.12 under Retirement Benefits). **ARA recommends** that the IRS focus on §403(b) plan issues and, in light of the PATH Act changes in 2015, this should also include guidance on the mergers and transfers between §401(a) plans and §403(b) plans.

## **VIII. Guidance Regarding the Aggregation Rules for Affiliated Service Groups under IRC §414(m)**

ARA notes that this item was included in the 2019-2020 Priority Guidance Plan (as item A.13 under Retirement Benefits) but was not included in any Guidance Plan since. The **ARA recommends** that the IRS add this item back into the 2025-2026 Priority Guidance Plan as guidance on this matter is important to the industry. **ARA specifically recommends** that the IRS:

- Provide guidance on the determination of affiliated service groups and management groups.
- Provide guidance on the impact of overlapping controlled groups and affiliated service groups.
- Provide a method to obtain a ruling on affiliated service group status, either by reopening the determination letter process or permitting private letter rulings.

This guidance is particularly important because these provisions impact the compliance, not only of retirement plans, but also of health plans under the Affordable Care Act. The proposed regulations, published in 1983, are extremely out of date and updated guidance is needed.

Issuance of this guidance will significantly reduce issues relevant to many retirement plan sponsors and practitioners and will promote sound tax administration in both the retirement plan and health plan contexts.

## **IX. High 25 Nondiscrimination**

**ARA recommends** that the IRS provide guidance under the High 25 rule,<sup>26</sup> particularly for plans covering only highly compensated employees, to coordinate the use of certain terms under the High 25 rule with terms used in IRC §430, and to review the restrictions under the High 25 rule in light of the IRC §436 benefit restrictions.

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<sup>25</sup> <https://araadvocacy.org/wp-content/uploads/2020/03/17.06.08-ARA-Comment-Letter-to-IRS-Mid-Year-Changes-to-Safe-Harbor-Plans-FINAL.pdf>

<sup>26</sup> See Treas. Reg. §1.401(a)(4)-5(b)(3)(ii).

## **X. Traditional, Roth, and SEP IRA Regulations**

ARA notes that regulations applicable to traditional and Roth IRAs have been on the Priority Guidance Plan for many years (referenced as “Regulations and related guidance under §§219, 408, 408A, and 4973 and related guidance under §408(m)”). The regulations and IRS models in this area are outdated and should be revisited to reflect the current environment and ease administration. In addition, changes to IRS forms in this area have generated changes in the reporting by financial institutions that are material to a number of issues: among other things, valuation of IRA assets rolled into qualified plans and, in turn, the amount that is required to be distributed to satisfy required minimum distribution amounts in some cases. It is our understanding that these rules are also being considered as a change in the new regulations. ARA believes reflecting the changes outlined in the applicable tax form instructions in regulations would provide consistency for payors. ARA welcomes the opportunity to comment on regulations.

We believe that guidance for each of the items—

- Will resolve significant issues relevant to many retirement plan sponsors and practitioners (not just a small group);
- Will improve economic efficiency by reducing the complexity and burdens on the plan sponsor, particularly on small businesses, which impede private enterprise; and
- Will promote sound tax administration by helping plan sponsors and practitioners to maintain retirement plans.

These comments are submitted on behalf of ARA and were prepared by ASPPA’s IRS Subcommittee, Claire P. Rowland, Esq., QPA, QKA, Chair. If you have any questions regarding the matters discussed herein, please contact Kelsey N.H. Mayo, Chief of Regulatory Affairs, at [kmayo@usaretirement.org](mailto:kmayo@usaretirement.org) or (703) 516-9300. Thank you for your time and consideration.

Sincerely,

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