May 29, 2026

Internal Revenue Service
Attn: CC:PA:01:PR (Notice 2026-23) Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Re: Request for Comments on 2026-2027 Priority Guidance Plan

To Whom It May Concern:

On behalf of the Pension Committee (Committee) of the American Academy of Actuaries,[1] we appreciate the opportunity to provide input on the Internal Revenue Service's 2026 – 2027 Guidance Priority List. The following attachment contains a list of eight priority areas within the defined benefit pension plans landscape that the Committee encourages the IRS to consider and address, noting which are most time sensitive. These priorities highlight opportunities for deregulation or where existing guidance is insufficient and additional guidance would provide clarity around options available to plan sponsors.

Thank you for the opportunity to provide this feedback. If you have any questions or would like to discuss these comments further, please contact Janae Nelson, the Academy's policy project manager, retirement (nelson@actuary.org).

Sincerely,

Grace Lattyak, MAAA, EA, FCA, FSA
Chairperson, Pension Committee

[1] The American Academy of Actuaries is a 20,000-member professional association whose mission is to serve the public and the U.S. actuarial profession. For 60 years, the Academy has assisted public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

1. Expansion of Employee Plans Compliance Resolution System under SECURE 2.0, Section 305 (Time Sensitive)

Section 305 of the SECURE 2.0 Act of 2022 made significant revisions to the Employee Plan Compliance Resolution System (EPCRS). The provision greatly expanded EPCRS's Self-Correction Program (SCP), allowing plan sponsors to self-correct any "eligible inadvertent failure" within a reasonable time after discovering the mistake and before Treasury identifies the error. The statute specifically provides that the correction period for such eligible inadvertent failures is indefinite and has no last day (though correction still must be completed within a reasonable period following the discovery of the error).

Additionally, SECURE 2.0 allows sponsors of simplified employee pension plans (SEPs) and savings incentive match plans for employees of small employers (SIMPLE IRAs) to self-correct eligible inadvertent failures. The law also expands SCP to cover eligible inadvertent failures related to plan loans and requires Treasury to expand ECPRS to allow IRA custodians to correct certain eligible inadvertent failures.

SECURE 2.0 gave Treasury until December 29, 2024 (two years after enactment), to update Rev. Proc. 2021-30 (the current EPCRS) to reflect the changes to the program. However, to date IRS has only released a single piece of guidance, Notice 2023-43, on how sponsors may proceed with error corrections under the expanded EPCRS. Though this guidance addressed many implementation issues, it specifically prohibited sponsors from self-correcting nine categories of errors, even if those errors would otherwise be eligible inadvertent failures, until IRS issues a revised EPCRS.

Because this Notice 2023-43 effectively prohibits plan sponsors from relying on the statutory relief in SECURE 2.0 to correct certain errors, we urge IRS to comply with the statutory directive to update EPCRS as a high priority.

Additionally, SECURE 2.0 Section 301 amended ERISA to provide special rules for benefit overpayments. Although that section of the law does not specifically require IRS to review EPCRS to reflect those changes, EPCRS nonetheless needs revision for consistency with those changes. Other sections of EPCRS would also benefit from review with an eye towards consistency throughout the document. For example, the various overpayment correction methods available to defined benefit plans overlap but do not have identical participant protections, so it is unclear how a plan sponsor must comply when more than one correction method is available.

Plan sponsors rely on EPCRS daily to correct plan administration errors, so having a comprehensive, coherent, and cohesive error-correction program is of critical importance. Plan sponsors require a smoothly functioning EPCRS to keep their plans compliant with applicable rules and to correctly address issues affecting participants' benefits.

2. SECURE 2.0 Cash Balance Guidance (Time Sensitive)

Employers considering sponsoring defined benefit plans are generally most interested in cash balance plans, in particular market-based cash balance plans. SECURE 2.0 provided a special provision to the anti-backloading testing rules to support these plans. Notice 2024-2 provided some guidance about the implementation of this provision, however more guidance as specified below is urgently needed.

- ***Clarify the scope of anti-cutback relief relating to changes in the interest crediting rate for cash balance plans, as described in Q&As H1-H5 of IRS Notice 2024-2.***
  Plan sponsors would like clarification on the following aspects of the anti-cutback relief:
  - Whether the interest-crediting basis can be changed for all participants who have cash balance accounts, including inactive participants, participants with frozen accruals, and participants who may be receiving accruals that are not pay related.
  - Whether a plan receiving the relief will lose such relief if the plan is frozen within a certain period of time after changing the interest credit rate.
  - Whether a schedule of rates is considered "graded" by age or service if the ultimate pay credit rate is higher than the initial pay credit rate by a factor of 1/3 (or less).

- ***Address the requirement when testing backloading to use a reasonable projection of future interest crediting rates.***
  Plan sponsors and practitioners would like clarification on whether the pay credit schedule may be tested for compliance with the Code Section 411(b) anti-backloading requirements once at the time of adoption, or whether changes in the economic environment could require plans to update their pay crediting rate schedule due to a decrease in the projected future interest crediting rates.

  For example, assume a cash balance plan gives a variable interest crediting rate tied to an index or other variable basis and the following pay credits:

  - 3.5% for employees with sum of age and service under 50
  - 4.9% for employees with sum of age and service 50 or greater

  Assume upon adoption, 6% is a reasonable projection of future interest crediting rates and the plan passes the 133⅓% test. If market conditions change and a reasonable projection of future interest crediting rates decreases to 3%, would the pay credits need to be adjusted to pass the backloading test, or would a sponsor need to add back in a minimum interest credit? If sponsors cannot use a "set and forget" approach, the relief from this SECURE 2.0 provision may be more limited than assumed.

While many cash balance plan sponsors welcome the relief offered in SECURE 2.0, they are reluctant to implement it without these additional clarifications, which suggests that the relief will not help as many sponsors as originally intended. Because amendments are due for most plans by December 31, 2026, if additional guidance cannot be issued quickly, we request an extension for the amendment due date until after these issues are clarified.

3. Related Cash Balance Plan Topics (Time Sensitive)

Outside of SECURE 2.0, there are a number of outstanding regulatory considerations related to cash balance plans. The following additional guidance will be helpful for continued adoption and maintenance of these plans:

- Clarify the circumstances under which a participant can select the underlying pool of investments used to determine the interest credit rate. Several approaches exist that may avoid many of the concerns described in the preamble to the hybrid plan regulations, such as a choice at the time of initial participation in the plan between a limited number of asset pools (e.g., 2 or 3) within the

plan with a specified target asset allocation. Clarify the extent to which a cash balance plan can encourage annuity options by subsidizing the conversion of account balances to annuity forms of payment. Confirm that such an adjustment would not require a concomitant increase in any lump sum payment.
- Adopt a consistent regulatory approach for actuarially increasing cash balance benefits after normal retirement age. Preferably this approach would deem the actuarial increase requirement to be met as long as the underlying cash balance account grows with the plan's interest crediting rate. Specifically, it would be helpful to clarify that the annuity at normal retirement, determined based on the conversion basis in effect at normal retirement, does not have to be actuarially increased and serve as a minimum annuity at all subsequent possible benefit commencement dates. Locking in the annuity at normal retirement could result in an annuity in later years that is significantly in excess of the value of the cash balance account. Introducing a requirement that a lump sum payment be more than the value of the cash balance account would appear to be inconsistent with Congress's decision in the Pension Protection Act to make the cash balance account value controlling, not the annuity amount.
- Similarly, for a market-based cash balance plan that provides an interest credit based on the return on plan assets, we believe it makes sense from an economic perspective to allow the interest credit to serve as the actuarial increase, notwithstanding that the return could be negative in some years, because the interest credit nevertheless reflects a fair market adjustment to the value of the participant account.
- Extend SECURE 2.0 accrual rule changes to Section 415 so that plan sponsors may use a deemed interest crediting rate of equivalent to the rate used for the backloading test to test for compliance with Section 415.

4. Funding Method Changes (Time Sensitive)

The process of obtaining approval for a change in funding method is challenging for plan sponsors, practitioners, and the IRS. Consulting fees and IRS user fees can be cost-prohibitive, especially for smaller plans. The lengthy period of uncertainty, which can stretch into many months, puts the plan sponsor in a tough position as they operate the plan in anticipation of a ruling. Additionally, these filings drain the time of IRS staff when they have many competing priorities. For these reasons, we believe all parties would benefit from additional automatic approvals or clarity on situations that might not qualify as a funding method change, thereby allowing plan sponsors to change funding methods without the onerous process of formal approval.

In 2011, the Committee sent a letter to the IRS outlining some of the most important issues surrounding mergers and spinoffs and providing suggestions for how to handle those issues. The release of Revenue Procedures 2017-56 and 2017-57 addressed some of the issues in that letter. However, we would like to draw your attention to the following sections of the letter discussing issues which, to date, have not been resolved.

- Plan Mergers—Funding and Benefit Restriction Ratios (the bottom of page 10)
- Plan Spinoffs (the bottom of page 12)
- De minimis Mergers and Spinoffs (the bottom of page 16)
- More Than One Actuary (the bottom of page 17)

Additionally, providing automatic approval for the following items would be particularly helpful:

- A merger of two plans where one has a shortfall and the other does not. It is likely this situation has been dealt with a number of times and that the IRS has a preferred approach that could be added to existing guidance without significant modification.
- A merger with a transition period of greater than 12 months. We suggest the following approach, which we believe is consistent with funding method change approvals that the IRS has granted in these situations: To avoid a period of reliance on the valuation results of the disappearing plan for more than a year, we propose that the actuary perform a valuation for the disappearing plan as of the merger date in order to establish an updated funding shortfall and funding target normal cost for the portion of the transition period following the merger date. Once this valuation is performed, the rules that pertain to the automatic approval for mergers with transition periods of less than 12 months (with short plan year rules) would apply.

It would be helpful if the IRS clarified and expanded the circumstances where there is no change in funding method requiring formal approval. For example, plan sponsors could be given some flexibility in evaluating whether a spinoff results in a funding method change requiring IRS approval, permitting them to differentiate between a genuine change in funding method and simply continuing to apply the same method to any resulting plans that applied to the predecessor plan. Many beginning or end of year spinoffs may truly not need formal review by the IRS if no methods are changing and no shortfall amortization charges or funding balances exist immediately prior to the spinoff, yet under current guidance, such approval is necessary. As a practical matter, some plan sponsors, with advice of counsel, already take this approach, effectively penalizing those who are less comfortable doing so by forcing them to file for a change in funding method when nothing is actually changing.

In addition, plan sponsors would find it helpful to be given more flexibility in the use of calculation elements that do not have a significant effect on results, such as allowing a less precise normal cost allocation when the effect would reasonably be judged to be minimal, or when the net normal cost is $0 under any reasonable method.

5. Funding Balances

The Pension Protection Act of 2006 ("PPA") has been law for 20 years. Based on our collective experience with defined benefit plans over that time period, in 2021 the Committee sent a letter providing a number of suggestions to improve the rules related to funding balances and help avoid unintended consequences. We reiterate the following suggestions:

- Extend the deadline for sponsor elections to create or apply funding balances by one month to coincide with the Form 5500 filing deadline.
- Extend the deadline for sponsor elections to reduce (waive) funding balances beyond the end of the plan year to coincide with the deadline for applying or creating funding balance.
- Modify specific and standing elections to provide greater flexibility by allowing formulaic elections (permitting sponsors to make elections before exact valuation results are known).
- To the extent that some of the above changes are not made, provide an additional standing election to waive funding balances under certain circumstances.

Our observations of PPA over the past almost 20 years make clear that, despite comprehensive rules around funding balance elections, it is still far too easy for actuaries and plan sponsors to misunderstand

the election rules and to miss deadlines. The result is great frustration and unintended negative outcomes, such as the permanent loss of funding balance due to a simple paperwork error.

6. Section 420 Transfers

Pension plan surpluses continue to grow, and more plan sponsors are exploring uses for these surplus assets, including Section 420 transfers. Plan sponsors need clarification that the extended cost maintenance period defined in SECURE 2.0 for *de minimis* Section 420 transfers applies only to plans that are less than 125% funded after the transfer, even if the amount transferred is less than 1.75% of assets. Without such clarification, plan sponsors with plans funded more than 125% may be reluctant to execute 420 transfers.

7. Closed Plan Nondiscrimination Testing Guidance

The SECURE Act of 2019 included nondiscrimination testing relief for certain closed defined benefit plans. Plan sponsors and practitioners have questions regarding various provisions, including which plans qualify for the relief and which plans are considered closed for purposes of Sections 410(b), 401(a)(4), and 401(a)(26) relief, etc. Without clear guidance as to how this relief applies, many plan sponsors with closed plans may be reluctant to rely on it and may even decide to fully freeze their plans. Guidance around the definition of a closed plan and whether the plan must be entirely closed or not to qualify for relief would be helpful.

8. IRC Section 414(m) Affiliated Service Groups

Section 414(m) affects many small employers, but the structures of small businesses have changed since the rules were added to the Code in 1980, leaving questions for plan sponsors. Previously, plan sponsors could request from the IRS a determination of whether a business is part of an Affiliated Service Group ("ASG"). That option is no longer available, making it more important to have clear rules for making such an evaluation. We suggest the following to provide clarity for affected plan sponsors:

1. Review proposed regulations issued in the 1980s to determine if these proposals are still valid and how they may need to be updated/revised.
2. Issue proposed regulations concerning Management Function Affiliated Service Groups (Section 414(m)(5)).
3. Evaluate the need for regulations concerning structures that either did not exist or were very rare in the 1980s (e.g., surgical centers owned by multiple otherwise unaffiliated medical practices). If regulations cannot address these situations, indicate the inability to do so without legislative changes.
4. Provide safe harbors and/or guidance to allow plan sponsors to develop definitive ASG determinations on their own in most situations.