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## PART I. OVERVIEW AND DEFINITIONS

### SECTION 1. PURPOSE

.01 Section 21.02 of Rev. Proc. 2013-22, 2013-18 I.R.B. 985, as modified by Rev. Proc. 2014-28, 2014-16 I.R.B. 944, and Rev. Proc. 2015-22, 2015-22 I.R.B. 754, and clarified by Rev. Proc. 2017-18, 2017-5 I.R.B. 743,<sup>1</sup> establishes a remedial amendment period that permits an Eligible Employer to retroactively correct Form Defects in its written § 403(b) plan by timely adopting a § 403(b) Pre-approved Plan or by otherwise timely amending its § 403(b) Individually Designed Plan.

Rev. Proc. 2017-18 provides that March 31, 2020, is the last day of this initial remedial amendment period. In addition, section 16.01 of Rev. Proc. 2013-22 provides that the Internal Revenue Service (IRS) expects future guidance to require the restatement of § 403(b) Pre-approved Plans every six years.

.02 This revenue procedure sets forth a system of recurring Remedial Amendment Periods for correcting Form Defects in § 403(b) Individually Designed Plans and § 403(b) Pre-approved Plans first occurring after the Initial Remedial Amendment Period (as defined in section 4.03) ends on March 31, 2020, and provides a limited extension of the Initial Remedial Amendment Period for certain Form Defects. Further, as contemplated by section 16.01 of Rev. Proc. 2013-22, this revenue procedure establishes a system of § 403(b) Pre-approved Plan Cycles under which a § 403(b) Pre-approved Plan Sponsor may submit a proposed § 403(b) Pre-approved Plan for review and approval by the IRS. Once approved, the § 403(b) Pre-approved Plan may be

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<sup>1</sup> For purposes of this revenue procedure, references to Rev. Proc. 2013-22 are to Rev. Proc. 2013-22, as modified by Rev. Proc. 2014-28 and Rev. Proc. 2015-22, and clarified by Rev. Proc. 2017-18.

made available for adoption by Eligible Employers. Finally, this revenue procedure provides deadlines for the adoption of plan amendments for § 403(b) Individually Designed Plans and § 403(b) Pre-approved Plans.<sup>2</sup>

.03 This revenue procedure also announces that the Department of the Treasury (Treasury Department) and the IRS intend to issue additional guidance, prior to the date that § 403(b) Pre-approved Plans may next be submitted for review, relating to the system of recurring Remedial Amendment Periods and the system of recurring § 403(b) Pre-approved Plan Cycles.

## SECTION 2. BACKGROUND

.01 Final regulations under § 403(b) (§§ 1.403(b)-1 through 1.403(b)-11) were published on July 26, 2007 (T.D. 9340, 72 FR 41128). Section 1.403(b)-3(b)(3)(i) generally provides that a contract does not satisfy the requirements of § 1.403(b)-3(a) (regarding exclusion of contributions from gross income) unless it is maintained pursuant to a plan. For this purpose, a plan is a written defined contribution plan, which, in both form and operation, satisfies the requirements of §§ 1.403(b)-1 through 1.403(b)-11.<sup>3</sup>

.02 Rev. Proc. 2013-22 sets forth the procedures for issuing opinion and advisory letters for § 403(b) Pre-approved Plans. Under the § 403(b) Pre-approved Plan program established by Rev. Proc. 2013-22, the IRS began accepting applications for

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<sup>2</sup> This guidance does not address issues under Title I of the Employee Retirement Income Security Act of 1974 ("ERISA"). Thus, for example, for § 403(b) plans covered by Title I of ERISA, this revenue procedure does not provide relief from the requirements of § 204(g) of Title I of ERISA (decrease of accrued benefits through amendment of plan) for any plan amendments, including plan amendments adopted as a result of changes in § 403(b) Requirements.

<sup>3</sup> The written plan document requirement applies to a § 403(b) plan maintained by a church only if the plan is a retirement income account plan under § 403(b)(9). Section 1.403(b)-3(b)(3)(iii).

opinion and advisory letters regarding the acceptability under § 403(b) of the form of prototype plans and volume submitter plans, respectively, on June 28, 2013.

Section 16.01 of Rev. Proc. 2013-22 provides that the IRS expects future guidance to require the restatement of every § 403(b) Pre-approved Plan by the § 403(b) Pre-approved Plan Sponsor every six years. Upon issuance of a new opinion or advisory letter for the restated plan, adopting Eligible Employers generally would be required to adopt the restated plan.

.03 The IRS issued § 403(b) Pre-approved Plan Letters beginning in March 2017. As provided in the § 403(b) Pre-approved Plan Letters, the IRS considered changes set forth in the final regulations under § 403(b) (§§ 1.403(b)-1 through 1.403(b)-11) that were published on July 26, 2007, and the applicable requirements of the 2012 Cumulative List of Changes in Plan Qualification Requirements contained in Notice 2012-76, 2012-62 I.R.B. 775.

.04 Section 21.02 of Rev. Proc. 2013-22 establishes an Initial Remedial Amendment Period to allow an Eligible Employer to retroactively correct defects in the form of its written § 403(b) plan by timely adopting a § 403(b) Pre-approved Plan or by otherwise timely amending its § 403(b) Individually Designed Plan. Section 21.02 of Rev. Proc. 2013-22 defines a defect in the form of a plan as a provision, or the absence of a required provision, that causes the plan to fail to satisfy the requirements of § 403(b). Section 21.02 also provides that the first day of the Initial Remedial Amendment Period is the later of January 1, 2010, or the effective date of the plan.

.05 Section 21.03 of Rev. Proc. 2013-22 provides, in general, that the form of a plan will be treated as satisfying the requirements of the final regulations under § 403(b)

published on July 26, 2007, as of the first day of the plan's Initial Remedial Amendment Period if (1) on or before that day, the Eligible Employer adopts a written plan that is intended to satisfy the requirements of § 403(b), and (2) on or before the last day of the Initial Remedial Amendment Period, the employer amends the plan to the extent necessary to correct any Form Defects retroactive to the first day of the Initial Remedial Amendment Period.

.06 Section 21.05 of Rev. Proc. 2013-22 provides that the IRS will announce, in subsequent guidance, the date that will be the last day of the Initial Remedial Amendment Period for all Eligible Employers for purposes of section 21 of Rev. Proc. 2013-22.

.07 Section 3 of Rev. Proc. 2017-18 provides that the last day of the Initial Remedial Amendment Period, for purposes of section 21 of Rev. Proc. 2013-22, is March 31, 2020. Section 3 of Rev. Proc. 2017-18 further provides that a plan that does not satisfy the requirements of § 403(b) in form on any day during the Initial Remedial Amendment Period will be considered to have satisfied those requirements if, on or before March 31, 2020, all provisions of the plan that are necessary to satisfy § 403(b) have been adopted and made effective in form and operation from the beginning of the Initial Remedial Amendment Period.

.08 Rev. Proc. 2016-37, 2016-29 I.R.B. 136, sets forth, for individually designed and pre-approved plans qualified under § 401(a), rules relating to remedial amendment periods, a system of remedial amendment cycles for pre-approved plans, and general plan amendment deadlines. As described in Rev. Proc. 2016-37, for qualified individually designed plans, the date a remedial amendment period applicable to

changes in qualification requirements ends is set forth in an annual Required Amendments List published by the Treasury Department and the IRS.<sup>4</sup> To assist qualified plan sponsors in achieving operational compliance with the qualification requirements, the IRS maintains on the IRS Employee Plans website an Operational Compliance List (<https://www.irs.gov/retirement-plans/operational-compliance-list>), which sets forth a list of changes in qualification requirements that are effective during a calendar year.

### SECTION 3. ORGANIZATION OF REVENUE PROCEDURE

.01 Guidance for § 403(b) Individually Designed Plans. Section 5 of this revenue procedure establishes a system of recurring Remedial Amendment Periods for § 403(b) Individually Designed Plans to allow an Eligible Employer to retroactively correct Form Defects in its written § 403(b) plan first occurring after March 31, 2020. Section 6 establishes plan amendment deadlines with respect to § 403(b) Individually Designed Plans. Section 7 provides a limited extension of the Initial Remedial Amendment Period for certain Form Defects in § 403(b) Individually Designed Plans. Sections 8 and 9 provide that changes in § 403(b) Requirements will appear on the Required Amendments List and the Operational Compliance List, respectively. The provisions referenced in this section 3.01 are similar in many respects to the provisions for individually designed qualified plans under § 401(a), which are described in Part II of Rev. Proc. 2016-37.

.02 Guidance for § 403(b) Pre-approved Plans. Section 10 of this revenue

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<sup>4</sup> For prior Required Amendments Lists, see Notice 2018-91, 2018-50 I.R.B. 985, Notice 2017-72, 2017-52 I.R.B. 601, and Notice 2016-80, 2016-52 I.R.B. 918.



procedure establishes a system of recurring § 403(b) Pre-approved Plan Cycles. Section 11 establishes a system of recurring Remedial Amendment Periods for § 403(b) Pre-approved Plans to allow an Eligible Employer to retroactively correct Form Defects in its written § 403(b) plan first occurring after March 31, 2020. Additional rules relating to the recurring § 403(b) Pre-approved Plan Cycles and the recurring Remedial Amendment Periods in § 403(b) Pre-approved Plans will be provided in future guidance. Section 12 establishes plan amendment deadlines with respect to § 403(b) Pre-approved Plans. Section 13 provides a limited extension of the Initial Remedial Amendment Period for certain Form Defects for § 403(b) Pre-approved Plans. The provisions referenced in this section 3.02 are similar in many respects to the provisions for pre-approved qualified plans under § 401(a), which are described in Part III of Rev. Proc. 2016-37.

#### SECTION 4. DEFINITIONS

.01 *Eligible Employer* means an employer described in § 403(b)(1)(A).

.02 *Form Defect* means:

- (1) a provision that causes a plan to fail to satisfy the § 403(b) Requirements;
- (2) the absence of a provision that causes a plan to fail to satisfy the § 403(b) Requirements;
- (3) a provision that is integral to a § 403(b) Requirement that has been changed (either by statute, or in regulations or other guidance published in the Internal Revenue Bulletin); or
- (4) the absence from a plan of a provision required by a change to the § 403(b) Requirements (either by statute, or in regulations or other guidance

published in the Internal Revenue Bulletin) or integral to the change.

*.03 Initial Remedial Amendment Period* means the period established under section 21 of Rev. Proc. 2013-22 during which an Eligible Employer maintaining a § 403(b) plan may correct Form Defects in its plan retroactive to the beginning of that period. The Initial Remedial Amendment Period begins on the later of January 1, 2010, or the effective date of the plan and, pursuant to Rev. Proc. 2017-18, ends on March 31, 2020. The Initial Remedial Amendment Period applies to both § 403(b) Individually Designed Plans and § 403(b) Pre-approved Plans.

*.04 Remedial Amendment Period* means the period during which an Eligible Employer maintaining a § 403(b) plan may correct Form Defects in its plan retroactive to the beginning of the period, pursuant to section 5 or 11 of this revenue procedure, as applicable.

*.05 Section 403(b) Individually Designed Plan* means a § 403(b) plan that is not a § 403(b) Pre-approved Plan.

*.06 Section 403(b) Pre-approved Plan* means a plan that is either a § 403(b) prototype plan or a § 403(b) volume submitter plan, as described in Rev. Proc. 2013-22.<sup>5</sup>

*.07 Section 403(b) Pre-approved Plan Cycle* means the plan approval period, as described in section 10.01, during which a § 403(b) Pre-approved Plan Sponsor submits a proposed § 403(b) Pre-approved Plan for review and approval by the IRS, and during which the plan, once approved, is adopted by Eligible Employers.

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<sup>5</sup> The IRS anticipates combining § 403(b) prototype plans and § 403(b) volume submitter plans in the future (similar to the combination of § 401(a) master and prototype and volume submitter plans in Rev. Proc. 2017-41, 2017-29 I.R.B. 92).

.08 *Section 403(b) Pre-approved Plan Letter* means an opinion letter or advisory letter, as described in Rev. Proc. 2013-22, issued by the IRS for a § 403(b) Pre-approved Plan.

.09 *Section 403(b) Pre-approved Plan Sponsor* means a § 403(b) prototype plan sponsor or a § 403(b) volume submitter practitioner, as described in Rev. Proc. 2013-22.

.10 *Section 403(b) Requirements* means the requirements of § 403(b), including requirements provided in the Internal Revenue Code (Code), and in regulations and other guidance published in the Internal Revenue Bulletin.

## PART II. SECTION 403(b) INDIVIDUALLY DESIGNED PLANS

### SECTION 5. RECURRING REMEDIAL AMENDMENT PERIODS FOR § 403(b) INDIVIDUALLY DESIGNED PLANS

.01 In general. This section 5 establishes a system of recurring Remedial Amendment Periods for § 403(b) Individually Designed Plan Form Defects first occurring after March 31, 2020. Under this recurring Remedial Amendment Period system, a § 403(b) Individually Designed Plan that does not satisfy the § 403(b) Requirements on any day solely as a result of a Form Defect will be considered to have satisfied the § 403(b) Requirements on that date if, on or before the last day of the Remedial Amendment Period with respect to the Form Defect, all provisions of the plan that are necessary to satisfy all § 403(b) Requirements related to the Form Defect have been adopted and made effective in form and operation for the whole of that period.

.02 Beginning of Remedial Amendment Period. Unless another time is specified by the Commissioner of the IRS in guidance published in the Internal Revenue Bulletin, the Remedial Amendment Period with respect to a Form Defect first occurring after

March 31, 2020, begins:

- (1) in the case of a Form Defect with respect to a provision of, or absence of a provision from, a new plan, the date the plan is put into effect;
- (2) in the case of a Form Defect with respect to an amendment to an existing plan (other than a Form Defect that is related to a change in § 403(b) Requirements, or that is integral to such a change, as described in paragraph (3) and (4), respectively, of this section 5.02), the date the plan amendment is adopted or put into effect, whichever is earlier;
- (3) in the case of a Form Defect with respect to a provision that fails to satisfy the § 403(b) Requirements by reason of a change in those requirements, the date on which the change effected by an amendment to the Code or a change in the requirements provided in regulations or other guidance published in the Internal Revenue Bulletin became effective with respect to the plan; or
- (4) in the case of a Form Defect with respect to a provision that is integral to a § 403(b) Requirement that has been changed, the first day on which the plan was operated in accordance with such provision, as amended.

.03 End of Remedial Amendment Period.

(1) Section 403(b) plan that is not a governmental plan. Except as otherwise provided by statute, or in regulations or other guidance published in the Internal Revenue Bulletin, the end of the Remedial Amendment Period for a § 403(b) Individually Designed Plan that is not a governmental plan within the meaning of § 414(d) is as follows:

- (a) New plan. With respect to a Form Defect described in section 5.02(1) relating

to a new plan, the Remedial Amendment Period ends on the last day of the second calendar year following the calendar year in which the plan is put into effect.

(b) Amendment to existing plan. With respect to a Form Defect described in section 5.02(2) relating to an amendment to an existing plan (but not relating to, or integral to, a change in § 403(b) Requirements), the Remedial Amendment Period ends on the last day of the second calendar year following the calendar year in which the amendment is adopted or effective, whichever is later.

(c) Change in § 403(b) Requirements. With respect to a Form Defect described in section 5.02(3) or (4) relating to, or integral to, a change in § 403(b) Requirements, the Remedial Amendment Period ends on the last day of the second calendar year that begins after the issuance of the Required Amendments List (described in section 8) in which the change in § 403(b) Requirements appears.

(2) Section 403(b) plan that is a governmental plan. Except as otherwise provided by statute, or in regulations or other guidance published in the Internal Revenue Bulletin, the end of the Remedial Amendment Period for a § 403(b) Individually Designed Plan that is a governmental plan within the meaning of § 414(d) is as follows:

(a) New Plan. With respect to a Form Defect described in section 5.02(1) relating to a new plan, the Remedial Amendment Period ends on the later of:

(i) the last day of the second calendar year following the calendar year in which the plan is put into effect; or

(ii) 90 days after the close of the third regular legislative session of the legislative body with the authority to amend the plan that begins after the end of the plan's initial plan year.

(b) Amendment to existing plan. With respect to a Form Defect described in section 5.02(2) relating to an amendment to an existing plan (but not relating to, or integral to, a change in § 403(b) Requirements), the Remedial Amendment Period ends on the later of:

- (i) the last day of the second calendar year following the calendar year in which the amendment is adopted or effective, whichever is later; or
- (ii) 90 days after the close of the third regular legislative session of the legislative body with the authority to amend the plan that begins after the calendar year in which the amendment is adopted or effective, whichever is later.

(c) Change in § 403(b) Requirements. With respect to a Form Defect described in section 5.02(3) or (4) relating to, or integral to, a change in § 403(b) Requirements, the Remedial Amendment Period ends on the later of:

- (i) the last day of the second calendar year that begins after the issuance of the Required Amendments List in which the change in § 403(b) Requirements appears; or
- (ii) 90 days after the close of the third regular legislative session of the legislative body with the authority to amend the plan that begins on or after the date of issuance of the Required Amendments List in which the change in § 403(b) Requirements appears.

.04 Terminating plan. Notwithstanding section 5.03, the termination of a § 403(b) Individually Designed Plan ends (and will generally shorten) the Remedial Amendment Period for each Form Defect of the plan. Accordingly, any retroactive remedial plan

amendments or other required plan amendments for a terminating plan (that is, plan amendments required to be adopted to reflect § 403(b) Requirements that apply as of the date of termination) must be adopted in connection with the plan termination regardless of whether such requirements are included on a Required Amendments List.

.05 Circumstances in which a Form Defect may not be corrected retroactively under a Remedial Amendment Period. If it is not possible to amend a plan retroactively so that all provisions of the plan that are necessary to satisfy § 403(b) Requirements related to the Form Defect are made effective in operation for the whole Remedial Amendment Period, then the requirements of section 5.01 will not be satisfied even if the Eligible Employer adopts a retroactive plan amendment that, in form, appears to satisfy those requirements. This revenue procedure also does not permit a plan to be made retroactively effective, for purposes of complying with § 403(b) Requirements, for a taxable year prior to the taxable year of the Eligible Employer in which the plan was adopted by the Eligible Employer. In addition, a § 403(b) plan for which an Eligible Employer corrects a Form Defect after the expiration of the applicable Remedial Amendment Period will not be considered to satisfy the requirements of § 403(b). However, an Eligible Employer maintaining a § 403(b) plan that has a Form Defect that cannot be corrected by an amendment within the applicable Remedial Amendment Period may be able to correct the Form Defect under the Employee Plans Compliance Resolution System (EPCRS). See Rev. Proc. 2019-19, 2019-19 I.R.B. 1086, or its successors.

## SECTION 6. PLAN AMENDMENT DEADLINE FOR § 403(b) INDIVIDUALLY DESIGNED PLANS

.01 Plan amendment deadline for Form Defects. Except as otherwise provided by

statute, or in regulations or other guidance published in the Internal Revenue Bulletin, for an amendment to a § 403(b) Individually Designed Plan made with respect to a Form Defect first occurring after March 31, 2020, the plan amendment deadline is the date on which the Remedial Amendment Period with respect to the Form Defect ends, as determined under section 5.03.

.02 Plan amendment deadline for discretionary amendments. Except as otherwise provided by statute, or in regulations or other guidance published in the Internal Revenue Bulletin, effective for plan years beginning on or after January 1, 2020, for a discretionary amendment (that is, an amendment that is not made with respect to a Form Defect) made to a § 403(b) Individually Designed Plan, the plan amendment deadline is the date described in paragraph (1) or (2) of this section 6.02, as applicable.

(1) Section 403(b) plan that is not a governmental plan. In the case of a discretionary amendment to a plan other than a governmental plan within the meaning of § 414(d), the plan amendment deadline is the end of the plan year in which the plan amendment is operationally put into effect. An amendment is operationally put into effect when the plan is administered in a manner consistent with the intended plan amendment.

(2) Section 403(b) plan that is a governmental plan. In the case of a discretionary amendment to a governmental plan within the meaning of § 414(d), the plan amendment deadline is the later of:

- (i) the end of the plan year in which the plan amendment is operationally put into effect; or
- (ii) 90 days after the close of the second regular legislative session of the



legislative body with the authority to amend the plan that begins on or after the date the plan amendment is operationally put into effect.

.03 Example illustrating plan amendment deadlines under sections 6.01 and 6.02.

Employer X maintains Plan Y, an existing non-governmental § 403(b) Individually Designed Plan that does not provide for plan loans. The plan year of Plan Y is the calendar year. During the 2021 plan year, Employer X makes plan loans available to all eligible participants in the plan in a manner consistent with the requirements of the Code. Employer X amends Plan Y by the end of 2021 to reflect the availability of plan loans. This amendment is adopted by the plan amendment deadline set forth in section 6.02. If the language of the amendment does not comply with the § 403(b) Requirements, then the plan has a Form Defect. In accordance with section 6.01, Employer X will have until December 31, 2023, the end of the Remedial Amendment Period with respect to the Form Defect as set forth in section 5.03(1)(b), to correct the Form Defect.

**SECTION 7. LIMITED EXTENSION OF INITIAL REMEDIAL AMENDMENT PERIOD FOR § 403(b) INDIVIDUALLY DESIGNED PLANS**

Pursuant to Rev. Proc. 2013-22 and Rev. Proc. 2017-18, the Initial Remedial Amendment Period for a Form Defect first occurring on or before March 31, 2020, will end on March 31, 2020 (regardless of whether the Form Defect first occurs near the beginning or near the end of the Initial Remedial Amendment Period). To ensure that the time available for correcting a Form Defect first occurring near the end of the Initial Remedial Amendment Period is at least as long as the time available for correcting a Form Defect that first occurs after March 31, 2020, this section 7 extends the Initial

Remedial Amendment Period with respect to a § 403(b) Individually Designed Plan Form Defect first occurring on or before March 31, 2020, to the later of:

(i) March 31, 2020, or (ii) the end of the Remedial Amendment Period provided under section 5, determined without regard to the requirement in section 5.01 that the Form Defect first occur after March 31, 2020. However, for a Form Defect that is related to a change in § 403(b) Requirements that was effective before 2019 (or that is integral to such change) and thus was not set forth in a Required Amendments List (see section 8), the Initial Remedial Amendment Period remains March 31, 2020.<sup>6</sup> As an example of the extension under this section 7, if a discretionary amendment that fails to satisfy the § 403(b) Requirements is adopted and made effective on January 1, 2018, with respect to an Eligible Employer's existing non-governmental § 403(b) plan, then the Initial Remedial Amendment Period with respect to the Form Defect will end on December 31, 2020, which is the later of March 31, 2020, or December 31, 2020 (the date the Initial Remedial Amendment Period would end under section 5.03(1)(b) if that section applied). In contrast, if the amendment had been adopted and made effective on January 1, 2017, then the Initial Remedial Amendment Period for the Form Defect would end on March 31, 2020, which is the later of March 31, 2020, or December 31, 2019 (the date the Remedial Amendment Period would end under section 5.03(1)(b) if that section applied). As another example, if a Form Defect is created as a result of a change in § 403(b) Requirements with respect to an Eligible

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<sup>6</sup> Under section 5, the end of a Remedial Amendment Period for a Form Defect that is related to, or that is integral to, a change in § 403(b) Requirements is determined based on when the change is included on a Required Amendments List. However, changes in § 403(b) Requirements were not included on a Required Amendments List before 2019.

Employer's existing non-governmental § 403(b) plan, and the change in § 403(b) Requirements appears on the Required Amendments List in 2019, then the Initial Remedial Amendment Period with respect to the Form Defect will end on December 31, 2021, which is the later of March 31, 2020, or December 31, 2021 (the date the Initial Remedial Amendment Period for the Form Defect would end under section 5.03(1)(c) if that section applied).

## SECTION 8. REQUIRED AMENDMENTS LIST

.01 Inclusion of changes in § 403(b) Requirements. The Treasury Department and the IRS annually publish a Required Amendments List that, in general, includes statutory and administrative changes in § 401(a) qualification requirements that are first effective during the plan year in which the list is published. Beginning with the Required Amendments List for 2019, each Required Amendments List also, in general, will include changes in § 403(b) Requirements that are first effective during the plan year in which the list is published. The Required Amendments List will be used to determine the date that the Remedial Amendment Period ends for changes in § 403(b) Requirements included on the list, in accordance with section 5.03.

.02 When a change in § 403(b) Requirements will be included on Required Amendments List. In general, a change in § 403(b) Requirements will be included on a Required Amendments List after guidance with respect to such change (including a model amendment, if applicable) has been provided in regulations or in other guidance published in the Internal Revenue Bulletin. However, in the discretion of the Treasury Department and the IRS, a change in § 403(b) Requirements may be included on a Required Amendments List in other circumstances, such as when an amendment to the

Code is enacted and it is anticipated that no guidance will be issued related to implementation of the statutory change.

## SECTION 9. OPERATIONAL COMPLIANCE LIST

The Remedial Amendment Period permits a plan to be amended retroactively to comply with a change in § 403(b) Requirements; however, a plan must be operated in compliance with a change in § 403(b) Requirements beginning on the effective date of the change. To assist Eligible Employers in achieving operational compliance, beginning after the issuance of this revenue procedure, updates to the Operational Compliance List currently maintained on the IRS website for sponsors of qualified plans will also include changes in § 403(b) Requirements that are effective during a calendar year. In order to comply with the § 403(b) Requirements, however, a plan must comply operationally with each relevant § 403(b) Requirement, even if the requirement is not included on an Operational Compliance List.

## PART III. SECTION 403(b) PRE-APPROVED PLANS

### SECTION 10. SECTION 403(b) PRE-APPROVED PLAN CYCLE SYSTEM

.01 Establishment of recurring § 403(b) Pre-approved Plan Cycles. This section 10 establishes a system of recurring § 403(b) Pre-approved Plan Cycles following the expiration of the Initial Remedial Amendment Period on March 31, 2020. Under this system, during each § 403(b) Pre-approved Plan Cycle, a § 403(b) Pre-approved Plan Sponsor will be able to apply for a § 403(b) Pre-approved Plan Letter for its plan during a one-year submission period, which generally will occur at the beginning of each § 403(b) Pre-approved Plan Cycle. Guidance on the procedures for applying for a § 403(b) Pre-approved Plan Letter and the timing of each § 403(b) Pre-approved Plan

Cycle will be issued prior to the opening of each submission period. When the IRS review of the § 403(b) Pre-approved Plans that are submitted during a § 403(b) Pre-approved Plan Cycle is near completion, the IRS will announce the date by which an adopting Eligible Employer must adopt a newly approved plan for that § 403(b) Pre-approved Plan Cycle. This deadline is expected to be a uniform date that will apply to all adopting Eligible Employers. It is expected that this deadline will provide virtually all Eligible Employers approximately two years to adopt a newly approved plan. See section 10.03 for more information regarding the § 403(b) Pre-approved Plan Cycle that begins immediately after March 31, 2020.

.02 First § 403(b) Pre-approved Plan Cycle (Cycle 1). For purposes of the system of recurring § 403(b) Pre-approved Plan Cycles established by this section 10, the period covered by the Initial Remedial Amendment Period (without regard to the extension under section 13) is considered the first § 403(b) Pre-approved Plan Cycle (Cycle 1), and a § 403(b) Pre-approved Plan for which a § 403(b) Pre-approved Plan Letter is issued pursuant to Rev. Proc. 2013-22 is considered a Cycle 1 plan. A person that sponsors a § 403(b) Pre-approved Plan as a word-for-word identical adopter or minor modifier of a Cycle 1 plan of a mass submitter is considered to have a Cycle 1 plan even if the person applies for a Cycle 1 § 403(b) Pre-approved Plan Letter (Cycle 1 letter) after March 31, 2020. Except as specifically provided in sections 12 and 13 of this revenue procedure, a Cycle 1 plan is subject to the procedures of Rev. Proc. 2013-22, rather than the procedures of this Part III.

.03 Second § 403(b) Pre-approved Plan Cycle (Cycle 2). The second § 403(b) Pre-approved Plan Cycle (Cycle 2) under the system of recurring § 403(b) Pre-approved

Plan Cycles begins immediately after March 31, 2020. The submission period for a § 403(b) Pre-approved Plan Sponsor to apply for a Cycle 2 § 403(b) Pre-approved Plan Letter (Cycle 2 letter) for its plan is not expected to begin until 2023. Prior to the beginning of the submission period, the IRS will issue additional guidance on the recurring § 403(b) Pre-approved Plan Cycles, specific procedures for applying for a Cycle 2 letter, and the requirements and procedures for an Eligible Employer to adopt a § 403(b) Pre-approved Plan. As part of this additional guidance, the IRS intends to provide a cumulative list of changes in § 403(b) Requirements, which is intended to identify all changes in § 403(b) Requirements resulting from changes in statutes, or changes in regulations or other guidance published in the Internal Revenue Bulletin, that were not taken into account during Cycle 1 and are required to be taken into account in the written plan document submitted to the IRS for a Cycle 2 letter. A § 403(b) Pre-approved Plan that is submitted during the Cycle 2 submission period and for which a Cycle 2 letter is issued is considered a Cycle 2 plan. After the IRS has issued Cycle 2 letters, in order to obtain reliance on a Cycle 2 letter, an Eligible Employer must adopt the approved version of the Cycle 2 plan during the window for adoption that will be announced by the IRS in future guidance.

.04 Future § 403(b) Pre-approved Plan Cycles. It is anticipated that the system of § 403(b) Pre-approved Plan Cycles will continue after Cycle 2.

## SECTION 11. RECURRING REMEDIAL AMENDMENT PERIODS FOR § 403(b) PRE-APPROVED PLANS

.01 In general. This section 11 establishes a system of recurring Remedial Amendment Periods for § 403(b) Pre-approved Plan Form Defects first occurring after March 31, 2020. Under this Remedial Amendment Period system, a § 403(b) Pre-

approved Plan that does not satisfy § 403(b) Requirements on any day solely as a result of a Form Defect will be considered to have satisfied the § 403(b) Requirements on that date if, on or before the last day of the Remedial Amendment Period with respect to the Form Defect, all provisions of the plan that are necessary to satisfy all § 403(b) Requirements related to the Form Defect have been adopted and made effective in form and operation for the whole of the period.

.02 Beginning of Remedial Amendment Period. The Remedial Amendment Period with respect to a § 403(b) Pre-approved Plan Form Defect that first occurs after March 31, 2020, begins at the applicable time provided under section 5.02.

.03 End of Remedial Amendment Period. Except as otherwise provided by statute, or in regulations or other guidance published in the Internal Revenue Bulletin, provided that an interim amendment, as described in section 11.04, if applicable, is made timely in accordance with section 12 and in good faith with the intent of complying with the § 403(b) Requirements, the Remedial Amendment Period with respect to a § 403(b) Pre-approved Plan Form Defect first occurring after March 31, 2020, will end no earlier than the end of Cycle 2. The IRS intends to issue guidance prior to the end of Cycle 2 that will provide additional rules for determining the end of the Remedial Amendment Period with respect to a § 403(b) Pre-approved Plan Form Defect first occurring after March 31, 2020.

.04 Interim amendment requirement for a change in § 403(b) Requirements.

(1) In general. To promote compliance during a § 403(b) Pre-approved Plan Cycle with an amendment to the Code or a change to § 403(b) Requirements in regulations or other guidance published in the Internal Revenue Bulletin that affects provisions of a

written plan document, an Eligible Employer adopting a § 403(b) Pre-approved Plan generally must adopt an interim amendment with respect to the change within the time period set forth in section 12. For purposes of this revenue procedure, an interim amendment is an amendment to correct a Form Defect described in section 5.02(3) or (4) (that is, a Form Defect that results in the failure of a plan to satisfy § 403(b) Requirements by reason of a change in those requirements, or that is integral to the § 403(b) Requirement that has been changed) that is related to a change in § 403(b) Requirements that is effective with respect to the plan after March 31, 2020.

(2) Good-faith determination that no interim amendment is required. The Remedial Amendment Period described in this section 11 also applies in cases in which the § 403(b) Pre-approved Plan Sponsor (or Eligible Employer, if applicable) reasonably and in good faith determines, during the period in which an interim amendment to reflect a change in § 403(b) Requirements would otherwise be required under section 11.04(1), that no amendment is required because the change to § 403(b) Requirements does not affect provisions of the written plan document. Thus, for example, if a § 403(b) Pre-approved Plan Sponsor makes such a determination and the IRS finds that an amendment is required, the plan would still be eligible for the Remedial Amendment Period described in this section 11 to correct the Form Defect. The IRS will make the final determination in all cases as to whether a new plan or an amendment to an existing plan was adopted with the good-faith intention of complying with § 403(b) Requirements or whether the determination that no interim amendment was required was reasonable and in good faith.

.05 Terminating plan. Notwithstanding any other provision of this section 11, the



termination of a § 403(b) Pre-approved Plan ends (and will generally shorten) the Remedial Amendment Period for each Form Defect of the plan. Accordingly, any retroactive remedial plan amendments or other required plan amendments for a terminating plan (that is, plan amendments required to be adopted to reflect § 403(b) Requirements that apply as of the date of termination) must be adopted in connection with the plan termination regardless of whether such requirements are included on a Required Amendments List.

.06 Circumstances in which a Form Defect may not be corrected retroactively under a Remedial Amendment Period. If it is not possible to amend a plan retroactively so that all provisions of the plan that are necessary to satisfy § 403(b) Requirements related to the Form Defect are made effective in operation for the whole Remedial Amendment Period, then the requirements of section 11.01 will not be satisfied even if the Eligible Employer adopts a retroactive plan amendment that, in form, appears to satisfy those requirements. This revenue procedure also does not permit a plan to be made retroactively effective, for purposes of complying with § 403(b) Requirements, for a taxable year prior to the taxable year of the Eligible Employer in which the plan was adopted by the Eligible Employer. In addition, a § 403(b) plan for which an Eligible Employer corrects a Form Defect after the expiration of the applicable Remedial Amendment Period will not be considered to satisfy the requirements of § 403(b). However, an Eligible Employer maintaining a § 403(b) plan that has a Form Defect that cannot be corrected by an amendment within the applicable Remedial Amendment Period may be able to correct the Form Defect under EPCRS.

SECTION 12. PLAN AMENDMENT DEADLINE FOR § 403(b) PRE-APPROVED

## PLANS

.01 Plan amendment deadline. Except as otherwise provided in section 12.02, the deadline for the timely adoption of an amendment for a § 403(b) Pre-approved Plan is determined as follows:

(1) Section 403(b) plan that is not a governmental plan.

(a) Interim amendments. For a § 403(b) Pre-approved Plan that is not a governmental plan within the meaning of § 414(d), a § 403(b) Pre-approved Plan Sponsor (or the Eligible Employer, if applicable) is considered to have adopted an interim amendment described in section 11.04 timely if the amendment is adopted by the end of the calendar year after the calendar year in which the change in § 403(b) Requirements is effective with respect to the plan.

(b) Discretionary amendments. Effective for plan years beginning on or after January 1, 2020, for a § 403(b) plan that is not a governmental plan within the meaning of § 414(d), in the case of a discretionary amendment (that is, an amendment that is not an interim amendment described in section 11.04), an Eligible Employer (or a § 403(b) Pre-approved Plan Sponsor, if applicable) is considered to have adopted the amendment timely if the plan amendment is adopted by the end of the plan year in which the plan amendment is operationally put into effect. An amendment is operationally put into effect when the plan is administered in a manner consistent with the intended plan amendment.

(2) Section 403(b) plan that is a governmental plan.

(a) Interim amendments. For a governmental plan within the meaning of § 414(d), in the case of an interim amendment described in section 11.04, a § 403(b)

Pre-approved Plan Sponsor (or the Eligible Employer, if applicable) is considered to have adopted the amendment timely if the plan amendment is adopted by the later of:

- (i) the end of the calendar year after the calendar year in which the change in § 403(b) Requirements is effective with respect to the plan; or
- (ii) 90 days after the close of the third regular legislative session of the legislative body with the authority to amend the plan that begins on or after the date the plan amendment becomes effective.

(b) Discretionary amendments. Effective for plan years beginning on or after January 1, 2020, for a governmental plan within the meaning of § 414(d), in the case of a discretionary amendment (that is, one that is not an interim amendment described in section 11.04), an Eligible Employer (or a § 403(b) Pre-approved Plan Sponsor, if applicable) is considered to have adopted the amendment timely if the plan amendment is adopted by the later of:

- (i) the end of the plan year in which the plan amendment is operationally put into effect; or
- (ii) 90 days after the close of the second regular legislative session of the legislative body with authority to amend the plan that begins on or after the date the amendment becomes effective.

.02 Exceptions to section 12.01 plan amendment deadlines. Section 12.01 applies unless a statutory provision or guidance issued by the IRS sets forth an earlier deadline to adopt a discretionary amendment with respect to a plan year or if a statutory provision or guidance provides another specific deadline for the adoption of a particular type of interim amendment that is earlier or later than the deadlines under

section 12.01.

### SECTION 13. LIMITED EXTENSION OF INITIAL REMEDIAL AMENDMENT PERIOD FOR CYCLE 1 PLANS

.01 In general. Provided that an amendment is made in accordance with section 13.03, if applicable, this section 13 extends the Initial Remedial Amendment Period with respect to a § 403(b) Pre-approved Plan Form Defect first occurring during Cycle 1, as described in section 10.02, so that the Initial Remedial Amendment Period will end no earlier than the end of Cycle 2, as described in section 10.03. Prior to the end of Cycle 2, the IRS will issue guidance providing rules for determining when the Initial Remedial Amendment Period ends with respect to a § 403(b) Pre-approved Plan Form Defect first occurring during Cycle 1.

.02 Exception for certain Form Defects first occurring before January 1, 2018. The extension of the Initial Remedial Amendment Period provided in section 13.01 does not apply to a Form Defect that is not described in section 5.02(3) or (4) (that is a Form Defect that is not related to a change in the § 403(b) Requirements, or that is integral to the change) and that first occurs before January 1, 2018. Accordingly, the end of the Initial Remedial Amendment Period for such a Form Defect continues to be March 31, 2020. For example, if, with respect to an existing § 403(b) Pre-approved Plan, a discretionary amendment that was adopted and effective on January 1, 2015, failed to satisfy the § 403(b) Requirements (and thus created a Form Defect), then, pursuant to this section 13.02, the Initial Remedial Amendment Period for that Form Defect ends on March 31, 2020. In contrast, if the amendment had become effective on January 1, 2018, then this section 13.02 would not apply and, pursuant to section 13.01, the Initial Remedial Amendment Period would not end earlier than the end of Cycle 2.

.03 Plan amendment requirement for Form Defect related to a change in § 403(b) Requirements. The extension of the Initial Remedial Amendment Period provided in section 13.01 will apply to a Form Defect described in section 5.02(3) or (4) (that is, a Form Defect that results in the failure of the plan to satisfy the § 403(b) Requirements by reason of a change in those requirements, or that is integral to the § 403(b) Requirement that has been changed), only if the § 403(b) Pre-approved Plan Sponsor (or the Eligible Employer, if applicable) timely adopts an initial amendment that is intended in good faith to correct the Form Defect. To be considered timely, the initial amendment must be adopted by the later of: (i) March 31, 2020, or (ii) the end of the calendar year after the calendar year in which the change in § 403(b) Requirements is effective with respect to the plan. If the initial amendment is adopted timely (or the § 403(b) Pre-approved Plan Sponsor (or the Eligible Employer, if applicable) determines in good faith that no amendment is required), then the Initial Remedial Amendment Period will end no earlier than the end of Cycle 2 (see section 11.04(2) for rules for determining in good faith that no amendment is required). For example, if a Form Defect is created as a result of a change in § 403(b) Requirements that became effective on January 1, 2020, then the § 403(b) Pre-approved Plan Sponsor (or the Eligible Employer, if applicable) must adopt an initial good-faith amendment by December 31, 2021, in order for the Initial Remedial Amendment Period to be extended so that it ends not earlier than the end of Cycle 2. By the end of the extended Initial Remedial Amendment Period described in section 13.01, the § 403(b) Pre-approved Plan Sponsor must correct any Form Defects in the initial good-faith amendment.

.04 Plan restatement does not supersede prior amendments to a Cycle 1 plan. For

purposes of this revenue procedure, a plan that is restated using a Cycle 1 plan will not be treated as superseding a previously adopted amendment made with respect to a Form Defect described in section 5.02(3) or (4) (that is, a Form Defect that results in the failure of the plan to satisfy the § 403(b) Requirements by reason of a change in those requirements, or that is integral to the § 403(b) Requirement that has been changed) that is effective after the restatement's effective date and that has not been incorporated or reflected in the restatement, provided that the Cycle 1 plan is operated in a manner consistent with the amendment. A plan is considered to be operating in compliance with such an amendment in any case in which the operation of the plan cannot be determined. The following example illustrates the application of this section 13.04. An Eligible Employer established a written § 403(b) plan on January 1, 2010. On January 1, 2015, the Eligible Employer amended its plan to comply with a change in § 403(b) Requirements that became effective on January 1, 2015. On January 1, 2019, the Eligible Employer restated its plan using a Cycle 1 plan, and made the restatement retroactive to January 1, 2010. The Cycle 1 plan does not include the language from the January 1, 2015 amendment. Under this section 13.04, the restatement retroactive to January 1, 2010, is not treated as superseding the January 1, 2015 amendment, provided that the plan is operated in a manner consistent with the amendment.

#### SECTION 14. OPERATIONAL COMPLIANCE LIST

To assist Eligible Employers in achieving operational compliance, see the Operational Compliance List described in section 9.

#### PART IV. EFFECT ON OTHER DOCUMENTS, EFFECTIVE DATE, DRAFTING

## INFORMATION

### SECTION 15. EFFECT ON OTHER DOCUMENTS

.01 Rev. Proc. 2013-22 is modified by this revenue procedure.

.02 Rev. Proc. 2017-18 is modified by this revenue procedure.

### SECTION 16. EFFECTIVE DATE

This revenue procedure is effective September 30, 2019.

### SECTION 17. DRAFTING INFORMATION

The principal author of this revenue procedure is Patrick T. Gutierrez of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this revenue procedure contact Patrick T. Gutierrez on (202) 317-4148 (not a toll-free number).