

2019 Required Amendments List for Qualified Retirement Plans and § 403(b) Retirement Plans

Notice 2019-64

I. PURPOSE

This notice sets forth the 2019 Required Amendments List (2019 RA List). Beginning with the 2019 RA List, all Required Amendments Lists (RA Lists) will apply to both individually designed plans qualified under § 401(a) (qualified individually designed plans) and individually designed plans that satisfy the requirements of § 403(b) (§ 403(b) individually designed plans).

Section 5 of Rev. Proc. 2016-37, 2016-29 I.R.B. 136, provides, generally, that in the case of a qualified individually designed plan, the remedial amendment period for a disqualifying provision arising as a result of a change in qualification requirements is extended to the end of the second calendar year that begins after the issuance of the RA List on which the change in qualification requirements appears. Similarly, section 5 of Rev. Proc. 2019-39, 2019-42 I.R.B. 945, provides that, with respect to a form defect in a § 403(b) individually designed plan, the remedial amendment period arising as a result of a change in § 403(b) requirements ends on the last day of the second calendar year that begins after the issuance of the RA List on which the change in § 403(b) requirements appears. Pursuant to these sections, December 31, 2021, generally is the last day of the remedial amendment period with respect to (1) a disqualifying provision arising as a result of a change in qualification requirements that appears on the 2019 RA List and (2) a form defect arising as a result of a change in § 403(b) requirements that appears on the 2019 RA List. In addition, under section 8.01 of Rev. Proc. 2016-37 and section 6.01 of Rev. Proc. 2019-39, December 31, 2021, generally is also the plan amendment deadline for a disqualifying provision arising as a result of a change in qualification requirements that appears on the 2019 RA List and for a form defect arising as a result of a change in § 403(b) requirements that appears on the 2019 RA List. Later dates may apply to a governmental plan (as defined in § 414(d)) pursuant to sections 5.06(3) and 8.01 of Rev. Proc. 2016-37 and sections 5.03(2)(c) and 6.01 of Rev. Proc. 2019-39. References to qualification requirements and to § 403(b) requirements in Parts III and IV of this notice are referred to, separately and collectively, as “requirements.”

II. BACKGROUND

Section 401(b) of the Internal Revenue Code (Code) provides a remedial amendment period during which a plan may be amended retroactively to comply with the qualification requirements under § 401(a). Section 1.401(b)-1 describes the

disqualifying provisions that may be amended retroactively and the remedial amendment period during which retroactive amendments may be adopted. That regulation also grants the Commissioner the discretion to designate certain plan provisions as disqualifying provisions and to extend the remedial amendment period.

Sections 5.05(3) and 5.06(3) of Rev. Proc. 2016-37 extend the remedial amendment period for individually designed plans to correct disqualifying provisions that arise as a result of a change in qualification requirements. Under section 5.05(3), the remedial amendment period for a plan that is not a governmental plan (as defined in § 414(d)) is extended to the end of the second calendar year that begins after the issuance of the RA List on which the change in qualification requirements appears. Section 5.06(3) provides a special rule for governmental plans that may further extend the remedial amendment period in some cases.

Section 8.01 of Rev. Proc. 2016-37 provides that the plan amendment deadline with respect to a disqualifying provision described in section 5 of Rev. Proc. 2016-37 is the date on which the remedial amendment period ends with respect to that disqualifying provision.

Section 21.02 of Rev. Proc. 2013-22, 2013-18 I.R.B. 985, establishes a remedial amendment period that permits an eligible employer to retroactively correct form defects in its written § 403(b) plan.

Section 3 of Rev. Proc. 2017-18, 2017-5 I.R.B. 743, provides that the remedial amendment period for a form defect in a § 403(b) plan ends on March 31, 2020. Thus, this § 403(b) remedial amendment period applies to form defects first occurring on or before March 31, 2020.

Section 5.01 of Rev. Proc. 2019-39 establishes a system of recurring remedial amendment periods for § 403(b) individually designed plan form defects first occurring after March 31, 2020.

Section 5.03(1)(c) of Rev. Proc. 2019-39 provides that with respect to a form defect relating to, or integral to, a change in § 403(b) requirements, the remedial amendment period for a § 403(b) individually designed plan that is not a governmental plan (as defined in § 414(d)) ends on the last day of the second calendar year that begins after the issuance of the RA List on which the change in requirements appears. Section 5.03(2)(c) provides a special rule for governmental plans that could further extend the remedial amendment period in some cases.

Section 6.01 of Rev. Proc. 2019-39 provides that the plan amendment deadline with respect to a form defect in a § 403(b) individually designed plan first occurring after March 31, 2020, is the date on which the remedial amendment period ends with respect to that form defect.

Section 7 of Rev. Proc. 2019-39 extends the § 403(b) remedial amendment period with respect to form defects first occurring on or before March 31, 2020, to the later of (1) March 31, 2020, or (2) the end of the remedial amendment period provided under section 5 of Rev. Proc. 2019-39.

Section 9 of Rev. Proc. 2016-37 and section 8.01 of Rev. Proc. 2019-39 provide that the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to publish an RA List annually. In general, a change in qualification requirements will not appear on an RA List until guidance with respect to that change (including, in certain cases, model amendments) has been provided in regulations or in other guidance published in the Internal Revenue Bulletin. However, in the discretion of the Treasury Department and the IRS, a change in qualification requirements may be included on an RA List in other circumstances, such as in cases in which a statutory change is enacted and the Treasury Department and the IRS anticipate that no guidance will be issued.

III. CONTENT AND ORGANIZATION OF RA LIST

In general, an RA List includes statutory and administrative changes in requirements that are first effective during the plan year in which the list is published.¹ However, an RA List does not include guidance issued or legislation enacted after the list has been prepared and also does not include:

- Statutory changes in requirements for which the Treasury Department and the IRS expect to issue guidance (which would be included on an RA List issued in a future year);
- Changes in requirements that permit (but do not require) optional plan provisions, in contrast to changes in requirements that cause existing plan provisions (which may include optional plan provisions previously adopted) to become disqualifying provisions or § 403(b) form defects;² or
- Changes in the tax laws affecting qualified individually designed plans or § 403(b) individually designed plans that do not change the requirements

¹ RA Lists also may include changes in requirements that were first effective in a prior year that were not included on a prior RA List under certain circumstances, such as changes in requirements that were issued or enacted after the prior year's RA List was prepared.

² The remedial amendment period and plan amendment deadline for discretionary changes to the terms of a qualified individually designed plan are governed by sections 5.05(2), 5.06(2), and 8.02 of Rev. Proc. 2016-37. The remedial amendment period and plan amendment deadline for discretionary changes to the terms of a § 403(b) individually designed plan are governed by sections 5.03(1)(b), 5.03(2)(b), and 6.02 of Rev. Proc. 2019-39. These deadlines for discretionary changes are not affected by the inclusion of a change in requirements on an RA List.

under § 401(a) or § 403(b) (such as changes to the tax treatment of plan distributions, or changes to the funding requirements for qualified individually designed plans).

The RA List is divided into two parts. Part A covers changes in requirements that generally would require an amendment to most plans or to most plans of the type affected by the change.

Part B includes changes in requirements that the Treasury Department and the IRS anticipate will not require amendments to most plans, but might require an amendment because of an unusual plan provision in a particular plan. For example, if a change affects a particular requirement that most plans incorporate by reference, Part B would include the change because a particular plan might not incorporate the requirement by reference and, thus, might include language inconsistent with the change.

Annual, monthly, or other periodic changes to (1) the various dollar limits that are adjusted for cost of living increases as provided in § 415(d) or other Code provisions, (2) the spot segment rates used to determine the applicable interest rate under § 417(e)(3), and (3) the applicable mortality table under § 417(e)(3), are treated as included on the RA List for the year in which such changes are effective even though they are not directly referenced on that RA List. The Treasury Department and the IRS anticipate that few plans have language that will need to be amended on account of these changes.

The fact that a change in a requirement is included on the RA List does not mean that a plan must be amended as a result of that change. Each plan sponsor must determine whether a particular change in a requirement requires an amendment to its plan.

IV. 2019 REQUIRED AMENDMENTS LIST

Part A. Changes in requirements that generally would require an amendment to most plans or to most plans of the type affected by the change.

- *Final regulations relating to hardship distributions* (84 FR 49651 (Sept. 23, 2019)). Plans (including § 403(b) individually designed plans) that (1) provide for a suspension of an employee's elective deferrals or employee contributions as a condition for obtaining a hardship distribution of elective deferrals or (2) do not require a representation from an employee who requests a hardship distribution that he or she has insufficient cash or other liquid assets reasonably available to satisfy the need, must be amended as necessary to eliminate the suspension and

provide for the representation, for hardship distributions made on or after January 1, 2020.

Note: The prohibition on a qualified plan's or 403(b) plan's suspension of elective deferrals and employee contributions as a condition for obtaining a hardship distribution of elective deferrals applies not only to the plan making the hardship distribution but also to all of the employer's other qualified plans, § 403(b) plans (and, if the employer is an eligible employer described in § 457(e)(1)(A), eligible deferred compensation plans, as described in § 457(b)).

- *Final regulations regarding cash balance/hybrid defined benefit plans* (79 FR 56442 (Sept. 19, 2014), 80 FR 70680 (Nov. 16, 2015)). Collectively bargained cash balance/hybrid defined benefit plans maintained pursuant to one or more collective bargaining agreements ratified on or before November 13, 2015, and which constitute collectively bargained plans under § 1.436-1(a)(5)(ii)(B), must be amended to the extent necessary to comply with those portions of the regulations regarding market rate of return and other requirements that first became applicable to the plan for the plan year beginning on or after the later of: (1) January 1, 2017, and (2) the earlier of (a) January 1, 2019, and (b) the date on which the last of those collective bargaining agreements terminates (determined without regard to any extension thereof on or after November 13, 2015). See § 1.411(b)(5)-1(f)(2)(i)(B)(3).

Note: The relief from the anti-cutback requirements of § 411(d)(6) provided in § 1.411(b)(5)-1(e)(3)(vi) applies only to plan amendments that are adopted before the effective date of those regulations.

See also Notice 2016-67, 2016-47 I.R.B. 748, which addresses the applicability of the market rate of return rules to implicit interest pension equity plans.

Part B. Other changes in requirements that may require an amendment.

- *None*

V. DRAFTING INFORMATION

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