

PR Treasury Issues Rules to Retirement Plan Sponsors that Adopted Amendments in Compliance with the SECURE 2.0 Act

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PRACTICE AREAS

- Employee Benefits

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On August 26, 2025, the Secretary of the Puerto Rico Treasury Department (“PRDT”) issued Administrative Determination No. 25-03 (“AD 25-03”) to establish the applicable qualification rules in connection with the Setting Every Community Up for Retirement Enhancement Act of 2022 (“Secure 2.0 Act”) amendments adopted by sponsors of retirement plans qualified under the PR Code.

The Secure 2.0 Act was approved by United States Congress on December 20, 2022, and contains several provisions amending both the United States Internal Revenue Code of 1986, as amended (the “US Code”), and the Employee Retirement Income Security Act of 1974, as amended (“ERISA”). Some amendments are mandatory while others are optional, and some provisions have been effective since the adoption of the law, in 2022, and others will be effective in 2025.

Puerto Rico qualified retirement plans are subject to the qualification requirements of the PR Code and may also be subject to US Code qualification requirements to the extent said plans cover participants who are residents of the United States, in addition to Puerto Rico residents. Further, Puerto Rico retirement plans are also subject to the rules and fiduciary obligations established in Title I of ERISA. Thus, SECURE 2.0 Act provisions that amended ERISA Title I apply to Puerto Rico participants and those that amended the US Code provisions impact Puerto Rico qualified retirement plans that are also qualified under the US Code (“Dual Qualified Plans”), or Puerto Rico qualified retirement plans that have voluntarily adopted US Code provisions.

Pursuant to the qualification rules issued under Circular Letter of Tax Policy No. 16-08 of December 23, 2016 (“CL TP 16-08”), once a retirement plan is qualified under the PR Code it must request a new qualification letter if it adopts “Qualification Amendments.” CL TP 16-08 establishes, however, that “Qualification Amendments” do not include, among others, amendments adopted to incorporate future changes to the qualification requirements of the US Code or the rules under ERISA.

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Prior to AD 25-03 it was not entirely clear whether the Secure Act 2.0 amendments were “Qualification Amendments,” since some of them modified eligibility or distribution provisions that pursuant to CL TP 16-08 require filing for qualification with the PRTD. Other amendments were optional provisions that did not modify the PR Code through ERISA, and their adoption could constitute a modification of the qualification requirements under the PR Code, which pursuant to CL TP 16-08 also required filing with the PRTD. Given the uncertainty, the most conservative approach was to submit for qualification Secure Act 2.0 amendments, and the PRTD was granting qualification letters for those Secure Act 2.0 amendments that were actually submitted for qualification.

The recently issued AD 25-03 clarified the aforementioned issue and it now provides that amendments adopted by sponsors of Puerto Rico qualified retirement plans to incorporate optional or mandatory SECURE 2.0 Act provisions are considered amendments adopted to incorporate future changes to the qualification rules of the US Code or the rules of ERISA, and thus are not considered “Qualification Amendments”. Therefore, if a retirement plan is amended to adopt mandatory or optional amendments of the SECURE 2.0 Act, the retirement plan does not have to request a new determination letter to the PRTD. The application of **AD 25-03 does not extend to other amendments adopted with the Secure 2.0 Act provisions. Thus, said other amendments not related to Secure 2.0 Act must still be reviewed pursuant to CL TP 16-08 to determine if a new qualification letter must be requested from the PRDT.**

According to AD 25-03, the SECURE 2.0 Act provisions that **will not be** considered “Qualification Amendments” include the following:

1. Mandatory amendments to allow the participation of “long-term part-time employees”.
2. Amendments to increase the dollar limit for small-amount distributions under the plan.
3. Amendments to comply with new rules for Required Minimum Distributions (“RMDs”) under the US Code.
4. Amendments to incorporate matching provisions for student loan payments made by plan participants.



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The provisions of AD 25-03 are effective immediately for tax years commencing after December 29, 2022. AD 25-03 is available in its entirety here.

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