

2022 Required Amendments List for Individually Designed Qualified and Section 403(b) Plans

Notice 2022-62

I. PURPOSE

This notice sets forth the 2022 Required Amendments List (2022 RA List). The Required Amendments List (RA List) applies to both individually designed plans qualified under section 401(a) of the Internal Revenue Code (Code) (qualified individually designed plans) and individually designed plans that satisfy the requirements of section 403(b) (section 403(b) individually designed plans).

Section 5 of Rev. Proc. 2022-40, 2022-47 IRB 487, provides generally that, except as otherwise provided by statute or in regulations or other guidance published in the Internal Revenue Bulletin (IRB), in the case of an individually designed qualified or section 403(b) plan that is not a governmental plan within the meaning of section 414(d), the remedial amendment period for (1) a disqualifying provision or (2) a form defect first occurring after June 30, 2020, that arises as a result of a change in qualification requirements or section 403(b) requirements, as applicable, expires on the last day of the second calendar year that begins after the issuance of the RA List on which the change in qualification requirements or section 403(b) requirements appears. Pursuant to section 5.03(1)(c) and section 6.01 of Rev. Proc. 2022-40, December 31, 2024, generally is both the last day of the remedial amendment period and the plan amendment deadline with respect to (1) a disqualifying provision arising as a result of a change in qualification requirements that appears on the 2022 RA List, and (2) a form defect arising as a result of a change in section 403(b) requirements that appears on the 2022 RA List. Later dates may apply to a governmental plan within the meaning of section 414(d) pursuant to section 5.03(2)(c) of Rev. Proc. 2022-40. References to qualification requirements and to section 403(b) requirements in Parts III and IV of this notice are referred to, separately and collectively, as “requirements.”¹

II. BACKGROUND

Section 401(b) of the Code provides a remedial amendment period during which a plan may be amended retroactively to comply with the qualification requirements under section 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 of Internal

¹ In order to help plan sponsors achieve operational compliance with changes in requirements, the IRS provides the Operational Compliance List, which is a list of changes in both qualification requirements and section 403(b) requirements that are effective during a calendar year, on the IRS website at <https://www.irs.gov/retirement-plans/operational-compliance-list>. See section 8 of Rev. Proc. 2022-40.

Revenue the discretion to designate in guidance published in the IRB certain plan provisions as disqualifying provisions and to extend the remedial amendment period.

Section 21.02 of Rev. Proc. 2013-22, 2013-18 IRB 985,² establishes an initial remedial amendment period that permits an eligible employer to retroactively correct form defects in its written section 403(b) plan.

Rev. Proc. 2017-18, as modified by Notice 2020-35, 2020-25 IRB 948, provides that the initial remedial amendment period for a form defect in a section 403(b) plan ends on June 30, 2020.

Section 5 of Rev. Proc. 2022-40 provides that except as otherwise provided by statute or in regulations or other guidance published in the IRB, with respect to plans that are not governmental plans within the meaning of section 414(d), the remedial amendment period for (1) a disqualifying provision or (2) a form defect first occurring after June 30, 2020, that arises as a result of a change in qualification requirements or section 403(b) requirements, as applicable, expires on the last day of the second calendar year that begins after the issuance of the RA List on which the change in qualification requirements or section 403(b) requirements appears. Section 5.03(2) provides a special rule for governmental plans that may further extend the remedial amendment period in some cases.

Section 6.01 of Rev. Proc. 2022-40 provides that the plan amendment deadline with respect to (1) a disqualifying provision in a qualified individually designed plan, or (2) a form defect first occurring after June 30, 2020, in a section 403(b) individually designed plan described in section 5 of Rev. Proc. 2022-40 is the date on which the remedial amendment period expires with respect to that disqualifying provision or form defect.

Section 7 of Rev. Proc. 2022-40 provides that the Treasury Department and the IRS publish an annual RA List. In general, a change in qualification requirements or section 403(b) 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 IRB. However, in the discretion of the Treasury Department and the IRS, a change in qualification requirements or section 403(b) 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 or form defect arising as a result of a change in qualification requirements or section 403(b) requirements may be extended beyond the date that normally would apply to an item included on an RA List, if, for example, a statute, regulation, or other guidance published in the IRB provides for a later deadline.

² Rev. Proc. 2013-22 was modified by Rev. Proc. 2014-28, 2014-16 I.R.B. 944, and Rev. Proc. 2015-22, 2015-11 I.R.B. 754, and clarified by Rev. Proc. 2017-18, 2017-5 I.R.B. 743.

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.³ However, an RA List does not include:

- Guidance issued or legislation enacted after the list has been prepared;
- Statutory changes in requirements for which the Treasury Department and the IRS expect to issue guidance that would be included on an RA List issued in a future year;⁴
- 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 section 403(b) form defects;⁵ or
- Changes in the tax laws affecting qualified individually designed plans or section 403(b) individually designed plans that do not change the requirements (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 that change because a particular plan might not incorporate the requirement by reference and, thus, might include language inconsistent with the change.

³ 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.

⁴ For example, certain provisions of Division O of the Further Consolidated Appropriations Act, 2020, Pub. L. 116-94, 133 Stat. 2534 (2019), known as the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act), are already effective, but have not been included on an RA List. As explained in Notice 2022-33, 2022-34 IRB 147 (guidance that, in part, extends the deadlines for amending a retirement plan to reflect provisions of the SECURE Act), it is anticipated that (1) guidance will be issued with respect to certain SECURE Act provisions and (2) the guidance and SECURE Act provisions requiring plan amendments will appear on a future RA List.

⁵ The remedial amendment period and plan amendment deadline for discretionary changes to the terms of an individually designed qualified or section 403(b) plan are governed by sections 5.03(1)(b), 5.03(2)(b), and 6.02 of Rev. Proc. 2022-40. These deadlines for discretionary changes are not affected by the inclusion of a change in requirements on an RA List.

Annual, monthly, or other periodic changes to (1) the various dollar limits that are adjusted for cost of living increases as provided in section 415(d) or other Code provisions, (2) the spot segment rates used to determine the applicable interest rate under section 417(e)(3), and (3) the applicable mortality table under section 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 necessarily 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. 2022 REQUIRED AMENDMENTS LIST

There are no entries listing changes in qualification requirements on the 2022 RA List.⁶

V. DRAFTING INFORMATION

The principal author of this notice is Tom Morgan of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this notice, contact Mr. Morgan at (202) 317-6700 (not a toll-free number).

⁶ The 2021 RA List included entries for section 9704 of the American Rescue Plan Act of 2021 (ARP) and Notice 2021-38, 2021-30 IRB 155, relating to special financial assistance for certain eligible multiemployer plans. Under these provisions, the sponsor of an eligible multiemployer plan has the discretion, during a period of several years beginning in 2021, to either apply for or not apply for special financial assistance pursuant to section 9704 of the ARP. If the plan sponsor (1) exercises its discretion to apply for special financial assistance, (2) had previously suspended plan benefits pursuant to section 432(e)(9) of the Code or section 4245(a) of the Employee Retirement Income Security Act of 1974, Pub. L. 93-406, 88 Stat. 829, as amended, and (3) received special financial assistance, then the sponsor is required to amend the plan to provide for reinstatement of the suspended benefits and for make-up payments, in accordance with Notice 2021-38. Beginning in 2022, an amendment made pursuant to section 9704 of the ARP will be treated as a discretionary amendment, and the plan amendment deadlines applicable to discretionary amendments as set forth in Rev. Proc. 2022-40 will apply. Accordingly, for a sponsor of an eligible multiemployer plan that commences payment of previously suspended benefits and make-up payments on account of being granted special financial assistance after 2021, the deadline for adopting the amendment to provide for these payments is the later of (1) the amendment deadline specified in the 2021 RA List that applies to plans eligible for special financial assistance (that is, December 31, 2023), or (2) the amendment deadline that would apply if the amendment were a discretionary amendment (that is, the end of the plan year in which the plan amendment is operationally put into effect, through the commencement of these payments by the plan).