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## Section 401.—Qualified Pension, Profit-Sharing, and Stock Bonus Plans

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

T.D. 8727

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 final and temporary 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 and temporary regulations clarify the scope of the Commissioner's authority to provide relief from plan disqualification under the regulations, to enable the

Commissioner to provide appropriate relief for plan amendments relating to changes to the plan qualification rules made in the Small Business Job Protection Act of 1996 and the Uruguay Round Agreements Act of 1994. These final and temporary regulations affect sponsors of qualified retirement plans, and employers that maintain qualified retirement plans. The text of the temporary regulations also serves as the text of the proposed regulations set forth in REG.–106043–97.

**DATES:** These regulations are effective August 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Linda S. F. Marshall, (202) 622-6030 (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). The temporary 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. This guidance will enable the Commissioner to provide appropriate relief concerning the timing of plan amendments relating to changes to the plan qualification rules made in the Small Business Job Protection Act of 1996, Pub. L. No. 104–188, and the Uruguay Round Agreements Act of 1994, Pub. L. No. 103–465, as well as for other plan amendments that may be needed as a result of future changes to the Internal Revenue Code.

### *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. The relief provided under section 401(b) applies only 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 rules of section 401(b). These plan provisions, termed “disqualifying provisions,” include the plan provisions listed 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. Section 1.401(b)–1(b)(2)(iii), as in effect prior to amendment by the final regulations, 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 ef-

ected by amendments to the Code, that is designated by the Commissioner, at the Commissioner's discretion, as a disqualifying provision.

Former §1.401(b)-1(c), which has been redesignated §1.401(b)-1(d) under the final regulations, provides rules for determining the period for which the relief provided under section 401(b) applies (the "remedial amendment period"). Former §1.401(b)-1(c)(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 temporary regulations make certain changes 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)-1T(b)(3) provides 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)-1T(c)(2) provides 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)-1T(d)(1)(iv) and (v) provide conforming rules regarding the beginning of the remedial amendment period for disqualifying provisions described in §1.401(b)-1T(b)(3).

#### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 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, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

#### Drafting Information

The principal author of these regulations is Linda S. F. Marshall, 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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#### 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 is amended by adding one entry for §1.401(b)-1 to read in part as follows:

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

§1.401(b)-1 also issued under 26 U.S.C. 401(b). \* \* \*

§1.401(b)-1 [Amended]

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

1. Paragraphs (c), (d) and (e) are redesignated as paragraphs (d), (e) and (f), respectively.

2. Following newly redesignated paragraph (d)(2)(iv), the two undesignated paragraphs are designated as paragraphs (d)(3) and (d)(4), respectively.

Par. 3. In the list below, for each section indicated in the left column, remove the language in the middle column, and add the language in the right column.

| SECTION                                  | REMOVE                                                | ADD                                                  |
|------------------------------------------|-------------------------------------------------------|------------------------------------------------------|
| 1.401(b)-1 (a), first sentence           | (c), (d) and (e)                                      | (d), (e) and (f)                                     |
| 1.401(b)-1 (b)(1)                        | effective or                                          | effective.                                           |
| 1.401(b)-1 (d)(1)(ii)                    | earlier), or                                          | earlier),                                            |
| 1.401(b)-1 (d)(1)(iii)                   | such provision.                                       | such provision, or                                   |
| 1.401(b)-1 (d)(2) introductory text      | paragraph (d)                                         | paragraph (e)                                        |
| 1.401(b)-1 (d)(3)                        | (c)(2)(i), (c)(2)(ii), and (c)(2)(iii)                | (d)(2)(i), (d)(2)(ii) and (d)(2)(iii)                |
| 1.401(b)-1 (d)(4)                        | (c)(2)                                                | (d)(2)                                               |
| 1.401(b)-1 (d)(4)                        | (c)(2)(i)                                             | (d)(2)(i)                                            |
| 1.401(b)-1 (e)(1)(ii)(C), third sentence | paragraph (d)(1)                                      | paragraph (e)(1)                                     |
| 1.401(b)-1 (e)(2)(ii)(C), third sentence | paragraph (d)(2)                                      | paragraph (e)(2)                                     |
| 1.401(b)-1 (e)(3) introductory text      | this paragraph (d)                                    | this paragraph (e)                                   |
| 1.401(b)-1 (e)(3) introductory text      | which paragraph (d)(1) or (2)                         | which paragraph (e)(1) or (2)                        |
| 1.401(b)-1 (e)(3) introductory text      | in paragraph (d)(1) or (2)                            | in paragraph (e)(1) or (2)                           |
| 1.401(b)-1 (e)(4)                        | paragraph (d)(3)                                      | paragraph (e)(3)                                     |
| 1.401(b)-1 (e)(4)                        | paragraph (c)                                         | paragraph (d)                                        |
| 1.401(b)-1 (e)(5) introductory text      | subdivisions (i), (ii) and (iii) of this subparagraph | paragraphs (e)(5)(i), (ii) and (iii) of this section |
| 1.401(b)-1 (e)(5) introductory text      | paragraph (c)                                         | paragraph (d)                                        |
| 1.401(b)-1 (e)(5)(iii)                   | paragraph (d)(5)(ii)                                  | paragraph (e)(5)(ii)                                 |

Par. 4. Section 1.401(b)-1 is further amended as follows:

1. Paragraph (b)(2)(iii) is removed.

2. Paragraphs (b)(3), (c) and (d)(1)(iv) are added.

The additions read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(3) A plan provision described in §1.401(b)-1T(b)(3).

(c) *Special rules applicable to disqualifying provisions.* For special rules applicable to disqualifying provisions, see §1.401(b)-1T(c).

(d) \* \* \*

(1) \* \* \*

(iv) In the case of a disqualifying provision described in §1.401(b)-1T(b)(3), the date described in §1.401(b)-1T(d)(1)(iv) or (v), whichever applies to the disqualifying provision.

Par. 5. Section 1.401(b)-1T is added to read as follows:

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

(a) [Reserved]. For further information, see §1.401(b)-1(a).

(b) *Disqualifying provisions.* For purposes of §1.401(b)-1, with respect to a plan described in §1.401(b)-1(a), the term “disqualifying provision” means:

(1) and (2) [Reserved]. For further information, see §1.401(b)-1(b)(1) and (2).

(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 Code by reason of a change in those requirements; or

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

(c) *Special rules applicable to disqualifying provisions—*(1) *Absence of plan provision.* For purposes of paragraph (b)(3) of this section and §1.401(b)-1(b)(2), 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 of 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)(ii)(b) 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 impose these limits and provide these additional rules only in revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin. See §601.601(d)(2)(ii)(b) of this chapter.

(d) *Remedial amendment period.* (1) The remedial amendment period with respect to a disqualifying provision begins:

(i) through (iii) [Reserved]. For further information, see §1.401(b)-1(d)(1)(i) through (iii).

(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)(ii)(b) of this chapter.

(2) [Reserved]

Michael P. Dolan,  
Acting Commissioner of  
Internal Revenue.

Approved July 22, 1997.

(Filed by the Office of the Federal Register on July 31, 1997, 8:45 a.m., and published in the issue of the Federal Register for August 1, 1997, 62 F.R. 41272)