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Restating Your 401(k)/Defined Contribution Plan for the Fourth Remedial Amendment Cycle – it's like déjá vu all over again!

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Plan sponsors of qualified defined contribution plans such as 401(k) plans must update their pre-approved plans every six years to reflect law changes and to maintain their "pre-approved" status with the IRS. See Revenue Procedures 2007-44, 2016-44 and 2023-37. The most recent Cycle 3 restatement for 401(k) plans had a deadline of July 31, 2022.

Many plan sponsors of 403(b) plans are in the process of adopting restated 403(b) plans by the December 31, 2026, deadline that applies to those plans. [See: Don't Let the 403(b) cycle 2 Restatement Deadline Sneak Up on You].

The IRS issued Announcement 2026-15 on August 5, 2026, with information about the next Cycle 4 restatement timeline and process based on the List of Required Modifications reflecting the 2023 Cumulative List (Publication 6088).

Here is an overview of the guidance:

- The IRS anticipates that Cycle 4 Opinion Letters will be issued on or shortly after August 31, 2026.
- **Cycle 4 pre-approved plans will have an adoption deadline of September 30, 2028**.
- Adopters of preapproved plans may submit applications for individual determination letters between October 1, 2026, and September 30, 2028, if otherwise eligible. See Revenue Procedure 2026-4.

Here is detailed information:

- **Secure 2.0 Changes**: It is anticipated that the Cycle 4 restatement will incorporate changes made by the CARES Act, SECURE Act and the SECURE 2.0 Act. However, the restatement likely will not incorporate all of the changes made by SECURE 2.0 because the IRS has not had the time to issue guidance on all SECURE 2.0 provisions. Employers will need to adopt snap-on amendments to the restated plan document as and when the IRS releases further guidance.
- **Cycle 4 Amendment Deadline:** The Cycle 4 restatement deadline overlaps with the **December 31, 2026, deadline** for most plans to be amended for the SECURE 2.0 Act. Plan sponsors must comply with both these deadlines. At this point, the IRS has not issued additional guidance on the interaction of these deadlines.
- **No More Discretionary Matches?**: With the Cycle 3 restatement the IRS had permitted plans to adopt discretionary matching formulas. Plans were required to incorporate notice requirements to the plan trustee or administrator and participants in order to comply with the definitely determinable benefit requirements of the regulations. The IRS indicates a change in its position

with the Cycle 4 restatement and will not permit matching formulas that it considers are not definitely determinable.

If an employer does not adopt a restated plan document by the prescribed deadline, the plan will lose reliance on the opinion letter and will be treated as an individually designed plan. The failure may be corrected under the Employee Plans Compliance Resolution System ("EPCRS," Revenue Procedure 2021-30 as updated by Notice 2023-43).

These requirements apply to sponsors of pre-approved plans; Sponsors of individually designed plans have different timelines and requirements to update plan documents for law changes.

The process of restating a plan for required law changes is a good opportunity for plan sponsors to review plan design, and plan policies and procedures to ensure they comply with law changes, and are taking advantage of any new provisions, for example, increased catch-up limits, tax credits, making matching contributions on student loan payments, additional distributable events, and so on.

Please contact your Boutwell Fay attorney if you need assistance or have questions about the law changes, how to comply with them, how to take advantage of them, and how to modify practices and procedures so your plan can be in compliance, or come into compliance, with the myriad of regulatory requirements.