

RIC's or REIT's taxable year for which the corporation qualifies to be taxed as a RIC or REIT. In the case of a C corporation that transfers property to a RIC or REIT in a carryover basis transaction, the 10-year recognition period begins on the day the assets are acquired by the RIC or REIT.

(3) *Making the election.* A RIC or REIT validly makes a section 1374 election with the following statement: “[Insert name and employer identification number of electing RIC or REIT] elects under §1.337(d)-5T(b) to be subject to the rules of section 1374 and the regulations thereunder with respect to its assets which formerly were held by a C corporation, [insert name and employer identification number of the C corporation, if different from name and employer identification number of RIC or REIT].” This statement must be signed by an official authorized to sign the income tax return of the RIC or REIT and attached to the RIC's or REIT's Federal income tax return for the first taxable year in which the assets of the C corporation become assets of the RIC or REIT.

(c) *Special rule.* In cases where the first taxable year in which the assets of the C corporation become assets of the RIC or

REIT ends after June 10, 1987 but before March 8, 2000, the section 1374 election may be filed with the first Federal income tax return filed by the RIC or REIT after March 8, 2000.

(d) *Effective date.* In the case of carryover basis transactions involving the transfer of property of a C corporation to a RIC or REIT, the regulations apply to transactions occurring on or after June 10, 1987. In the case of a C corporation that qualifies to be taxed as a RIC or REIT, the regulations apply to such qualifications that are effective for taxable years beginning on or after June 10, 1987.

Par. 3. In §1.852-12, paragraph (d) is added to read as follows:  
 §1.852-12 *Non-RIC earnings and profits.*  
 \* \* \* \* \*

(d) For treatment of net built-in gain assets of a C corporation that become assets of a RIC, see §1.337(d)-5T.

Par. 4. In §1.857-11, paragraph (e) is added to read as follows:  
 §1.857-11 *Non-REIT earnings and profits.*  
 \* \* \* \* \*

(e) For treatment of net built-in gain assets of a C corporation that become assets

of a REIT, see §1.337(d)-5T.

PART 602-OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. In §602.101, paragraph (b) is amended by adding an entry in numerical order to the table to read as follows:

§602.101—OMB Control numbers.  
 \* \* \* \* \*

(b) \*\*\*

Robert E. Wenzel,  
 Deputy Commissioner of  
 Internal Revenue.

Approved January 21, 2000.

Jonathan Talisman,  
 Acting Assistant Secretary  
 for Tax Policy.

(Filed by the Office of the Federal Register on February 4, 2000, 8:45 a.m., and published in the issue of the Federal Register for February 7, 2000, 65 F.R. 5775)

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.337(d)-5T .....	1545-1672
* * * * *	

**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.*

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(b) \* \* \*