

2023 Required Amendments List for Individually Designed Qualified and Section 403(b) Plans

Notice 2023-79

I. PURPOSE

This notice sets forth the 2023 Required Amendments List (2023 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).

Pursuant to sections 5.03(1)(c) and 6.01 of Rev. Proc. 2022-40, 2022-47 IRB 487, December 31, 2025, 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 2023 RA List, and (2) a form defect arising as a result of a change in section 403(b) requirements that appears on the 2023 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). Treas. Reg. § 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 Revenue the discretion to designate certain plan provisions as disqualifying provisions and to extend the remedial amendment period in guidance published in the Internal Revenue Bulletin (IRB).

Section 5 of Rev. Proc. 2019-39, 2019-42 IRB 945, as modified by section III.B.2(e) of Notice 2020-35, 2020-25 IRB 948, establishes a system of recurring remedial amendment periods for section 403(b) individually designed plan form defects first occurring after June 30, 2020.

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 generally section 8 of Rev. Proc. 2022-40.

Section 5.03(1)(c) of Rev. Proc. 2022-40 provides generally that, except as otherwise provided by statute or in regulations or other guidance published in the 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. Section 5.03(2)(c) 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 is the date on which the remedial amendment period expires in accordance with section 5 of Rev. Proc. 2022-40 with respect to that disqualifying provision or form defect.

Section 7 of Rev. Proc. 2022-40 provides that the Department of the Treasury (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, any model amendment, if applicable) 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. Section 501 of the SECURE 2.0 Act² provides, in general, that a retirement plan or annuity contract will be treated as being operated in accordance with the terms of the plan during a specified period and, except as provided by the Secretary of the Treasury (or the Secretary's delegate), a retirement plan will not fail to satisfy the anti-cutback requirements of section 411(d)(6) of the Code or section 204(g) of the Employee Retirement Income Security Act of 1974, Pub. L. 93-406, 88 Stat. 829, as amended (ERISA), by reason of a plan amendment made pursuant to any amendment made by the SECURE 2.0 Act or pursuant to any regulation issued by the Secretary of the Treasury or the Secretary of Labor (or a delegate of either such Secretary) under the SECURE 2.0 Act, provided that:

² Division T of the Consolidated Appropriations Act, 2023, Pub. L. 117-328, 136 Stat. 4459 (2022), known as the SECURE 2.0 Act of 2022 (SECURE 2.0 Act).

(1) the amendment is adopted no later than the last day of the first plan year beginning on or after January 1, 2025, 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 29, 2022), or for a governmental plan (within the meaning of section 414(d) of the Code), the last day of the first plan year beginning on or after January 1, 2027, or such later date as the Secretary may prescribe (the section 501 date);

(2) the amendment applies retroactively to the effective date of the SECURE 2.0 Act provision or the regulations thereunder (or, in the case of an amendment not required by a provision of the SECURE 2.0 Act or the regulations thereunder, the effective date specified by the plan); 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 2.0 Act provision or the regulations thereunder (or, in the case of an amendment not required by a provision of the SECURE 2.0 Act or the regulations thereunder, the effective date specified by the plan or contract) and ending on the section 501 date or, if earlier, the date the amendment is adopted.

Section 501(c) of the SECURE 2.0 Act modifies section 601(b)(1) of the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act),³ sections 2202(c)(2)(A) and 2203(c)(2)(B)(i) of the Coronavirus Aid, Relief, and Economic Security Act, and section 302(d)(2)(A) of Title III of the Taxpayer Certainty and Disaster Tax Relief Act of 2020⁴ to extend plan amendment deadlines with respect to these sections to coordinate with the plan amendment deadlines under section 501 of the SECURE 2.0 Act, as applicable.⁵

³ Division O of the Further Consolidated Appropriations Act, 2020, Pub. L. 116-94, 133 Stat. 2534 (2019).

⁴ Division EE of the Consolidated Appropriations Act, 2021, Pub. L. 116-260, 134 Stat. 1182 (2020).

⁵ Section G of Notice 2020-68, 2020-38 IRB 567, extended the deadline to amend a plan to reflect section 104 of Division M of the Further Consolidated Appropriations Act, known as the Bipartisan American Miners Act of 2019, to coordinate with the plan amendment deadlines provided in section 601 of the SECURE Act.

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.⁶ 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;
- 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;⁷ 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.

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

⁶ 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.

⁷ 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.

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. 2023 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*

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

- *None*

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).