

MEMO# 33932

December 2, 2021

IRS Publishes 2021 Required Amendments List for Individually Designed Qualified Retirement Plans and 403(b) Plans

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TO: ICI Members

Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: IRS Publishes 2021

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

The Internal Revenue Service (IRS) issued Notice 2021-64,[\[1\]](#) containing the 2021 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, 2023. 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 2021 RA List includes the following item:

- Special Financial Assistance Program for financially troubled multiemployer plans (American Rescue Plan Act of 2021 section 9704). As provided under the American Rescue Plan Act, under section 4262 of ERISA, the sponsor of an eligible multiemployer plan as defined in section 4262(b) of ERISA may apply to the Pension Benefit Guaranty Corporation (PBGC) to receive special financial assistance, provided certain conditions are satisfied. Code section 432(k) provides rules relating to an eligible multiemployer plan that applies to PBGC for special financial assistance. IRS guidance relating to these provisions requires a plan receiving special financial assistance to adopt plan amendments to reinstate suspended benefits and to provide make-up payments to certain participants and beneficiaries.

Part B of the 2021 RA List contains no items.

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endnotes

[1] IRS Notice 2021-64 is available at <https://www.irs.gov/pub/irs-drop/n-21-64.pdf>.

[2] See ICI Memorandum No. 30015, dated July 6, 2016. Available at <https://www.ici.org/memo30015>. For a description of the 2020 RA List, see ICI Memorandum No. 32937, dated November 23, 2020. Available at <https://www.ici.org/memo32937>.

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