

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.201: Rulings and determination letters

(Also, Part I, § 401; 1.401(b)-1.)

Rev. Proc. 99-23

SECTION 1. PURPOSE

.01 This revenue procedure extends until the last day of the first plan year beginning on or after January 1, 2000, the remedial amendment period under § 401(b) of the Code for amending plans that are qualified under § 401(a) or § 403(a) for changes made by the Small Business Job Protection Act of 1996, Pub. L. 104-188 ("SBJPA") and for other recent changes in the law. It also designates as a disqualifying provision for which this extended remedial amendment period is available any plan provision that causes a plan to fail to satisfy the qualification requirements of the Code because of the repeal of the combined plan limitation under § 415(e) or that is integral to this repealed qualification requirement. The repeal of § 415(e) is effective for limitation years beginning after December 31, 1999.

.02 This revenue procedure provides that the extension of the remedial amendment period also applies:

1 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;

2 to the deadline for adopting certain amendments relating to § 415(b)(2)(E);

3 to the deadline for adopting amendments of disqualifying provisions that are integral to a qualification requirement changed by a provision of SBJPA that became effective on the first day of the first plan year beginning after December 31, 1998; and

4 to the deadline for adopting amendments of disqualifying provisions that are integral to the requirements of § 401(a)(31) to reflect the change made by § 6005(c)(2) of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105-206 ("RRA 98").

.03 This revenue procedure also provides that the extension of the remedial amendment period applies to the time for adopting amendments of defined benefit plans to provide that benefits will be determined in accordance with the applicable interest rate rules and applicable mortality table rules of § 1.417(e)-1(d) of the Income Tax Regulations. However, such a plan amendment must provide that, with respect to distributions with annuity starting dates that are on or after the effective date of the amendment but before the adoption date of the amendment, the distribution will be the greater of the amount that would be determined under the plan without

regard to the amendment and the amount determined under the plan with regard to the amendment.

.04 This revenue procedure extends by one year the period of extended reliance for certain plans that received favorable determination, opinion, or notification letters under the Tax Reform Act of 1986, Pub. L. 99-514 ("TRA 86").

.05 Finally, this revenue procedure extends the TRA 86 remedial amendment period for governmental and nonelecting church plans to the end of the remedial amendment period for SBJPA. This extension ensures that no such plan need be submitted for a determination letter until the end of the SBJPA remedial amendment period. Sponsors of nonelecting church plans continue to have until the end of the 2001 plan year to adopt amendments relating to the nondiscrimination requirements.

SECTION 2. BACKGROUND

.01 In recent years, the following public laws have made changes affecting the requirements for qualification of pension, profit-sharing, and stock bonus plans under § 401(a) or § 403(a):

1 the Uruguay Round Agreements Act, Pub. L. 103-464 ("GATT");

2 the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. 103-353 ("USERRA");

3 SBJPA;

4 the Taxpayer Relief Act of 1997, Pub. L. 105-34 ("TRA 97"); and

5 RRA 98.

.02 Rev. Proc. 97-41, 1997-33 I.R.B. 51, provided a remedial amendment period under § 401(b) with respect to certain amendments for GATT, SBJPA, and USERRA. The remedial amendment period that was provided under Rev. Proc. 97-41 generally permits plan amendments to be made retroactively effective if they are adopted before the end of the remedial amendment period and they relate to GATT, SBJPA, and USERRA qualification changes that are effective before the first day of the first plan year beginning on or after January 1, 1999. Rev. Proc. 98-14, 1998-4 I.R.B. 22, provided that the remedial amendment period described in Rev. Proc. 97-41 will also apply to plan amendments that relate to TRA 97. For plans other than governmental plans, the remedial amendment period under Rev. Proc. 97-41 and Rev. Proc. 98-14 ends on the last day of the first plan year beginning on or after January 1, 1999. For governmental plans, as defined in § 414(d), the remedial amendment period ends on the later of (i) the last day of the last plan year beginning before January 1, 2001, 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 after December 31, 1998, of the governing body with authority to amend the plan, if that body does not meet continuously). Those amendments that are required to be made to retain qualified status as a result of changes in the qualification requirements must be made retroactively effective as of the date on which the qualification change became effective with respect to the plan, and, in general, operational compliance prior to actual amendment is required. Those amendments that are not required but that amend plan provisions that are integrally related to qualification changes may be made retroactively effective as of the first day on which the plan was operated in accordance with the amended plan provision.

.03 The remedial amendment period described in Rev. Proc. 97-41 also applies with respect to all disqualifying provisions of new plans adopted or effective after December 7, 1994, and with respect to all plan amendments adopted after December 7, 1994, which would cause an existing plan to fail to be qualified.

.04 The end of the remedial amendment period described in Rev. Proc. 97-41 is also the deadline for adopting plan amendments applying the changes under § 415(b)(2)(E). It is, likewise, the deadline for adopting a plan amendment repealing a pre-August 20, 1996, GATT plan amendment, thereby permitting the earlier plan amendment to be disregarded in applying § 767(d)(3)(A) of GATT, as modified by § 1449(a) of SBJPA.

.05 Notice 98-52, 1998-46 I.R.B. 16, provided guidance on the nondiscrimination safe harbor methods in § 401(k)(12) and § 401(m)(11). This notice designates as disqualifying provisions under § 401(b) plan provisions that are integral to a qualification requirement changed by a provision of SBJPA that becomes effective on the first day of the first plan year beginning after December 31, 1998, provided two conditions are satisfied. First, the plan provisions must generally be amended by no later than the last day of the first plan year beginning after December 31, 1998. Second, the plan provisions, as amended, must be effective as of the first day of the first plan year beginning after December 31, 1998. Notice 98-52 also provides that a plan amendment that satisfies these conditions will not be treated as violating § 411(d)(6) merely because the plan amendment imposes the withdrawal restrictions required by § 401(k)(12)(E)(i), provided that those withdrawal restrictions do not apply with respect to contributions allocated as of a date before the first day of the first plan year beginning after December 31, 1998.

.06 Notice 99-5, 1999-3 I.R.B. 10, provided guidance relating to the exception to the definition of eligible rollover distribution for certain hardship distributions which was added to §§ 402(c)(4) and 403(b)(8)(B) by § 6005(c)(2)(A) and (B) of RRA 98. This definition is relevant in the application of the direct rollover requirements of § 401(a)(31). This notice designates as disqualifying provisions under § 401(b) plan provisions that are integral to the requirements of § 401(a)(31), but only to the extent such provisions are amended to reflect the change made by § 6005(c)(2) of RRA 98, provided two conditions are satisfied. First, the plan provisions must generally be amended to reflect the change made by § 6005(c)(2) of RRA 98 by no later than the last day of the first plan year beginning after December 31, 1998. Second, the plan provisions, as amended, must be effective as of the first day the plan operates in accordance with the change

made by § 6005(c)(2) of RRA 98.

.07 Under § 417(e)(3), as amended by § 767 of the Retirement Protection Act of 1994 (“RPA 94,” which is part of GATT), and § 1.417(e)-1(d), a defined benefit plan must provide that the present value of any accrued benefit and the amount of any distribution must not be less than the amount calculated using the applicable interest rate described in § 1.417(e)-1(d)(3) and the applicable mortality table described in § 1.417(e)-1(d)(2). Prior to amendment by § 767 of RPA 94, § 417(e)(3) required, instead of the applicable interest rate, an interest rate based on the rate that would be used by the Pension Benefit Guaranty Corporation (“PBGC”) for a trustee single-employer plan to value the participant’s vested benefit (“PBGC rate”), and it did not impose any restrictions on the mortality table to be used. Section 767 of RPA 94 and § 1.417(e)-1(d) are generally effective for distributions with annuity starting dates in plan years beginning after December 31, 1994. However, § 417(e)(3)(B) provides a transition rule for plans adopted and in effect as of December 7, 1994 (“pre-GATT plans”). In general, under this 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 changes made to § 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 changes to § 417(e)(3) to plan years beginning before January 1, 2000, could not be adopted retroactively, and these plans could not be operated in accordance with the changes prior to plan amendment.

.08 Section 767(d)(2) of RPA 94 provides that a participant’s accrued benefit is not considered to be reduced in violation of § 411(d)(6) merely because the benefit is determined in accordance with the applicable interest rate rules and the applicable mortality table rules of § 417(e)(3)(A), as amended by RPA 94. Section 1.417(e)-1(d)(10) explains the scope of relief from the requirements of § 411(d)(6). A plan amendment to comply with the applicable interest rate rules and the applicable mortality table rules of § 417(e)(3)(A), as amended by RPA 94, must apply to all distributions with annuity starting dates that occur in plan years beginning after December 31, 1999.

.09 Section 1.401(b)-1T(c)(3) authorizes the Commissioner to impose limits and provide additional rules regarding the amendments that may be made within the remedial amendment period with respect to a plan provision that has been designated by the Commissioner as a disqualifying provision under § 401(b).

.10 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 TRA 86 and received favorable letters are entitled to extended reliance. 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. 96-47, 1996-2 C.B. 35.)

.11 For nonelecting church plans, Notice 98-39, 1998-33 I.R.B. 11, extended the remedial amendment period for plan amendments relating to regulations under §§ 401(a)(4), 401(a)(5), 401(l), and 414(s) ("TRA 86 remedial amendment period") until the last day of the first plan year beginning on or after January 1, 2001. The remedial amendment period was not extended for other amendments covered by the TRA 86 remedial amendment period, such as amendments required to satisfy the Omnibus Budget Reconciliation Act of 1993 ("OBRA 93"), the Unemployment Compensation Act of 1992 ("UCA"), or the changes to the law under TRA 86 other than changes to the nondiscrimination rules. Sponsors of nonelecting church plans were required by Notice 96-64, 1996-2 C.B. 229, to adopt amendments satisfying those changes in law by the last day of the first plan year beginning on or after January 1, 1999.

.12 For governmental plans, Notice 96-64, citing Announcement 95-48, 1995-23 I.R.B. 13, provided that the TRA 86 remedial amendment period for plan amendments relating to regulations under §§ 401(a)(4), 401(a)(26), 401(k), 401(m), 410(b), and 414(s) was extended to the last day of the first plan year beginning on or after the later of January 1, 1999, or 90 days after the opening of the first legislative session beginning on or after January 1, 1999 ("1999 legislative date"). This extension of the TRA 86 remedial amendment period for governmental plans applied to all amendments relating to TRA 86, UCA, and OBRA 93, not just the nondiscrimination requirements.

SECTION 3. EXTENSION OF REMEDIAL AMENDMENT PERIOD

.01 The remedial amendment period described in Rev. Proc. 97-41 and Rev. Proc. 98-14, hereafter referred to as the "GUST" remedial amendment period, is, in the case of nongovernmental plans, hereby extended to the last day of the first plan year beginning on or after January 1, 2000. This extension does not alter the GUST remedial amendment period for governmental plans described in Rev. Proc. 98-14.

.02 This extension also applies to the remedial amendment period with respect to disqualifying provisions of new plans adopted or effective after December 7, 1994, and with respect to plan amendments adopted after December 7, 1994, which would cause an existing plan to fail to be qualified.

.03 This extension also extends the deadline for adopting plan amendments applying the changes under § 415(b)(2)(E) and the deadline for adopting a plan amendment repealing a pre-August 20, 1996, GATT plan amendment, thereby permitting the earlier plan amendment to be

disregarded in applying § 767(d)(3)(A) of GATT, as modified by § 1449(a) of SBJPA.

.04 The deadline, under Notice 98-52, for amending plan provisions that are integral to a qualification requirement changed by a provision of SBJPA that becomes effective on the first day of the first plan year beginning after December 31, 1998, is also extended to the end of the GUST remedial amendment period. In addition, the requirement, under Notice 98-52, that such plan provisions, as amended, must be effective as of the first day of the first plan year beginning after December 31, 1998, is eliminated. Instead, such plan provisions, as amended, must be effective no earlier than the first day of the first plan year beginning after December 31, 1998. Thus, for example, an existing § 401(k) plan may be amended by the last day of the 2000 plan year, retroactive to the first day of that year (or to the first day of the 1999 plan year), to satisfy the safe harbors in § 401(k)(12) and § 401(m)(11) for the 2000 plan year (or for both the 1999 and 2000 plan years). Lastly, Notice 98-52 is modified to provide that a plan amendment that is made within the GUST remedial amendment period will not be treated as violating § 411(d)(6) merely because the plan amendment imposes the withdrawal restrictions required by § 401(k)(12)(E)(i), but only if those withdrawal restrictions do not apply with respect to contributions allocated as of a date before the first day of the first plan year for which the plan satisfies the safe harbor.

.05 The deadline, under Notice 99-5, for amending plan provisions that are integral to the requirements of § 401(a)(31) to reflect the change made by § 6005(c)(2) of RRA 98 is also extended to the end of the GUST remedial amendment period. The requirement, under Notice 99-5, that such plan provisions, as amended, must be effective as of the first day the plan operates in accordance with the change made by § 6005(c)(2) of RRA 98 continues to apply.

.06 Finally, the extension of the remedial amendment period also applies to the time for adopting amendments of defined benefit plans to provide that benefits will be determined in accordance with the applicable interest rate rules and applicable mortality table rules of § 1.417(e)-1(d). Thus, such a plan amendment may be adopted at any time up to the last day of the extended remedial amendment period, provided the amendment is made effective for distributions with annuity starting dates occurring in plan years beginning after December 31, 1999. However, pursuant to the Commissioner's authority in §1.401(b)-1T(c)(3), if such a plan amendment is adopted after the last day of the last plan year beginning before January 1, 2000, the amendment must provide that, with respect to distributions with annuity starting dates that are after the last day of that plan year but before the date of adoption of the amendment, the distribution will be the greater of the amount that would be determined under the plan without regard to the amendment and the amount determined under the plan with regard to the amendment.

.07 The TRA 86 remedial amendment period for governmental plans is hereby extended to the end of the GUST remedial amendment period for governmental plans described in Rev. Proc. 98-14, and the TRA 86 remedial amendment period for nonelecting church plans is hereby extended to the last day of the first plan year beginning on or after January 1, 2000. Accordingly, governmental plans need not be amended to comply with TRA 86, UCA, or OBRA 93 (to the

extent the provisions of those acts apply) until the date described in Rev. Proc. 98-14. In accordance with Notice 98-39, nonelecting church plans need not be amended to comply with the regulations under §§ 401(a)(4), 401(l), 410(b), or 414(s) until the last day of the first plan year beginning on or after January 1, 2001. For all other applicable provisions of those acts, however, nonelecting church plans must be amended by the last day of the first plan year beginning on or after January 1, 2000. The additional administrative relief provided under Notice 92-36, 1992-2 C.B. 364, continues to be available to governmental and nonelecting church plans through the end of their respective remedial amendment periods with respect to the applicable nondiscrimination requirements.

SECTION 4. DESIGNATION OF PLAN PROVISIONS INTEGRAL TO § 415(e) AS DISQUALIFYING PROVISIONS

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 the repeal of the combined plan limitation of § 415(e) by § 1452(a) of SBJPA or if the provision is integral to the limitation of § 415(e), as in effect prior to its repeal by § 1452(a) of SBJPA, provided the following conditions are satisfied. First, the plan provision must be amended to reflect the repeal of § 415(e) by the end of the GUST remedial amendment period. Second, in the case of a plan provision that is integral to the limitation of § 415(e), the plan provision, as amended, may not be effective earlier than the first day on which the plan was operated in accordance with the amended provision.

SECTION 5. EXTENSION OF EXTENDED RELIANCE PERIOD

The TRA 86 extended reliance period is extended by one year. A plan with extended reliance must therefore be amended by the end of the GUST remedial amendment period to the extent necessary to comply with regulations or administrative guidance of general applicability that have 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, 2000, and, except in the case of master or prototype or other pre-approved plans, no earlier than the first day of the plan year in which the amendments are adopted. (But see Rev. Rul. 94-76 and Rev. Rul. 96-47.)

SECTION 4. EFFECT ON OTHER DOCUMENTS

The following revenue procedures and notices are modified: Rev. Proc. 89-9, Rev. Proc. 89-13, section 13 of Rev. Proc. 93-39, Rev. Proc. 95-12, Rev. Proc. 97-41, Rev. Proc. 98-14, Notice 92-36, Notice 96-64, Notice 98-39, Notice 98-52, and Notice 99-5.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective April 19, 1999.

DRAFTING INFORMATION

The principal author of this revenue procedure is James Flannery of the Employee Plans Division. For further information regarding this revenue procedure, contact the Employee Plans Division's telephone assistance service between the hours of 1:30 and 3:30 p.m. Eastern time, Monday through Thursday, on (202) 622-6074/75. (These telephone numbers are not toll-free.)