

MEMO# 32937

November 23, 2020

IRS Publishes 2020 Required Amendments List for Individually-Designed Qualified Retirement Plans and 403(b) Plans

[32937]

November 23, 2020 TO: ICI Members

Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: IRS Publishes 2020 Required Amendments List for Individually-Designed Qualified Retirement Plans and 403(b) Plans

The Internal Revenue Service (IRS) issued Notice 2020-83,[\[1\]](#) containing the 2020 Required Amendments (RA) List for certain individually-designed retirement plans. Beginning with the RA List from 2019, the annual RA List applies to both individually-designed retirement plans qualified under Internal Revenue Code (Code) section 401(a) and individually-designed Code section 403(b) retirement plans. As a reminder, in 2016, the IRS began issuing the annual RA List in place of the annual Cumulative List of Changes in Plan Qualification Requirements (last published in 2015).[\[2\]](#)

An RA List includes only those items for which an amendment must be adopted by the end of the second calendar year following the year in which the RA List is published—which, in this case, would be December 31, 2022. An RA List for a given year will include statutory and administrative changes in requirements that are first effective during the plan year in which the list is published, but will not include guidance issued or legislative changes enacted after the list is prepared. It also will not include legislative changes for which Treasury and/or IRS expect to issue future guidance (to be included on a future year RA List), changes in requirements that permit (but do not require) new optional plan provisions, or changes in tax laws that do not affect the rules under Code sections 401(a) or 403(b) (such as changes to the tax treatment of plan distributions or changes to funding requirements).

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 covers changes in requirements that the Treasury Department and IRS anticipate will not require amendments to most plans, but might require an amendment in

a plan with an unusual plan provision (such as a provision relating to a requirement that most other plans incorporate by reference). The Notice specifies that annual, monthly, or other periodic changes to (1) the various dollar limits that are adjusted for cost of living increases as provided in Code section 415(d) or other Code provisions, (2) the spot segment rates used to determine the applicable interest rate under Code section 417(e)(3), and (3) the applicable mortality table under Code 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.^[3]

Part A of the 2020 RA List contains no items.

Part B of the 2020 RA List includes the following items:

- *Difficulty of care payments treated as compensation for retirement contribution limitations (SECURE Act section 116).* SECURE Act section 116 permits certain individuals to contribute to a retirement plan or IRA based on compensation (so-called “difficulty of care” payments)^[4] that is tax-exempt under Code section 131. Notice 2020-68 provides that difficulty of care payments received by an employee from a person other than his or her employer are not includible in the definition of compensation (for purposes of the Code section 415(c) limits) under that employer’s plan.^[5] Plans 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 section 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.
- *Application of cooperative and small employer charity pension plan rules to certain charitable employers (CARES Act section 3609).*^[6] CARES Act section 3609 adds section 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 section 414(y) is not permitted to include the benefit restrictions of section 436.

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endnotes

^[1] IRS Notice 2020-83 is available at <https://www.irs.gov/pub/irs-drop/n-20-83.pdf>.

^[2] See ICI Memorandum No. 30015, dated July 6, 2016. Available at https://www.ici.org/my_ici/memorandum/memo30015. For a description of the 2019 RA List, see ICI Memorandum No. 32080, dated December 5, 2019. Available at https://www.ici.org/my_ici/memorandum/memo32080.

[3] Treasury and IRS anticipate that few plans have language that will need to be amended on account of these changes.

[4] “Difficulty of care” payments are a type of foster care payment defined in Code section 131(c).

[5] See ICI Memorandum No. 32741, dated September 4, 2020. *Available at* https://www.ici.org/my_ici/memorandum/memo32741.

[6] For a description of the relief provided regarding IRAs and defined contribution plans in the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act), see ICI Memorandum No. 32328, dated March 27, 2020. *Available at* https://www.ici.org/my_ici/memorandum/memo32328.

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