
26 CFR 601.601: Rules and regulations.
(Also, Part I, §§ 401, 403; 1.401(b)-1.)

Rev. Proc. 97-41

SECTION 1. PURPOSE

.01 This revenue procedure provides

August 18, 1997

guidance to sponsors of pension, profit-sharing and stock bonus plans qualified under § 401(a) or 403(a) of the Internal Revenue Code (qualified plans) and tax-sheltered annuity plans described in § 403(b) (§ 403(b) plans) with respect to the date by which they must adopt amendments to comply with changes in the law made by the Small Business Job Protection Act of 1996, Pub. L. 104-188 (SBJPA), the Uruguay Round Agreements Act, Pub. L. 103-465 (GATT), and the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. 103-353 (USERRA). This revenue procedure provides that:

1 In general, there is a single deadline for adopting SBJPA, GATT and USERRA amendments to qualified plans.

2 The deadline for adopting SBJPA, GATT and USERRA amendments is the same as the date by which certain plans that have extended reliance on Tax Reform Act of 1986 (TRA '86) determination letters must be amended.

3 Plan sponsors are allowed, for qualification purposes, to anticipate in plan operation certain plan amendments that they intend to adopt as a result of changes in the qualification requirements.

.02 Specifically, under this revenue procedure:

1 Qualified plans have a remedial amendment period under § 401(b) with respect to certain amendments for SBJPA, GATT or USERRA through the last day of the first plan year beginning on or after January 1, 1999. Thus, these amendments will not have to be adopted before the last day of a plan's 1999 plan year.

2 The deadline for adopting plan amendments to reflect certain limitations under § 415(b), as amended by GATT and SBJPA, is also the last day of the first plan year beginning on or after January 1, 1999. In addition, relief is provided so that a plan amendment described in § 1449(d)(2) of SBJPA repealing an earlier plan amendment that implemented certain amendments made by GATT to § 415(b) need not be adopted before the last day of the first plan year beginning on or after January 1, 1999.

3 Plan sponsors are advised of the Service's intention to publish procedures for obtaining determination letters that include consideration of the changes to the

qualification requirements made by SBJPA and GATT as soon as possible after necessary guidance is issued.

4 Amendments for SBJPA to § 403(b) plans, or to annuity contracts purchased under § 403(b) plans, are not required to be adopted before the first day of the first plan year beginning on or after January 1, 1998.

PART I. BACKGROUND

SECTION 2. SBJPA

.01 SBJPA changed several of the requirements of the Code that apply to pension, profit-sharing and stock bonus plans qualified under § 401(a) or 403(a). While a number of these changes are effective in plan years beginning after December 31, 1996, others are not effective until later years.

.02 Section 1465 of SBJPA generally provides an extended period for amending plans and annuity contracts as required by SBJPA. Under § 1465, if any provision of subtitle D (Pension Simplification) of SBJPA requires an amendment to any plan or annuity contract, the amendment is not required to be made before the first day of the first plan year beginning on or after January 1, 1998, provided (1) the amendment is made effective retroactively to the date on which the provision of SBJPA became effective with respect to the plan or contract and (2) the plan or contract is operated in accordance with the requirements of the provision as of its effective date. For a governmental plan (as defined in § 414(d) of the Code), the year "2000" is substituted for the year "1998" in § 1465. Section 1465 applies to plans and contracts in existence on or after the date of enactment of SBJPA, August 20, 1996.

.03 In Rev. Proc. 96-49, 1996-43 I.R.B. 74, the Service stated that plan amendments to reflect the provisions of USERRA and § 414(u), which was added by § 1704(n) in subtitle G (Technical Corrections) of SBJPA, are not required to be made before the date plan amendments are required to be made under § 1465 of SBJPA.

SECTION 3. GATT

.01 GATT, which was enacted December 8, 1994, also changed several of the Code's qualification requirements. These

included the rules relating to the determination of certain benefits under §§ 411(a)-(11)(B), 415(b)(2)(E) and 417(e)(3).

.02 The changes to §§ 411(a)(11)(B) and 417(e)(3), relating to the determination of the present value of certain plan distributions, were generally effective for plan years beginning after December 31, 1994. However, § 767(a)(2) of GATT provided a transition rule with respect to the determination under §§ 411(a)(11)(B) and 417(e)(3) of the present value of distributions from plans that were adopted and in effect as of December 7, 1994 ("pre-GATT plans"). In general, under this transition rule, the present value of a distribution from a pre-GATT plan that is made before the earlier of (i) the first plan year beginning after December 31, 1999, or (ii) the later of the adoption or effective date of a plan amendment applying the GATT changes to §§ 411(a)-(11)(B) and 417(e)(3) to the plan is to be determined under the plan's pre-GATT terms. Thus, for pre-GATT plans, amendments applying the GATT changes to §§ 411(a)-(11)(B) and 417(e)(3) to the plan cannot be adopted retroactively. As a result, these plans are not permitted to operate in accordance with these changes prior to the adoption of plan amendments.

.03 Under section 767(d) of GATT, the changes to § 415(b)(2)(E), relating to required adjustments to certain benefits for limitation purposes, were effective for limitation years beginning after December 31, 1994. In addition, § 767(d) of GATT required plans to be operated in accordance with the GATT changes to § 415(b)(2)(E) as of the first limitation year beginning after December 31, 1994, even though, under § 767(d)(3)(B) of GATT, plan amendments applying these changes to the plan would not be required until such date as the Secretary provides.

.04 Section 1449 of SBJPA amended § 767(d)(3)(A) of GATT, however, to permit plan sponsors to delay the implementation of the GATT changes to § 415(b)(2). Section 1449 provides that a pre-GATT plan is not required to apply the GATT changes to § 415(b)(2)(E) with respect to benefits accrued before the earlier of (i) the later of the date a plan amendment applying the changes is adopted or effective or (ii) the first day of the first limitation year beginning

after December 31, 1999. Further, § 1449(d) of SBJPA provides that an amendment applying specified GATT changes that was adopted or effective before August 20, 1996, will be disregarded in applying § 767(d)(3)(A) of GATT, as modified by § 1449(a) of SBJPA, if that amendment is repealed by another plan amendment that is adopted no later than August 20, 1997.

SECTION 4. THE REMEDIAL AMENDMENT PERIOD UNDER SECTION 401(B)

.01 Section 401(b) provides a remedial amendment period during which a plan may be amended retroactively, under certain circumstances, to comply with the Code's qualification requirements. Temporary and proposed amendments to the regulations under § 401(b) were published in the Federal Register on August 1, 1997. Section 1.401(b)-1(f) of the regulations grants the Commissioner the discretion to extend the remedial amendment period. Absent such an extension, however, the remedial amendment period is generally determined as described below.

.02 Section 1.401(b)-1 provides that a plan that fails to satisfy the requirements of § 401(a) solely as a result of a disqualifying provision defined under § 1.401(b)-1(b) need not be amended to comply with those requirements until the last day of the remedial amendment period with respect to the disqualifying provision, provided the amendment is made retroactively effective to the beginning of the remedial amendment period. Under § 1.401(b)-1T(b)(3), a disqualifying provision includes a plan provision designated, at the Commissioner's discretion, as a disqualifying provision that either (i) results in the failure of the plan to satisfy the qualification requirements of the Code by reason of a change in those requirements; or (ii) is integral to a qualification requirement of the Code that has been changed. For this purpose, § 1.401(b)-1T(c)(1) provides that a disqualifying provision includes the absence from a plan of a provision required by or, if applicable, integral to the applicable change in the qualification requirements of the Code, if the plan was in effect on the date the change in those requirements became effective with respect to the plan.

.03 For a disqualifying provision described in § 1.401(b)-1T(b)(3), the remedial amendment period generally begins with the date on which the change becomes effective with respect to the plan or, in the case of a provision that is integral to a qualification requirement that has been changed, the first day on which the plan was operated in accordance with the provision as amended. The remedial amendment period for a disqualifying provision described in § 1.401(b)-1T(b)(3) generally ends with the later of (1) the due date (including extensions) for filing the income tax return for the employer's taxable year that includes the date on which the remedial amendment period begins or (2) the last day of the plan year that includes the date on which the remedial amendment period begins. A plan maintained by more than one employer need not be amended until the last day of the tenth month following the last day of the plan year in which the remedial amendment period begins.

.04 Section 1.401(b)-1 also provides that in the case of a new plan which contains (or fails to contain) a provision that causes the plan to fail to satisfy the requirements of § 401(a) as of the date the plan is put into effect, the plan need not be amended to comply with those requirements until the later of the due date including extensions for filing the employer's tax return for the taxable year in which the plan is put into effect or the last day of the plan year in which the plan is put into effect. A new plan maintained by more than one employer need not be amended until the last day of the tenth month following the last day of the plan year in which falls the date the plan is put into effect.

.05 Section 1.401(b)-1 also provides that in the case of an amendment to an existing plan which causes the plan to fail to satisfy the requirements of § 401(a) as of the date the amendment is adopted or effective (whichever is earlier), the plan need not be amended to correct the amendment until the later of the due date for filing the employer's tax return (including extensions) for the taxable year in which the amendment is adopted or effective (whichever is later) or the last day of the plan year in which the amendment is adopted or effective (whichever is later). In the case of an amendment to an exist-

ing plan maintained by more than one employer, the plan need not be amended until the last day of the tenth month following the last day of the plan year in which the amendment is adopted or effective (whichever is later).

SECTION 5. EXTENDED RELIANCE

.01 Under Rev. Proc. 89-9, 1989-1 C.B. 780, Rev. Proc. 89-13, 1989-1 C.B. 801 (both as modified by Rev. Proc. 93-9, 1993-1 C.B. 474), Rev. Proc. 93-39, 1993-2 C.B. 513, Announcement 94-85, 1994-26 I.R.B. 23, and Rev. Proc. 95-12, 1995-1 C.B. 508, plans that were submitted to the Service within certain deadlines for determination, opinion, or notification letters under the Tax Reform Act of 1986, Pub. L. 99-514 (TRA '86), and received favorable letters are entitled to extended reliance. During the extended reliance period, a plan is generally not required to operationally comply with or be amended for regulations or administrative guidance of general applicability issued after the date of the plan's letter which interpret the qualification requirements in effect when the letter was issued. The extended reliance period continues until the earlier of the last day of the last plan year commencing prior to January 1, 1999, or the date established for plan amendment by any legislation that is effective after the date of the plan's letter.

PART II. TIME FOR AMENDING QUALIFIED PLANS FOR SBJPA, GATT, AND USERRA

SECTION 6. DESIGNATION OF CERTAIN PLAN PROVISIONS RELATING TO SBJPA, GATT AND USERRA CHANGES AS DISQUALIFYING PROVISIONS

.01 Pursuant to the Commissioner's authority under § 1.401(b)-1T(b)(3), a plan provision is hereby designated as a disqualifying provision under § 1.401(b)-1(b) if the plan provision causes a plan to fail to satisfy the qualification requirements of the Code because of changes made to those requirements by SBJPA or GATT that are effective before the first day of the first plan year beginning on or after January 1, 1999.

.02 A plan provision is also hereby designated as a disqualifying provision if the plan provision is integral to a qualifi-

cation requirement changed by SBJPA, but only to the extent the change in the qualification requirement is effective before the first day of the first plan year beginning on or after January 1, 1999, and the plan provision as amended is effective prior to the end of the remedial amendment period as described in section 6.04, below. For purposes of this paragraph, the changes in the qualification requirements made by SBJPA include § 414(u) and USERRA. In accordance with § 1.401(b)-1T(d)(1)(v), an amendment of a disqualifying provision described in this paragraph may be made retroactively effective only to the first day on which the plan was operated in accordance with the provision. For example, Announcement 97-24, 1997-11 I.R.B. 24, and Announcement 97-70, 1997-29 I.R.B. 14, provide that an employer may offer certain employees an option to defer commencement of benefits under its qualified plan provided the employer amends the plan retroactively to conform the plan to its pre-amendment operation regarding the option to defer. These announcements also state that future guidance will provide the date by which such a retroactive amendment must be adopted. The retroactive amendment described in Announcements 97-24 and 97-70 is an amendment to a plan provision that is integral to a qualification requirement changed by SBJPA and must therefore be adopted by the end of the remedial amendment period as described below. Generally, plan provisions reflecting the family aggregation rules as in effect prior to 1997 would also be integrally related to SBJPA qualification changes. See section 6.09.

.03 A plan provision that causes a plan to fail to satisfy § 401(a) because of a change made by SBJPA or GATT to the qualification requirements that is effective on or after the first day of the first plan year beginning on or after January 1, 1999, is not a disqualifying provision under section 6.01. A plan provision that is integral to a qualification requirement changed by SBJPA is not a disqualifying provision under section 6.02 if the change in the qualification requirement is effective on or after the first day of the first plan year beginning on or after January 1, 1999, or if the plan provision as amended is not effective prior to the end

of the remedial amendment period as described in section 6.04, below. Thus, for example, § 401(b) and the regulations thereunder would not apply to permit the adoption of the § 401(k) and § 401(m) safe harbors described in § 1433(a) and (b) of SBJPA on a retroactive basis, because the provisions of § 1433(a) and (b) are effective for plan years beginning after December 31, 1998. A plan provision that is integral to the limitation under § 415(e), which was repealed by § 1452(a) of SBJPA effective for limitation years beginning after December 31, 1999, also is not a disqualifying provision under section 6.02.

.04 Pursuant to the Commissioner's authority under § 1.401(b)-1(f), with respect to plans other than governmental plans, the remedial amendment period for disqualifying provisions described in sections 6.01 and 6.02 is hereby extended to the last day of the first plan year beginning on or after January 1, 1999. Thus, for example, a single employer calendar year nongovernmental plan that does not satisfy the requirements of § 401(a) because of a disqualifying provision described in section 6.01 or 6.02 may be retroactively amended to meet those requirements by December 31, 1999. For governmental plans, the remedial amendment period for disqualifying provisions described in sections 6.01 and 6.02 is extended to the later of (i) the first day of the first plan year beginning on or after January 1, 2000, or (ii) the last day of the first plan year beginning on or after the "1999 legislative date" (that is, the 90th day after the opening of the first legislative session beginning on or after January 1, 1999, of the governing body with authority to amend the plan, if that body does not meet continuously).

.05 In addition, the remedial amendment period with respect to all disqualifying provisions of new plans adopted or effective after December 7, 1994, and all disqualifying provisions of existing plans arising from a plan amendment adopted after December 7, 1994, that causes the plan to fail to satisfy the requirements of § 401(a) as of the date the amendment is adopted or effective (whichever is earlier), will not expire earlier than the last day of the first plan year beginning on or after January 1, 1999. For a governmen-

tal plan, this period will not expire before the later of (i) the first day of the first plan year beginning on or after January 1, 2000, or (ii) the last day of the first plan year beginning on or after the 1999 legislative date.

.06 Although plan amendments are not required before the end of the remedial amendment period, plan sponsors must operate their plans in compliance with the provisions of SBJPA or GATT prior to the time plan amendments are required to the extent earlier operational compliance is required by law or regulation or by revenue ruling, notice or other guidance published in the Internal Revenue Bulletin. In these cases, any retroactive amendments will have to reflect the choices the plan sponsor has already made in the operation of the plan. The following are examples where earlier operational compliance is required.

1 Section 1465 of SBJPA generally requires plans to be operated in compliance with any provision of SBJPA that is effective before the first day of the first plan year beginning on or after January 1, 1998 (or January 1, 2000, in the case of a governmental plan), as of such provision's effective date.

2 Section 401(m)(6)(A) requires correction of excess aggregate contributions to § 401(m) plans to be accomplished within 12 months of the end of the plan year in which the contributions were made. Thus, to this extent, for example, a sponsor of a § 401(m) plan will have to operate the plan in a manner that satisfies § 401(a) as amended by SBJPA and any retroactive amendments must reflect the choices that the plan sponsor has already made in the operation of the plan (for example, the definition of highly compensated employee).

3 Section 1.401(b)-1T(d)(1)(v) permits a remedial amendment of a disqualifying provision that is integral to a qualification requirement changed by SBJPA (including § 414(u) and USERRA) to be made retroactively effective only to the first day on which the plan was operated in accordance with the provision as amended.

.07 Earlier plan amendment may be required by law or regulation or by revenue ruling, notice or other guidance published in the Internal Revenue Bulletin. In these cases plan sponsors may

not rely on the remedial amendment period as a basis for making an amendment retroactively effective. The following are examples where the remedial amendment period may not be relied on as a basis for making an amendment retroactively effective.

1 Except as provided in Rev. Proc. 97-9, 1997-2 I.R.B. 55, a plan sponsor may not retroactively amend a § 401(k) plan to adopt the alternative (“SIMPLE”) method of satisfying the § 401(k) and § 401(m) nondiscrimination tests added by § 1422 of SBJPA.

2 As provided in § 417(e)(3)(B), the present value of a distribution from a pre-GATT plan that is made prior to the first plan year beginning after December 31, 1999, and before a plan amendment applying the GATT changes to § 417(e)(3) to the plan has been adopted and made effective generally must be determined under the plan’s pre-GATT terms.

.08 Any amendment that would result in an elimination or reduction of § 411(d)(6) protected benefits may not be made retroactively effective unless specifically permitted by law or regulation or by revenue ruling, notice, or other guidance published in the Internal Revenue Bulletin.

.09 Section 1431(b)(1) of SBJPA eliminated the family aggregation requirements of § 414(q)(6), effective for years beginning after December 31, 1996. Section 1431(b)(2) of SBJPA also eliminated the family aggregation requirement that formerly applied under § 401(a)(17)(A), effective for years beginning after December 31, 1996. A plan’s family aggregation provisions generally would be disqualifying provisions under § 401(b) because they would be integrally related to a qualification requirement of the Code that has been changed by SBJPA, effective before 1999. In certain limited circumstances, the continued application of the family aggregation rules in the operation of a plan could result in the loss of qualified status. The plan’s family aggregation provisions also would then be disqualifying provisions because they would cause disqualification as a result of SBJPA changes to the qualification requirements effective before 1999. Regardless of whether a plan’s family aggregation provisions are disqualifying provisions because they are integrally re-

lated to SBJPA qualification changes or because they would cause plan disqualification, a plan amendment eliminating the provisions will not violate the requirements of § 411(d)(6) provided the amendment is effective no earlier than the first day on which the plan was operated in accordance with the amendment, and in no event earlier than the first day of the first plan year beginning after December 31, 1996.

SECTION 7. TIME FOR ADOPTING CERTAIN AMENDMENTS RELATING TO SECTION 415

For purposes of § 767(d)(3)(B) of GATT, the date provided by the Secretary for adopting plan amendments reflecting the changes to § 415(b)(2)(E) is the last day of the plan’s remedial amendment period under section 6.04. Moreover, as discussed in section 3.04, § 1449(d) of SBJPA provides that an amendment applying specified GATT changes that was adopted or effective before August 20, 1996, will be disregarded in applying § 767(d)(3)(A) of GATT, as modified by § 1449(a) of SBJPA, if that amendment is repealed by another plan amendment that is adopted no later than August 20, 1997. Pursuant to this revenue procedure, a plan amendment applying the amendments made by § 767 of GATT which was adopted or made effective on or before August 20, 1996, also shall not be taken into account in applying § 767(d)(3)(A) of GATT as amended by § 1449(a) of SBJPA, if the amendment is repealed by another plan amendment that is adopted on or before the last day of the plan’s remedial amendment period under section 6.04. This relief will not fail to be available merely because a plan is not operated in accordance with the repealing amendment prior to the date specified in future guidance. The Service intends to issue additional guidance concerning the GATT and SBJPA changes to the limitations under § 415(b) in the near future.

SECTION 8. MINIMUM FUNDING REQUIREMENTS

Section 412 provides minimum funding standards applicable to pension plans that are or were qualified plans under § 401. Section 1.412(c)(3)-1 provides rules concerning the reasonable funding methods for defined benefit pension plans.

Section 1.412(c)(3)-1(d)(1)(i) provides that, except as provided by the Commissioner, a reasonable funding method does not anticipate changes in plan benefits that become effective, whether or not retroactively, in a future plan year or that become effective during a plan year but after the first day thereof. Section 412(c)(12), which was added by GATT, provides that the funding method of a collectively bargained plan described in § 413(a) (other than a multiemployer plan) must anticipate benefit increases scheduled to take effect during the term of the collective bargaining agreement applicable to the plan. Therefore, except to the extent required by § 412(c)(12) or as otherwise provided by the Commissioner, in determining the minimum funding standards for a defined benefit plan under § 412, amendments that become effective, whether or not retroactively, in a future plan year may not be anticipated, even though the amendments are made before the end of any applicable remedial amendment period. Contributions to a defined benefit plan will be deductible subject to the limitations of § 404, with the § 412 minimum funding standards determined without anticipating such future amendments.

SECTION 9. TERMINATING PLANS

A plan (including a master or prototype, regional prototype, or volume submitter plan) that is terminated after the effective date of changes in the qualification requirements made by SBJPA or GATT but before the date that plan amendments would otherwise be required must be amended in connection with the plan termination to comply with the changes as of their effective date with respect to the plan. For this purpose, any amendment that is adopted after the date of plan termination in order to receive a favorable determination letter will be considered as adopted in connection with the plan termination. In addition, annuity contracts distributed from such terminated plans also must meet all the applicable requirements of SBJPA and GATT. In the case of changes in the qualification requirements to which § 1465 of SBJPA applies, the operational compliance requirement of § 1465 must also be satisfied. (See Notice 87-57, 1987-2 C.B. 368, and Announcement 88-8, 1988-4 I.R.B. 32,

which enunciated the same principles with respect to plans that terminated before the amendment date described in § 1140 of TRA '86.)

SECTION 10. PLANS WITH EXTENDED RELIANCE

As described above, the sponsor of a plan that is entitled to extended reliance on a favorable TRA '86 letter may rely on that letter until the earlier of the last day of the last plan year commencing prior to January 1, 1999, or the date established for plan amendment by any legislation that is effective after the date of the plan's letter. A plan with extended reliance must be amended by the last day of the first plan year beginning on or after January 1, 1999, to the extent necessary to comply with regulations or administrative guidance of general applicability that has been issued since the date of the plan's favorable TRA '86 letter. These amendments must be made effective no later than the first day of the first plan year beginning on or after January 1, 1999, and no earlier than the first day of the plan year in which the amendments are adopted. (But see Rev. Rul. 94-76, 1994-2 C.B. 46, and Rev. Rul. 96-48, 1996-40 I.R.B. 7.) Also see section 11, below, regarding preapproved plans.

SECTION 11. DETERMINATION AND OPINION LETTER PROGRAMS

.01 Effective with the date of enactment of SBJPA or GATT, as applicable, and until further notice is given, determination, opinion, notification, and advisory letters, other than determination letters issued for terminating plans, will not include consideration by the Service of any amendments to the qualification requirements made by SBJPA or GATT, with the following two exceptions. First, determination letters will include consideration of the changes made to § 401(a)(26) by § 1432 of SBJPA, which limited the applicability of § 401(a)(26) to defined benefit plans and made certain other changes. See Announcement 97-2, 1997-2, I.R.B. 62. Second, determinations of leased employee status under § 414(n) will reflect the "primary direction or control" test under § 414(n)(2)(C), as amended by § 1454 of SBJPA, that replaces the former "historically performed" test.

.02 Until further notice is given, plans

(including master or prototype, regional prototype, and volume submitter plans), other than terminating plans, that include provisions that reflect the SBJPA or GATT amendments to the qualification requirements will not be subject to adverse letters by reason of the inclusion of the provisions. This will not preclude the issuance of adverse letters for other reasons, such as an impermissible elimination or reduction of § 411(d)(6) protected benefits resulting from the adoption of amendments for SBJPA or GATT. However, favorable letters issued for plans, other than terminating plans, may not be relied upon with respect to whether the plans satisfy the qualification requirements as amended by SBJPA or GATT.

.03 The Service will begin reviewing both preapproved plans and individually designed plans for compliance with the qualification requirements as amended by SBJPA and GATT as soon as possible after the issuance of additional guidance pertaining to the requirements of SBJPA. Prior to that time, the Service intends to publish procedures relating to the issuance of determination, opinion, notification and advisory letters for plans that take into account the requirements of SBJPA and GATT. The procedures are also expected to include rules pertaining to the required time for sponsors to amend preapproved plans for SBJPA and GATT and actions that may be required of adopters of these plans.

PART III. TIME FOR AMENDING SECTION 403(B) PLANS

SECTION 12. SECTION 403(B) PLANS

.01 SBJPA also made certain changes that may require the amendment of tax-sheltered annuity plans described in § 403(b) or annuity contracts purchased under these plans. The provisions of § 1465 of SBJPA apply with respect to any plan or annuity contract that is required to be amended by any provision of subtitle D of SBJPA. Section 1465 thus applies not only to qualified plans but also to § 403(b) plans and annuity contracts purchased under these plans. Therefore, if a provision of subtitle D of SBJPA requires an amendment to a § 403(b) plan or an annuity contract purchased under the plan, the amendment will not be required

to be made before the time described in § 1465 of SBJPA, provided the retroactive amendment and operational compliance requirements of § 1465 are satisfied. For this purpose, the time described in § 1465 with respect to a § 403(b) plan that is a governmental plan will be treated as not expiring before the last day of the first plan year beginning on or after the 1999 legislative date, that is, the 90th day after the opening of the first legislative session beginning on or after January 1, 1999, of the governing body with authority to amend the plan, if that body does not meet continuously.

.02 For example, § 1450(c)(1) of SBJPA amended § 403(b)(1)(E) to provide that each contract purchased under a § 403(b) plan salary reduction agreement must provide that elective deferrals made under the contract may not exceed the annual limit on elective deferrals under § 402(g)(1). Prior to this amendment, the § 403(b) plan, not each contract, was required to provide this limitation. Section 1450(c)(2) provides that this amendment applies to years beginning after December 31, 1995, except a contract will not be required to meet any change in any requirement by reason of the amendment before the 90th day after enactment of SBJPA (that is, November 18, 1996). Because § 1465 applies to any annuity contract purchased under a § 403(b) plan, such a contract is not required to be amended to comply with § 1450(c)(1) before the first day of the first plan year beginning on or after January 1, 1998 (or, in the case of a contract purchased under a § 403(b) plan that is a governmental plan, the later of (i) the first day of the first plan year beginning on or after January 1, 2000, or (ii) the last day of the first plan year beginning on or after the 1999 legislative date), provided the retroactive amendment and operational compliance requirements of § 1465 are satisfied with respect to the contract.

SECTION 13. EFFECTIVE DATE

This revenue procedure is effective August 18, 1997.

DRAFTING INFORMATION

The principal author of this revenue procedure is James Flannery of the Employee Plans Division. For further information regarding this revenue procedure,

please contact the Employee Plans Division's taxpayer assistance telephone service between the hours of 1:30 p.m. and 4 p.m. Eastern Time, Monday through Thursday, by calling (202) 622-6074/6075, or Mr. Flannery on (202) 622-6214. (These telephone numbers are not toll-free numbers.)
