

Section 401.—Qualified Pensions, Profit-sharing, and Stock Bonus Plans

26 CFR 1.401(b)–1: Certain retroactive changes in plan.

T.D. 8871

DEPARTMENT OF THE TREASURY Internal Revenue Service 26 CFR Part 1

Remedial Amendment Period

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations relating to the remedial amendment period, during which a sponsor of a qualified retirement plan or an employer that maintains a qualified retirement plan can make retroactive amendments to the plan to eliminate certain qualification defects for the entire period. These final regulations clarify the scope of the Commissioner's authority to provide relief from plan disqualification under the regulations. These clarifications confirm the Commissioner's authority to provide appropriate relief for plan amendments relating to changes to the plan qualification rules made in recent legislation. These final regulations affect

sponsors of qualified retirement plans, employers that maintain qualified retirement plans, and qualified retirement plan participants.

EFFECTIVE DATES: These regulations are effective February 4, 2000.

FOR FURTHER INFORMATION CONTACT: Linda S.F. Marshall at (202)622-6030 or Lisa A. Tavares at (202) 622-6090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 401(b). These regulations provide guidance to clarify the

scope of the Commissioner's authority to provide relief from plan disqualification under section 401(b) and the regulations. On August 1, 1997, temporary regulations (T.D. 8727, 1997-2 C.B. 47) under section 401(b) were published in the **Federal Register** (62 F.R. 41272). A notice of proposed rulemaking (REG-106043-97, 1997-2 C.B. 654) cross-referencing the temporary regulations, was published in the **Federal Register** (62 F.R. 41322) on the same day. The temporary regulations enabled the Commissioner to provide appropriate relief concerning the timing of plan amendments relating to changes to the plan qualification rules made in recent legislation, as well as for other plan amendments that may be needed as a result of future changes to the Internal Revenue Code (Code).

No written comments responding to the notice of proposed rulemaking were received. No public hearing was requested or held. The proposed regulations under section 401(b) are adopted by this Treasury decision, and the corresponding temporary regulations are removed.

Explanation of Provisions

Section 401(b) provides that a plan is considered to satisfy the qualification requirements of section 401(a) for the period beginning with the date on which it was put into effect, or for the period beginning with the earlier of the date on which any amendment that caused the plan to fail to satisfy those requirements was adopted or put into effect, and ending with the time prescribed by law for filing the employer's return for the taxable year in which that plan or amendment was adopted (including extensions) or such later time as the Secretary may designate, if all provisions of the plan needed to satisfy the qualification requirements are in effect by the end of the specified period and have been made effective for all purposes for the entire period.

Section 1.401(b)-1(b) lists the plan provisions that may be amended retroactively pursuant to the rules of section 401(b). These plan provisions, termed *disqualifying provisions*, include the plan provisions described in section 401(b), as well as plan provisions that result in failure of a plan to satisfy the qualification requirements of the Code by reason of a change

in those requirements effected by the legislation listed in §1.401(b)-1(b)(2)(i) and (ii). Under §1.401(b)-1(b)(2)(ii), a disqualifying provision also includes a plan provision that is integral to a qualification requirement changed by specified legislation. As in effect prior to the previously issued final and temporary regulations, §1.401(b)-1(b)(2)(iii) provided that a disqualifying provision includes a plan provision that results in failure of the plan to satisfy the Code's qualification requirements by reason of a change in those requirements effected by amendments to the Code, that is designated by the Commissioner, at the Commissioner's discretion, as a disqualifying provision.

Section 1.401(b)-1(d) provides rules for determining the period for which the relief provided under section 401(b) applies (the "remedial amendment period"). Section 1.401(b)-1(d)(1) defines the beginning of the remedial amendment period for the disqualifying provisions listed in §§1.401(b)-(1)(b)(1) and 1.401(b)-1(b)(2)(i) and (ii).

The final regulations retain the rules set forth in the temporary regulations to clarify the scope of the Commissioner's authority to provide relief from plan disqualification under section 401(b). These changes are needed to clarify the rules relating to the plan provisions that may be designated by the Commissioner as disqualifying provisions based on amendments to the plan qualification requirements of the Internal Revenue Code. Section 1.401(b)-1(b)(3) retains the rule set forth in the temporary regulations to provide that a disqualifying provision includes a plan provision designated by the Commissioner, at the Commissioner's discretion, as a disqualifying provision that either (1) results in the failure of the plan to satisfy the qualification requirements of the Code by reason of a change in those requirements; or (2) is integral to a qualification requirement of the Code that has been changed. Section 1.401(b)-1(c)(2) retains the rule set forth in the temporary regulations to provide the Commissioner with explicit authority to impose limits and provide additional rules regarding the amendments that may be made with respect to disqualifying provisions during the remedial amendment period. Section 1.401(b)-1(d)(1)(iv) and (v) provide conforming rules, as previ-

ously provided in the temporary regulations, regarding the beginning of the remedial amendment period for disqualifying provisions described in §1.401(b)-1(b)(3).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small businesses.

Drafting Information

The principal authors of these regulations are Linda S. F. Marshall and Lisa A. Tavares, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

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Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.401(b)-1 is amended by:

1. Revising paragraphs (b)(3), (c), and (d)(1)(iv).
2. Adding paragraph (d)(1)(v).

The addition and revisions read as follows:

§1.401(b)-1 Certain retroactive changes in plan.

* * * * *

(b) * * *

(3) A plan provision designated by the Commissioner, 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 Internal Revenue Code by reason of a change in those requirements; or

(ii) Is integral to a qualification requirement of the Internal Revenue Code that has been changed.

(c) *Special rules applicable to disqualifying provisions*— (1) *Absence of plan provision*. For purposes of paragraphs (b)(2) and (3) of this section, a disqualifying provision includes the absence from a plan of a provision required by, or, if applicable, integral to the applicable change to the qualification requirements of the Internal Revenue Code, if the plan was in effect on the date the change became effective with respect to the plan.

(2) *Method of designating disqualifying provisions*. The Commissioner may designate a plan provision as a disqualifying provision pursuant to paragraph (b)(3) of this section only in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin. See §601.601(d)(2) of this chapter.

(3) *Authority to impose limitations*. In the case of a provision that has been designated as a disqualifying provision by the Commissioner pursuant to paragraph (b)(3) of this section, the Commissioner may impose limits and provide additional rules regarding the amendments that may be made with respect to that disqualifying provision during the remedial amendment period. The Commissioner may provide

guidance in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin. See §601.601(d)(2) of this chapter.

(d) ***

(1) ***

(iv) In the case of a disqualifying provision described in paragraph (b)(3)(i) of this section, the date on which the change effected by an amendment to the Internal Revenue Code became effective with respect to the plan; or

(v) In the case of a disqualifying provision described in paragraph (b)(3)(ii) of this section, the first day on which the plan was operated in accordance with such provision, as amended, unless another time is specified by the Commissioner in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin. See §601.601(d)(2) of this chapter.

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§1.401(b)–1T [Removed]

Par. 3. Section 1.401(b)–1T is removed.

John M. Dalrymple,
*Acting Deputy Commissioner
of Internal Revenue.*

Approved January 19, 2000.

Jonathan Talisman,
*Acting Assistant Secretary
of the Treasury.*

(Filed by the Office of the Federal Register on February 3, 2000, 8:45 a.m., and published in the issue of the Federal Register for February 4, 2000, 65 F.R. 5432)