The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
INVESTMENT COMPANY INSTITUTE
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Filed Electronically

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US Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Andrew De Mello
Acting Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Priority Guidance Plan Recommendations on Retirement Security Issues (Notice 2025-19)

Dear Mr. Salinger and Mr. De Mello:

The Investment Company Institute[1] is pleased to submit recommendations regarding retirement security issues for projects to be included on the 2025-2026 Priority Guidance Plan ("Guidance Plan").[2] A separate ICI submission describes our recommendations regarding regulated investment companies.

This letter makes recommendations for guidance on the following topics:

- Guidance implementing provisions of the SECURE 2.0 Act, including:
    - Roth treatment of certain catch-up contributions under SECURE 2.0 Act section 603;

[1] The Investment Company Institute (ICI) is the leading association representing the asset management industry in service of individual investors. ICI's members include mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors in other jurisdictions. Its members manage $37.9 trillion invested in funds registered under the US Investment Company Act of 1940, serving more than 120 million investors. Members manage an additional $9.3 trillion in regulated fund assets managed outside the United States. ICI also represents its members in their capacity as investment advisers to collective investment trusts (CITs) and retail separately managed accounts (SMAs). ICI has offices in Washington DC, Brussels, and London.

[2] IRS Notice 2025-19, available at https://www.irs.gov/pub/irs-drop/n-25-19.pdf, invites the public to submit recommendations for items to be included on the 2025-2026 Priority Guidance Plan.

  - Updates to model SIMPLE IRA documents and custodial agreements;
  - Guidance to implement the Saver's Match;
  - Final regulations to implement RMD changes;
  - Additional guidance under the Employee Plans Compliance Resolution System;
  - Final regulations on the requirement for certain plans to automatically enroll participants; and
  - Guidance on withdrawals for certain emergency expenses, for individuals who experience domestic abuse and for individuals with a terminal illness;
- The unified plan rule for multiple employer plans;
- Permanent remote notarization relief;
- The notice requirement under Internal Revenue Code (Code) section 411(a)(11);
- Application of the one-per-year limit on IRA rollovers;
- Guidance to harmonize IRS's Electronic Delivery rules with the Department of Labor's safe harbor; and
- Relief for the reporting of Qualified Charitable Distributions on Form 1099-R.

1. Guidance Implementing Provisions of the SECURE 2.0 Act

As we have previously commented, due to its breadth, implementing the SECURE 2.0 Act requires significant rulemaking and guidance from the Department of the Treasury ("Treasury"), the Internal Revenue Service (IRS), and the Department of Labor. ICI appreciates the guidance that IRS and Treasury have already provided. However, additional guidance is still needed, as more of the SECURE 2.0 provisions are becoming effective.

ICI previously submitted a comment to the IRS and Treasury requesting guidance regarding selected provisions of the SECURE 2.0 Act of 2022 ("SECURE 2.0 Act"),[3] as well as a comment on IRS Notice 2024-02.[4] Rather than restate the points made in these letters, we have attached

[3] Letter from Elena Barone Chism, Deputy General Counsel, Retirement Policy, ICI, and Shannon Salinas, Associate General Counsel, Retirement Policy, ICI, to Carol Weiser, Benefits Tax Counsel, US Department of the Treasury, and Rachel Levy, Associate Chief Counsel, IRS (March 23, 2023), available at https://www.ici.org/system/files/2023-04/23-cl-secure20-priorities.pdf.

[4] Letter from Elena Barone Chism, Deputy General Counsel, Retirement Policy, ICI, and Shannon Salinas, Associate General Counsel, Retirement Policy, ICI, to IRS (Feb. 20, 2024), available at https://www.ici.org/letters/24-cl-irs-grab-bag-guidance.

them for your reference. Please consider the guidance requests in these letters as a part of our recommendations for inclusion in the Guidance Plan. Where some guidance has since been provided but additional guidance is recommended, we highlight that below.

We also urge Treasury to treat guidance issued under the SECURE 2.0 Act as exempt from the Executive Order entitled "Unleashing Prosperity Through Deregulation," which requires that for each new regulation issued, at least 10 prior regulations be identified for elimination.[5] While ICI supports rescinding overly burdensome regulations,[6] we are concerned that applying this executive order to SECURE 2.0 implementation regulations and guidance could delay or prevent the issuance of guidance that is greatly needed and which Congress has directed. With this in mind, we note the following items under the SECURE 2.0 Act that IRS and Treasury should prioritize.

1.1 Roth treatment of certain catch-up contributions (section 603 of SECURE 2.0 Act)

We recommend IRS and Treasury prioritize final regulations to implement the new restrictions under section 603 of the SECURE 2.0 Act on age 50 catch-up contributions under Code section 414(v). Our members appreciate the proposed regulations issued in January 2025.[7] ICI provided comments in response to those proposed regulations.[8] We summarize these comments below.

- Treasury and IRS should reconsider permitting a plan design where all catch-up contributions must be designated as Roth contributions. The availability of such a plan design would encourage the adoption of Roth catch-up contributions by smaller plans and smaller plan service providers.
- Corrections via in-plan Roth rollover would be of significantly more utility were plans not required to adjust for earnings and losses when determining the amount to be rolled over. The final regulation also should clarify both that a plan need not generally permit voluntary in-plan Roth rollovers in order to use this correction method, and that any amounts rolled over pursuant to this correction method are treated the same as any Roth contribution for purposes of the 5-year holding period under Code section 402A(d)(2)(b).

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[5] The Executive Order, issued on January 31, 2025, is available at https://www.whitehouse.gov/presidential-actions/2025/01/unleashing-prosperity-through-deregulation/.

[6] Letter from Eric J. Pan, President & CEO and Paul G. Cellupica, General Counsel, ICI to Russell T. Vought, Director, Office of Management and Budget (May 12, 2025), available at https://www.ici.org/letters/25-cl-omb-rfi-deregulation.

[7] The proposed regulations were published in the Federal Register at 90 Fed. Reg. 2645 (January 13, 2025), available at https://www.federalregister.gov/documents/2025/01/13/2025-00350/catch-up-contributions.

[8] Letter from Elena Barone Chism, Deputy General Counsel, Retirement Policy, ICI, and David Cohen, Associate General Counsel, Retirement Policy, ICI, to Internal Revenue Service (March 14, 2025), available at https://www.ici.org/letters/25-cl-roth-catchup-contributions-proposal.

- The final regulation should include a standing de minimis exception for the correction of pre-tax contributions to comply with the Roth catch-up requirements. A de minimis exception would both encourage compliance with the applicable limits and ease reasonable concerns as to the burden and cost of correcting small errors.
- The final regulation should confirm that the mandatory Roth catch-up contribution requirement does not apply to special 15-year catch-up contributions permitted under Code section 402(g)(7) for 403(b) plans.

1.2 Updates to model SIMPLE IRA documents and custodial agreements (sections 116, 117, and 601 of SECURE 2.0 Act)

The SECURE 2.0 Act made several changes that affect SIMPLE IRAs including adding optional Roth contributions, enhanced employer contributions, and increased deferral limits under certain circumstances.[9] These statutory changes make these accounts much more complex to administer, for both the sponsoring employers and providers.

IRS and Treasury should prioritize updates to their model SIMPLE IRA documents and custodial agreements.[10] Updated model documents would ensure accurate and consistent communication to SIMPLE IRA sponsoring employers and participants regarding the optional SECURE 2.0 changes to SIMPLE IRAs, many of which are already effective. In addition, it is not clear yet how the IRS intends to address the participant level agreement(s) to address Roth contributions (i.e., whether IRS will update the existing 5305-SA and 5305-S to incorporate Roth contributions, or if IRS will require a new separate custodial/trust agreement for Roth SIMPLE

[9] Previously, SIMPLE IRAs were not permitted to be designated as Roth IRAs. Section 601 of the SECURE 2.0 Act permits employers to offer employees the opportunity to have SIMPLE (and SEP IRA) contributions made as Roth contributions, effective for taxable years beginning after December 31, 2022.

Effective for taxable years beginning after December 31, 2023, the SECURE 2.0 Act allows employers who sponsor SIMPLE plans to make contributions in addition to the currently required three percent match or two percent nonelective contribution, as additional nonelective contributions of up to ten percent of compensation (or $5,000 if less).

Also effective for taxable years beginning after December 31, 2023, the SECURE 2.0 Act increases the annual deferral limit to SIMPLE plans, and the catchup contribution limit that applies at age 50 for SIMPLE plans, to 110 percent of the otherwise applicable limits in 2024 (and indexed thereafter). These increased deferral limits are available to employers with no more than 25 employees, and, for employers with more than 25 employees and not more than 100 employees, the increased limits are available only to those who make enhanced employer contributions on behalf of employees (either a four percent matching contribution or a three percent non-elective contribution).

[10] The existing IRS model documents related to SIMPLE IRAs include: 5304-SIMPLE (employer plan document – non-DFI); 5305-SIMPLE (employer plan document – DFI); 5305-SA (SIMPLE IRA custodial agreement for participants); 5305-S (SIMPLE IRA trust agreement for participants).

IRA monies). Section 4.4 of our February 2024 letter[11] responding to Notice 2024-02 (which provided guidance on several SECURE 2.0 Act changes) offers suggestions for how to update the model forms to reflect the availability of Roth employer and employee contributions in a way that maximizes flexibility and simplicity. We would be pleased to discuss these ideas in more detail.

1.3 Guidance on Saver's Match (section 103 of SECURE 2.0 Act)

The Saver's Match is a refundable tax credit that, beginning in 2027, will be deposited directly into retirement accounts for eligible individuals who make qualifying retirement savings contributions. Implementing the Saver's Match presents numerous questions and challenges as it represents a fundamentally new approach to proving a tax credit, which has little precedence from which to build. Developing a system for allocating Saver's Match contributions to a taxpayer's eligible account will require a joint effort among Treasury and IRS, employers, and service providers to plans and IRAs. Even once a solution is decided upon, it will take a significant amount of time to implement and test the system to ensure it is ready, and the effective date is quickly approaching (plan years beginning after December 31, 2026).

In November 2024, ICI responded to IRS Notice 2024-65 (in which IRS and Treasury requested comments on the implementation of the Saver's Match), proving comments on the process for claiming, depositing, and reporting Saver's Match contributions.[12] We are continuing discussions with our members about implementation and would be pleased to provide further assistance as IRS and Treasury work to develop their approach.

1.4 Final regulations on RMD changes (sections 204, 325, and 327 of SECURE 2.0 Act and section 401 of the SECURE Act)

In July 2024, the IRS and Treasury released proposed and final regulations governing required minimum distributions from retirement plans and IRAs. The proposed regulations address several changes made by the SECURE 2.0 Act, including provisions which were left reserved in

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[11] Letter from Elena Barone Chism, Deputy General Counsel, Retirement Policy, ICI, and Shannon Salinas, Associate General Counsel, Retirement Policy, ICI, to IRS (Feb. 20, 2024), available at https://www.ici.org/letters/24-cl-irs-grab-bag-guidance.

[12] Letter from Elena Barone Chism, Deputy General Counsel, Retirement Policy, and David Cohen, Associate General Counsel, Retirement Policy, ICI, to IRS (November 7, 2024), available at https://www.ici.org/letters/24-saver-match-contributions, submitted in response to IRS Notice 2024-65, Request for Comment Regarding Implementation of Saver's Match Contributions, available at https://www.irs.gov/pub/irs-drop/n-24-65.pdf.

the final regulations governing RMDs issued on the same day. ICI submitted comments in response to the proposed regulations, including the following requests.[13]

- *Spousal Election to Use Uniform Lifetime Table for RMD Calculation - Optional Election*. IRS and Treasury should provide clarity on the automatic application of this optional provision.
- *Spousal Election to Use Uniform Lifetime Table for RMD Calculation - Eligibility*. IRS and Treasury should provide more flexibility on the applicability date for the spousal election (i.e., the election should be available for any elections made on or after January 1, 2024).
- *Spousal Election to Use Uniform Lifetime Table for RMD Calculation - IRA issues*. IRS and Treasury should confirm application of spousal election for inherited spousal IRAs and allow election when the surviving spouse is the sole beneficiary of a see-through trust.
- *Spousal Election to Use Uniform Lifetime Table for RMD Calculation - Additional Examples*. IRS and Treasury should provide additional examples addressing the spousal election under different fact scenarios.
- *Treatment of Designated Roth Accounts*. IRS and Treasury should address the treatment of participant accounts that include both Roth and pre-tax amounts, for distributions after the participant's death.
- *Partial Annuitization for IRAs and Plans*. IRS and Treasury should clarify that the optional aggregation rules of section 204 of the SECURE 2.0 Act extend to all partial annuity situations within a single IRA, and, for plans, that the aggregation rules extend to qualified plan distribution annuities.
- *Outright Distribution to Trust Beneficiary*. IRS and Treasury should confirm proper reporting for establishing an inherited IRA outright in the name of the beneficiary, in the case of a distribution from a see-through trust.

ICI appreciates that the IRS and Treasury issued an announcement regarding the applicability date of the future final regulations, announcing that certain sections of the anticipated final regulation will be applicable beginning in the 2026 distribution calendar year, rather than the 2025 distribution calendar year, as IRS and Treasury had proposed.[14] However, we urge IRS and

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[13] Letter from Elena Barone Chism, Deputy General Counsel, Retirement Policy, and Shannon Salinas, Associate General Counsel, Retirement Policy, ICI, to IRS (September 17, 2024), available at https://www.ici.org/24-cl-proposed-rmd-rules.

[14] Announcement 2025-02 is available at https://www.irs.gov/pub/irs-drop/a-25-02.pdf.

Treasury to issue final regulations quickly, particularly since generally all of the relevant statutory provisions are already effective.

1.5 Additional Guidance Under the Employee Plans Compliance Resolution System (section 305 of SECURE 2.0 Act)

We request that IRS and Treasury expedite an update or replacement of Rev. Proc. 2021-30, the Employees Plans Compliance Resolution System (EPCRS). Pursuant to section 305 of the SECURE 2.0 Act, IRS and Treasury issued Notice 2023-43, which provides interim guidance with respect to the expansion of EPCRS as mandated by section 305. We appreciate this interim guidance. As ICI highlighted in our comment letter on Notice 2023-43, however, numerous important questions either were not addressed or were only partially resolved by Notice 2023-43.[15] Our letter makes recommendations on the following aspects of expanding EPCRS:

- *Timing for self-correction under EPCRS*. We recommend IRS clarify that the reasonable period to self-correct eligible inadvertent failures under section 305 is in all cases at least as long as it was under prior guidance, consistent with the intent of section 305 to expand the availability of self-correction methods under EPCRS.
- *Self-correction should be extended to the following common IRA failures*. Consistent with the language of section 305(c), we recommend that further guidance include relief (under self-correction and under the voluntary correction program (VCP), at the IRA custodian's election) for the following types of common IRA failures.
    - Failure to satisfy the 60-day rollover requirement;
    - Required minimum distribution failures;
    - Inadvertent or unauthorized distributions from IRAs;
    - Setup of, or transfer to, wrong IRA account type;
    - Failure to properly process a Roth conversion; and
    - Failure to comply with the one-per-year limit on IRA rollovers due to IRA custodian action or error.
- *VCP should be made available for IRA errors*. IRS should exercise its discretion, consistent with the language of section 305(c), to make clear that IRS custodians may use both self-correction and VCP to correct eligible inadvertent failures.

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[15] Letter from Elena Barone Chism, Deputy General Counsel, Retirement Policy, and David Cohen, Associate General Counsel, Retirement Policy, ICI, to IRS and Treasury (August 23, 2023), available at https://www.ici.org/system/files/2023-08/23-cl-ici-irs-treasury-epcrs-program.pdf.

Given the significant differences in the management and administration of qualified plans and IRAs, we urge IRS and Treasury to move quickly in crafting proposed guidance for the applicability of EPCRS to IRA custodians. In this vein, we view it as critical that IRS and Treasury engage with the regulated community as it determines how to expand EPCRS to IRAs. ICI and our members would be happy to meet with IRS and Treasury to assist in these efforts.

1.6 Final regulations on auto enrollment (section 101 of SECURE 2.0 Act)

Section 101 of the SECURE 2.0 Act adds new section 414A to the Code, which requires newly established 401(k) and 403(b) plans to automatically enroll participants (subject to certain exceptions). We appreciate the IRS's and Treasury's efforts to provide needed guidance to clarify the operation of the new statutory requirements, in both IRS Notice 2024-2 and proposed regulations issued in January 2025. ICI submitted comments expressing strong support for the proposed regulations and appreciation that the guidance in the proposed regulations addressed the items we raised in our prior letters.[16] We urge the IRS and Treasury to finalize the regulations, as this statutory provision is already effective.

1.7 Withdrawals for certain emergency expenses, for individuals who experience domestic abuse and for individuals with a terminal illness (sections 115, 314 and 326 of the SECURE 2.0 Act)

The SECURE 2.0 Act provided new exceptions to the 10 percent additional tax under Code section 72(t) for emergency personal expense distributions (EPEDs), domestic abuse victim distributions (DAVDs), and distributions to a terminally ill individual, pursuant to sections 115, 314 and 326 of the SECURE 2.0 Act. In June 2024, the IRS and Treasury issued Notice 2024-55, providing guidance on EPEDs and DAVDs. ICI provided comments[17] in response to the Notice including the following.

- *There Should Not Be Exceptions to Self-Certification of EPEDs or DAVDs*. Treasury and IRS should not provide exceptions to self-certification and procedures to address cases of employee misrepresentation. Any such exceptions would severely undercut the benefits to self-certification of distributions, and as such should not be included in future guidance.

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[16] Letter from Elena Barone Chism, Deputy General Counsel, Retirement Policy, and Shannon Salinas, Associate General Counsel, Retirement Policy, ICI, to IRS (March 17, 2025), available at https://www.ici.org/letters/25-cl-proposed-automatic-enrollment. Also see letters cited in footnotes 3 and 4, *supra*.

[17] Letter from Elena Barone Chism, Deputy General Counsel, Retirement Policy, and David Cohen, Associate General Counsel, Retirement Policy, ICI, to IRS and Treasury (October 7, 2024), available at https://www.ici.org/letters/24-cl-notice-2024-55.

- *Permit Self-Certification for EPED and DAVD Repayments*. Future guidance should provide that individual self-certification also is available for repayments of EPEDs and DAVDs.
- *Confirm that Repayments Are Permitted to a Different Plan*. Repayment of EPEDs, DAVDs, and QBADs to plans other than the distributing plan or an IRA should be affirmatively permitted—the current guidance is unclear. Additionally, Treasury and IRS should confirm that a plan that does not accept rollover contributions would not have to be amended to permit rollover contributions in order to offer EPEDs, DAVDs, or QBADs.
- *Permit Self-Certification for Both Distributions and Repayments in Cases of Terminal Illness*. Treasury and IRS should provide that both eligibility for and repayments of terminal illness distributions may be self-certified, consistent with their discretion under Section 326 of the Act. Self-certification would address many practical challenges to vesting discretion to evaluate these distributions and repayments with plan sponsors and administrators.

The IRS and Treasury have indicated that they anticipate issuing regulations under section 72(t) of the Code.[18] We urge the IRS and Treasury to issue such regulations (or other guidance) addressing these provisions.

2. Multiple employer plans; pooled employer plans (section 101 of the SECURE Act)

We appreciate IRS and Treasury's issuing informal guidance in Notice 2024-02 addressing certain issues applicable to multiple employer plans (MEPs) and pooled employer plans (PEPs). However, significant additional guidance is needed as to these types of plans. We request that IRS and Treasury finalize, with certain modifications, the proposed regulations published on March 28, 2022, relating to the "unified plan rule" for MEPs.[19] The unified plan rule provides that the failure by one employer maintaining a MEP, or by the plan itself, to satisfy an applicable tax-qualification requirement will result in the disqualification of the MEP for all participating employers.[20]

In connection with the creation of PEPs, a new type of MEP available to otherwise unrelated employers, section 101 of the SECURE Act amends Code section 413 to allow PEPs (and MEPs adopted by groups of related employers) to continue to be treated as satisfying the tax qualification requirements despite the violation of certain requirements with respect to one or

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[18] See page 1 of Notice 2024-55.

[19] The proposed regulations were published at 87 Fed. Reg. 17225 (March 28, 2022), available at https://www.govinfo.gov/content/pkg/FR-2022-03-28/pdf/2022-06005.pdf.

[20] Code section 413(c) contains the unified plan rule for MEPs.

more participating employers. In the case of a violation of the tax qualification requirements by a participating employer, the SECURE Act allows the plan to spin off the portion of the plan's assets attributable to that participating employer into a separate plan maintained by that employer. The March 2022 proposed regulations would implement the SECURE Act changes to the unified plan rule.

We reiterate our comments on the proposal, submitted in a letter dated May 27, 2022.[21] Our comment letter expresses general support for the proposed regulations and makes recommendations on the following issues.

- *Inclusion of Procedures in Plan Terms.* The letter recommends eliminating the proposed requirement for the plan document to include detailed procedures for addressing a participating employer failure.
- *Time Limit for Completing Spinoff.* The letter recommends clarification that the 180-day safe harbor period for completing a spinoff would not include periods during which the plan administrator waits for information or action from the unresponsive participating employer.
- *Option for Spinoff Initiated by Plan Administrator.* The letter recommends providing an option for the plan administrator to voluntarily initiate a spinoff of the assets attributable to the employees of the unresponsive participating employer to a separate single-employer plan, followed by a termination and distribution of the assets of such plan.
- *Model Plan Language.* The letter recommends providing model plan language as soon as possible to allow plans adequate time to incorporate the model language.
- *Crediting Service for Employment with Other Participating Employers.* The letter recommends reconsidering, in a separate rulemaking, the preamble's presumption that employers participating in a PEP would be required to credit an employee with service for periods the employee was employed by another employer participating in the PEP, for purposes of plan eligibility and vesting.

These recommendations will enhance the ability of MEP and PEP administrators to more effectively address compliance issues.

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[21] See Letter from Elena Barone Chism, Associate General Counsel, Retirement Policy, ICI, to IRS (May 27, 2022), available at https://www.ici.org/system/files/2022-05/34164a.pdf.

3. Permanence of Remote Notarization Relief

We reiterate our prior comments, submitted in a joint letter (dated September 30, 2021) responding to Notice 2021-40,[22] requesting that IRS and Treasury make permanent the temporary relief from the physical presence requirement for notarization of spousal consent (and other participant elections); as well as our comments in a joint letter (dated March 10, 2023) regarding the proposed regulation from December 2022 that would make this temporary relief permanent.[23]

The temporary relief, originally announced in Notice 2020-4210 and extended by Notices 2021-03, 2021-40 and 2022-27, expired on December 31, 2022, though the IRS indicated that it will permit reliance on the proposed regulation prior to issuance of the final regulation.

As described in the above referenced joint letters, remote witnessing worked well during the pandemic and allowed retirement plan participants to access their benefits without unnecessarily jeopardizing their health by physically meeting with a notary public or plan representative. In addition, the joint letters explain that remote witnessing under the protective conditions described in Notice 2020-42 has proven to be more secure and more convenient than physical witnessing. Moreover, as noted in the joint comments, the undersigned have seen no indication, either from plan sponsors or service providers, of fraud, spousal coercion, or other abuse. We urge the IRS to take swift action to finalize the proposed rule to permit continued remote notarization and witnessing.

4. Regulations under Code section 411(a)(11)

We request that IRS and Treasury finalize the proposed regulations implementing section 1102 of the Pension Protection Act, which instructed Treasury to modify the regulations under Code section 411(a)(11) to require disclosure of the consequences of failing to defer receipt of a distribution from a DC plan.[24] We strongly recommend that you finalize the requirements as proposed. As we stated in our comment letter,[25] the proposal strikes the right balance by alerting the participant that the plan may have investments, or fee structures, different from those obtainable in an IRA, and alerting the participant that more information is available. This approach will not overwhelm the participant with information that obscures the key information

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[22] Letter from ICI and 15 other trade organizations to IRS regarding Permanent Relief for Remote Witnessing Procedures, dated September 30, 2021, available at https://www.ici.org/system/files/2021-10/33806a.pdf.

[23] Letter from ICI and 18 other organizations, to IRS regarding Use of an Electronic Medium to Make Participant Elections and Spousal Consents (RIN 1545-BQ50), dated March 10, 2023, available at https://www.ici.org/system/files/2023-03/35205a.pdf.

[24] The proposed regulations were published at 73 Fed. Reg. 59575 (Oct. 9, 2008).

[25] See Letter from ICI to IRS regarding Proposed Regulation on Notice to Participants of Consequences of Failure to Defer Receipt of Qualified Retirement Plan Distributions (REG-107318-08) (January 7, 2009).

while also assuring the participant has access to information consequential to the decision whether to take or defer a distribution from the plan.

5. Additional guidance clarifying the application of the one-per-year limit on IRA rollovers

Pursuant to an item on the second quarter update to the 2014-2015 Priority Guidance Plan, the IRS issued Announcement 2014-32, which clarifies the impact a 2014 IRA rollover has on the one-rollover-per-year limitation contained in Code section 408(d)(3)(B). Announcement 2014-32 and previously issued Announcement 2014-15 were issued in response to *Bobrow v. Commissioner*,[26] a January 2014 US Tax Court opinion which held that the one-rollover-per-year limitation applies on an aggregated basis to all of a taxpayer's IRAs and not to each IRA separately. While Announcement 2014-32 addressed certain issues relating to the section 408(d)(3)(B) one-per-year-limitation on IRA rollovers, as is further discussed below, we request additional guidance permitting waivers of inadvertent violations of the one-per-year-limit on IRA rollovers in circumstances where the inadvertent violations are beyond the control of the IRA holder. For example, as discussed below, such inadvertent violations may arise as a result of trailing dividends or in circumstances where the IRA holder has not taken an affirmative action to initiate a distribution. We ask that you consider these issues as you work on regulations and guidance pertaining to IRAs, as indicated on the current Priority Guidance Plan.

With respect to trailing dividends, in circumstances where an IRA holder initiates an indirect rollover after the dividend record date but prior to the dividend payment date, the dividend payment will likely be issued directly to the IRA holder as a subsequent payment. In a circumstance where the IRA holder effectuates a rollover to another IRA within the 60-day period required by section 408(d)(3)(a)(i), an attempt to roll the trailing dividend payment into the new IRA may be seen as violating section 408(d)(3)(B)'s one-per-year-limitation on IRA rollovers.

Another example is where the decision to initiate a distribution is due to circumstances beyond the control of the IRA holder. Such a situation may occur, for example, where an investment product undergoes a structural change (such as a reorganization, merger, or closure), and as a result of this structural change the IRA holder's investment in the investment product is liquidated and payment is issued directly to the IRA holder. In the event that payment is issued to the IRA holder during a 12-month period in which he or she has previously made an indirect rollover, he or she will be precluded from making another indirect rollover with the funds received as a result of the investment product structural change.

[26] T.C. Memo. 2014-21 (January 28, 2014).

Similarly, a distribution to the IRA holder may be reported under the circumstances described in Revenue Ruling 2018-17,[27] where assets in a traditional IRA are paid to a state unclaimed property fund. If such assets are later recovered by the IRA owner, the one-rollover-per-year limitation could prevent the individual from returning the funds to an IRA.

In light of these possible situations, it may be appropriate for the IRS to have a process for waiving inadvertent violations of the one-per-year limit on IRA rollovers, similar to the waiver process contained in Code section 408(d)(3)(I) for violations of the 60-day rule for indirect rollovers. We note that correction of such violations also is discussed above in the context of the Employee Plans Compliance Resolution System.

6. Streamline Compliance for Electronic Delivery of IRS Notices and Disclosures

ICI has long supported increased use of electronic delivery of required disclosures because, as we have explained in several prior letters, the use of electronic delivery is a crucial aspect of improving disclosure to participants.[28] The Department of Labor (the "Department") and the IRS each have separate rules that apply to the electronic delivery of notices under each's jurisdiction. As we have explained in prior comment letters, plans would benefit from expanded coordination between the IRS and the Department on their rules for plans' use of electronic media.[29] Specifically, the IRS should confirm that that a plan that meets the standards in the Department's 2020 safe harbor[30] is deemed to meet the "effective ability to access"[31] test in the IRS's guidance

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[27] Revenue Ruling 2018-17 provides that, under the facts and circumstances described, an IRA trustee who pays amounts from a traditional IRA to a state unclaimed property fund must report the payment on Form 1099-R and withhold federal income tax (unless the taxpayer made a withholding election).

[28] See pages 4-8 of letter from David M. Abbey, Deputy General Counsel—Retirement Security, ICI and Shannon N. Salinas, Assistant General Counsel—Retirement Security, ICI, to Office of Regulations and Interpretations, EBSA (November 22, 2019); available at https://www.ici.org/doc-server/pdf%3A32062a.pdf (in response to Department's 2019 proposed e-delivery safe harbor and accompanying RFI). Also see Peter Swire and DeBrae Kennedy-Mayo, 2018 Update to Delivering ERISA Disclosure for Defined Contribution Plans: Why the Time Has Come to Prefer Electronic Delivery; available at https://peterswire.net/wpcontent/uploads/2018-Update-to-Delivering-ERISA-Disclosure-for-DC-Plans-002.pdf ("Swire Paper").

[29] Letter from Elena Barone Chism, Deputy General Counsel, Retirement Policy, and Shannon Salinas, Associate General Counsel, Retirement Policy, ICI, to Office of Regulations and Interpretations, Employee Benefits Security Administration, Department of Labor (May 22, 2024), available at https://www.ici.org/letters/24-cl-response-effectiveness-retirement-plans, in response to a joint agency Request for Information issued by the Department, Treasury, and the Pension Benefit Guaranty Corporation (PBGC) to solicit public input to develop a record as they review the effectiveness of existing reporting and disclosure requirements for retirement plans, as required by the SECURE 2.0 Act. Also see pages 13–14 of 2019 letter cited in footnote 28

[30] In 2020, the Department published a final rule on electronic delivery for ERISA plan notices and disclosures, adding a new alternative safe harbor that may be used by ERISA retirement plans. 85 Fed. Reg. 31884 (May 27, 2020).

[31] In 2006, the IRS issued guidance relating to plans' use of electronic media to furnish notices required under the Code. See 26 CFR 1.401(a)–21(e)(1), published at 71 Fed. Reg. 61877 (October 20, 2006).

on electronic media. This coordination would provide flexibility to plans and would streamline compliance. Therefore, such guidance would have a deregulatory effect.

7. Form 1099-R, Reporting of Qualified Charitable Distributions (Reporting item code Y)

While not necessarily a recommendation for the Guidance Plan, we want to make you aware of a concern raised by our members relating to reporting of Qualified Charitable Distributions (QCDs). In a draft version of the 2025 Form 1099-R Instructions released in March 2025, IRS introduced a new code Y for reporting QCDs. Prior to this change, QCDs were reported using Code 7 – Normal Distribution; therefore, no special coding (other than using a special payee to pay to the charitable institution) was required on the Form 1099-R. An updated draft of the Instructions released in April 2025 (which has since been finalized) indicates a requirement to report a QCD using code Y with:

- Code 7 for a QCD from a non-inherited (normal distribution) IRA,
- Code 4 for a QCD from an inherited (death distribution) IRA, or
- Code K for a QCD reporting distributions of traditional IRA assets not having a readily available FMV that are either from non-inherited or inherited.

Implementing this change to the Form 1099-R will take some time and a fairly large development effort for IRA providers, because many IRA providers currently do not have a good way to track these distributions. Looking back to identify 2025 QCDs already processed in the early months of 2025 would be even more difficult because there is not a reliable way to identify, with any accuracy, payments of this type that were already processed. Since providers do not currently have in place a method to designate a payment as a QCD, any attempt to track QCDs at this point would be a fully manual process, and one provider has estimated it has made thousands of distributions that it believes may be QCDs. Particularly for 2025, there are likely to be many errors, and many instances in which providers' reporting will not match the taxpayers' filings.

The timing of the publishing this significant change to the form is very late for 2025 distributions. Therefore, we respectfully request that IRS either not implement this change to the reporting for 2025 QCDs, or alternatively, provide reporting relief for reporting QCDs for 2025. As the Form 1099-R and instructions are not yet final, we urge the IRS to delay this change or offer some type of relief to ease the reporting burden on IRA providers.

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If we can provide you with any additional information regarding these issues, please do not hesitate to contact Elena Chism at 202/326-5821 (elena.chism@ici.org) or Shannon Salinas at 202/326-5809 (shannon.salinas@ici.org).

Sincerely,

/s/ Elena Chism	/s/ Shannon Salinas
Elena Chism Deputy General Counsel Retirement Policy	Shannon Salinas Associate General Counsel Retirement Policy

cc: Helen Morrison, Benefits Tax Counsel, US Department of Treasury