

**MEMO# 34418**

November 29, 2022

# **Recent IRS Guidance for Individually Designed Qualified Plans and 403(b) Plans**

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TO: ICI Members

Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: Recent IRS Guidance for Individually Designed Qualified Plans and 403(b) Plans

## **IRS Publishes 2022 Required Amendments List for Individually Designed Qualified Retirement Plans and 403(b) Plans**

The Internal Revenue Service (IRS) issued Notice 2022-62,[\[1\]](#) providing the 2022 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.[\[2\]](#) The RA List for 2022 contains no items.

An RA List will include 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, 2024.[\[3\]](#) 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).

## **IRS Establishes Determination Letter Program for individually Designed 403(b) Plans**

In Revenue Procedure 2022-40, the IRS announced a new determination letter program for individually designed 403(b) plans.[\[4\]](#) The availability of determination letters for such plans will be limited, for the time being, to initial plan determinations and determinations

upon plan termination. The IRS may extend the program to other limited circumstances in the future. The earliest date a plan sponsor will be permitted to submit a determination letter application for a 403(b) individually designed plan is June 1, 2023.<sup>[5]</sup> For a terminating plan, the application is due by the later of: (1) one year from the effective date of the termination, or (2) one year from the date on which the action terminating the plan is taken (but in no event may the application be filed later than 12 months from the date of distribution of substantially all plan assets in connection with the plan termination).

In addition to extending the determination letter program (as set forth in Rev. Proc. 2016-37<sup>[6]</sup>) to individually designed 403(b) plans, Rev. Proc. 2022-40 also (1) incorporates modifications of Rev. Proc. 2016-37 set forth in Rev. Proc. 2019-20, relating to the submission of determination letter applications for a determination with respect to merged plans, (2) clarifies and modifies the provisions of Rev. Proc. 2019-39 that relate to the Remedial Amendment Period for 403(b) individually designed plan form defects first occurring after June 30, 2020, (3) extends the expiration of the Remedial Amendment Period for new qualified individually designed plans, (4) modifies the circumstances under which a plan is considered to have been issued an initial plan determination, and (5) modifies the scope of review of qualified individually designed plans submitted under the determination letter program.

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#### Notes

<sup>[1]</sup> IRS Notice 2022-62 is available at <https://www.irs.gov/pub/irs-drop/n-22-62.pdf>.

<sup>[2]</sup> 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). See ICI Memorandum No. 30015, dated July 6, 2016, available here: <https://www.ici.org/memo30015>. For a description of the 2021 RA List, see ICI Memorandum No. 33932, dated December 2, 2021, available here: <https://www.ici.org/memo33932>

<sup>[3]</sup> The RA List typically 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. Treasury and IRS anticipate that few plans have language that will need to be amended on account of these changes.

[4] Rev. Proc. 2022-40 is available here: <https://www.irs.gov/pub/irs-drop/rp-22-40.pdf>.

[5] Under Rev. Proc. 2022-40, section 12.01, the date on which an application may first be submitted for an initial plan determination is staggered over three years (June 1, 2023, June 1, 2024, and June 1, 2025), depending on the last digit of the plan sponsor's employer identification number (EIN).

[6] See ICI Memorandum No. 30015, dated July 6, 2016, available at <https://www.ici.org/memo30015>.

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