

MEMO# 34025

February 4, 2022

IRS Issues 2022 Cumulative List of Changes for Pre-approved 403(b) Plans

[34025]

February 4, 2022

TO: ICI Members

Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: IRS Issues 2022 Cumulative List of Changes for Pre-approved 403(b) Plans

IRS Notice 2022-08^[1] provides the 2022 Cumulative List of Changes in Section 403(b) Requirements for use by providers of pre-approved 403(b) plans applying for IRS opinion letters during the second remedial amendment cycle (Cycle 2) under the IRS's section 403(b) pre-approved plan program.^[2] The 2022 Cumulative List identifies changes in the requirements under Internal Revenue Code ("Code") section 403(b) that the IRS will take into account with respect to a plan document submitted to the IRS for Cycle 2 and that were not taken into account during the first remedial amendment cycle (Cycle 1). As announced earlier in IRS Revenue Procedure 2021-37, section 403(b) plans may be submitted for approval during the Cycle 2 on-cycle submission period, which begins May 2, 2022, and ends May 1, 2023.^[3]

Except as specified in the Notice, the IRS will not consider in its review of any opinion letter application for Cycle 2: guidance issued or statutes enacted after November 1, 2021; Code section 403(b) requirements first effective in 2023 or later; or statutory provisions that are first effective in 2022 (or later) for which there is no guidance identified in the Notice.

The 2022 Cumulative List sets forth only changes in Code section 403(b) requirements that were not taken into account during Cycle 1. However, to satisfy Code section 403(b), a plan must comply with all relevant section 403(b) requirements, not only those on the 2022 Cumulative List. The 2022 Cumulative List sets forth items that were enacted or issued after October 1, 2012. The list includes changes related to:

- Various rules for safe harbor plans;
- In-plan Roth rollovers;
- Hardship distributions;
- Distributions upon elimination of certain lifetime income investment options;
- Distribution of custodial accounts upon plan termination;
- Qualified birth or adoption distributions;
- Rollovers to SIMPLE IRAs;
- Wrongful tax levy;

- Eligibility for retirement income accounts under section 403(b)(9);
- Required minimum distributions;
- Exclusion of part-time employees;
- Difficulty of care payments included in determination of compensation;
- Definition of the terms "spouse" and "marriage";
- Disaster relief for use of retirement savings; and
- Church plan clarifications.

Elena Barone Chism
Associate General Counsel - Retirement Policy

endnotes

[1] Notice 2022-08 is available at <https://www.irs.gov/pub/irs-drop/n-22-08.pdf>.

[2] Cycle 2 began on July 1, 2020. See ICI Memorandum No. 32336, dated March 30, 2020, available at <https://www.ici.org/memo32336>.

[3] See ICI Memorandum No. 33780, dated September 21, 2021, available at <https://www.ici.org/memo33780>. Rev. Proc. 2021-37 also makes several changes to the procedures for the 403(b) pre-approved plan program. Many of these changes are aimed at making the program more similar to the 401(a) pre-approved plan program. The Rev. Proc. announced that the IRS will issue a Cumulative List of Changes in the 403(b) requirements identifying the 403(b) requirements that the IRS will consider in reviewing 403(b) pre-approved plans submitted for Cycle 2.