

## 2020 Required Amendments List for Qualified Retirement Plans and § 403(b) Retirement Plans

Notice 2020-83

### I. PURPOSE

This notice sets forth the 2020 Required Amendments List (2020 RA List). The Required Amendments List (RA List) applies 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 that, except as otherwise provided by statute, or by regulations or other guidance published in the Internal Revenue Bulletin, 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, except as otherwise provided by statute, or by regulations or other guidance published in the Internal Revenue Bulletin, 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, 2022, 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 2020 RA List, and (2) a form defect arising as a result of a change in § 403(b) requirements that appears on the 2020 RA List. In addition, under section 8.01 of Rev. Proc. 2016-37 and section 6.01 of Rev. Proc. 2019-39, December 31, 2022, generally is also the plan amendment deadline for (1) a disqualifying provision arising as a result of a change in qualification requirements that appears on the 2020 RA List, and (2) a form defect arising as a result of a change in § 403(b) requirements that appears on the 2020 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.”<sup>1</sup>

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<sup>1</sup> In order to help plan sponsors and practitioners achieve operational compliance with changes in qualification requirements, the IRS provides the Operational Compliance List, a list of changes in qualification requirements that are effective during a calendar year, on the IRS website at <https://www.irs.gov/retirement-plans/operational-compliance-list>. See section 10 of Rev. Proc. 2016-37 and section 9 of Rev. Proc. 2019-39.

## 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 and 5.06 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. Sections 5.05 and 5.06 provide that, except as otherwise provided by statute, or by regulations or other guidance published in the Internal Revenue Bulletin, sections 5.05 and 5.06 set forth the extended remedial amendment period for disqualifying provisions. 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 an initial 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, as modified by Notice 2020-35, 2020-25 I.R.B. 948, provides that the initial remedial amendment period for a form defect in a § 403(b) plan ends on June 30, 2020.

Section 5.01 of Rev. Proc. 2019-39, as modified by Notice 2020-35, establishes a system of recurring remedial amendment periods for § 403(b) individually designed plan form defects first occurring after the last day of the initial remedial amendment period.

Section 5.03(1) of Rev. Proc. 2019-39 provides that, except as otherwise provided by statute, or by regulations or other guidance published in the Internal Revenue Bulletin, with respect to a form defect relating to, or integral to, a change in § 403(b) requirements that occurs after the initial remedial period, 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 the initial remedial amendment period is the date on which the remedial amendment period ends with respect to that form defect.

Section 7 of Rev. Proc. 2019-39, as modified by Notice 2020-35, extends the initial remedial amendment period with respect to a § 403(b) individually designed plan form defect first occurring on or before June 30, 2020, to the later of (1) June 30, 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, as modified by Notice 2020-35, 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.

The remedial amendment period applicable to a disqualifying provision arising as a result of a change in qualification requirements may be extended beyond the date that normally would apply to an item included on the 2020 RA List. Section 601 of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act)<sup>2</sup> provides, in general, that a retirement plan or annuity contract will be treated as being operated in accordance with the terms of the plan and, except as provided by the Secretary of the Treasury (Secretary), or the Secretary's delegate, a retirement plan will not fail to satisfy the anti-cutback requirements of § 411(d)(6) of the Code or § 204(g) of the Employee Retirement Income Security Act of 1974, Pub. L. 93-406, 88 Stat. 829 (1974), as amended (ERISA), as a result of a plan amendment made pursuant to a provision of the SECURE Act or the regulations thereunder, provided that:

- (1) the amendment is adopted no later than the last day of the first plan year beginning on or after January 1, 2022, or, for an applicable collectively bargained plan (a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before December 20, 2019) or a § 414(d) governmental plan, the last day of the first plan year beginning on or after January 1, 2024,

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<sup>2</sup> The SECURE Act appears in Division O of the Further Consolidated Appropriations Act, 2020, Pub. L. 116-94, 133 Stat. 2534, which was enacted on December 20, 2019.

or such later date as the Secretary may prescribe (SECURE Act section 601 date);

- (2) the amendment applies retroactively to the effective date of the SECURE Act provision or the regulations thereunder (or, in the case of an amendment not required by a provision of the SECURE Act or the regulations thereunder, the effective date specified by the plan or contract); and
- (3) the plan or contract is operated as if the amendment were in effect during the period beginning on the effective date of the SECURE Act provision or the regulations thereunder (or, in the case of an amendment not required by a provision of the SECURE Act or the regulations thereunder, the effective date specified by the plan or contract) and ending on the SECURE Act section 601 date or, if earlier, the date the amendment is adopted.

Notice 2020-68, 2020-38 I.R.B. 567, Q&A G-1, provides the deadline by which a retirement plan must be amended to reflect the provisions of the SECURE Act and the regulations thereunder. In general, for (1) a qualified plan that is not a governmental plan within the meaning of § 414(d) of the Code or an applicable collectively bargained plan, or (2) a § 403(b) plan that is not maintained by a public school (as described in § 403(b)(1)(A)(ii)), the deadline to amend for provisions of the SECURE Act and the regulations thereunder is the last day of the first plan year beginning on or after January 1, 2022. The plan amendment deadline for a qualified § 414(d) governmental plan or an applicable collectively bargained plan, and a § 403(b) plan that is maintained by a public school, as described in § 403(b)(1)(A)(ii), is the last day of the first plan year beginning on or after January 1, 2024.

### 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.<sup>3</sup> 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

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<sup>3</sup> 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.

provisions (which may include optional plan provisions previously adopted) to become disqualifying provisions or § 403(b) form defects;<sup>4</sup> or

- Changes in the tax laws affecting qualified individually designed plans or § 403(b) individually designed plans that do not change the requirements 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. 2020 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.

- *None*

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<sup>4</sup> 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.

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

- *Difficulty of care payments treated as compensation for retirement contribution limitations* (SECURE Act section 116). SECURE Act section 116(b) adds § 415(c)(8) to the Code to increase the annual additions limit for retirement plans to take into account difficulty of care payments, which are defined in § 131(c). Section 415(c)(8)(A) provides that a participant's compensation for purposes of § 415(c)(1) is increased by the amount of difficulty of care payments. Plans that are maintained by employers that have provided difficulty of care payments during plan years beginning after December 31, 2015, and before January 1, 2021, must be amended by December 31, 2022 or, if later, the SECURE Act section 601 date applicable to the plan, as set forth in section G of Notice 2020-68. If an employer changes its practice and begins to make difficulty of care payments to its employees in future years, the plan must be amended to include difficulty of care payments in the definition of § 415(c)(1) compensation by the end of the second calendar year following the calendar year in which the employer begins to make difficulty of care payments.<sup>5</sup>

*Note:* See also section E of Notice 2020-68, which provides questions and answers related to SECURE Act section 116.

- *Application of cooperative and small employer charity pension plan rules to certain charitable employers* (CARES Act section 3609). CARES Act section 3609 adds § 414(y)(1)(D) to the Code. Section 414(y)(1)(D) provides that a cooperative and small employer charity pension plan (CSEC plan) is defined to include a defined benefit plan that, as of January 1, 2000, was maintained by a tax-exempt employer that met specific characteristics. A CSEC plan as defined in § 414(y) is not permitted to include the benefit restrictions of § 436.

## V. DRAFTING INFORMATION

The principal author of this notice is Angelique Carrington of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this notice, contact Ms. Carrington at (202) 317-4148 (not a toll-free number).

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<sup>5</sup> Notice 2020-68, Q&A E-2, provides, in part, that if an employer does not make difficulty of care payments to its employees that are eligible to participate in the employer's plan, then the plan does not need to be amended to include difficulty of care payments in the plan's definition of § 415(c)(1) compensation.