

EB Flash: IRS Issues 2021 Required Amendments for Savings Plans

Employee Benefits Alert

11.30.2021

The Internal Revenue Service (IRS) today issued [Notice 2021-64](#), which provides the 2021 Required Amendments List for individually designed plans qualified under Internal Revenue Code [section 401\(a\)](#) and individually designed plans that satisfy the requirements of [section 403\(b\)](#).

Today's guidance lists the following changes in requirements "that generally would require an amendment to most plans or to most plans of the type affected by the change," the IRS explains:

Special Financial Assistance Program for financially troubled multiemployer plans (American Rescue Plan Act of 2021 section 9704).

[Section 9704 of the American Rescue Plan Act of 2021](#), Pub. L. 117-2, 135 Stat. 4, added section 4262 to the Employee Retirement Income Security Act of 1974, Pub. L. 93-406, 88 Stat. 829, as amended (ERISA) and [section 432\(k\)](#) to the Code. Under section 4262 of ERISA, the sponsor of an eligible multiemployer plan as defined in section 4262(b) of ERISA may apply to the Pension Benefit Guaranty Corporation (PBGC) to receive special financial assistance, provided certain conditions are satisfied. Section 432(k) of the Code provides rules relating to an eligible multiemployer plan that applies to PBGC for special financial assistance. Section 432(k)(2)(A)(i) provides that an eligible multiemployer plan receiving special financial assistance under section 4262 of ERISA must reinstate any benefits that were suspended under section 432(e)(9) of the Code or section 4245(a) of ERISA (which corresponds to section 418E(a) of the Code), effective as of the first month in which the effective date for the special financial assistance occurs, for participants and beneficiaries as of such month. Section 432(k)(2)(A)(ii) provides that an eligible multiemployer plan must also provide payments equal to the amount of benefits previously suspended to any participants or beneficiaries in pay status as of the effective date of the special financial assistance, payable as determined by the plan as a lump sum within three months of the effective date or in equal monthly installments over a period of five years, commencing within three months of the effective date, with no adjustment for interest.

[Notice 2021-38](#), 2021-30 IRB 155 provides guidance under section 432(k). Among other things, Notice 2021-38 provides that, under section 432(k)(2)(A)(i), if an eligible multiemployer plan receiving special financial assistance was previously amended to suspend 6 benefits pursuant to section 432(e)(9) of the Code or section 4245(a) of ERISA, or had suspended benefits operationally under section 418E(a) of the Code without adopting a plan amendment, the plan must be amended to reinstate those suspended benefits, effective as of the month in which the special financial assistance is paid to the plan, for individuals who are participants or beneficiaries as of that month. Notice 2021-38 also provides that under section 432(k)(2)(A)(ii), an eligible multiemployer plan that receives special financial assistance must be amended to provide make-up payments to individuals who are participants or beneficiaries on, and who have commenced benefits by, the date the special financial assistance is paid to the plan. The make-up payments to a participant or a beneficiary must be paid, as determined by the plan sponsor, either as a lump sum within three months of the date the special financial assistance is paid to the plan or in equal monthly installments over a period of five years, commencing within three months of the date the special financial assistance is paid. The plan amendment providing for the make-up payments must also specify which distribution form (that is, a lump-sum payment or monthly installments) will apply for the make-up payments to a participant or beneficiary.

Today's guidance does not include any other required amendments. The six-page text of Notice 2021-64 is [posted here](#).

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