

2018 Required Amendments List for Qualified Retirement Plans

Notice 2018-91

I. PURPOSE

This notice contains the Required Amendments List for 2018 (2018 RA List). Section 5 of Rev. Proc. 2016-37, 2016-29 I.R.B. 136, provides that, in the case of an individually designed plan, the remedial amendment period for a disqualifying provision arising as a result of a change in qualification requirements generally is extended to the end of the second calendar year that begins after the issuance of the Required Amendments List (RA List) in which the change in qualification requirements appears. There are no entries listing changes in qualification requirements on the 2018 RA List.

II. BACKGROUND

Section 401(b) of the Internal Revenue Code (Code) provides a remedial amendment period during which a plan may be amended retroactively to comply with the qualification requirements under § 401(a). Section 1.401(b)-1 describes the disqualifying provisions that may be amended retroactively and the remedial amendment period during which retroactive amendments may be adopted. Those regulations also grant the Commissioner the discretion to designate certain plan provisions as disqualifying provisions and to extend the remedial amendment period.

Sections 5.05(3) and 5.06(3) of Rev. Proc. 2016-37 extend the remedial amendment period for individually designed plans to correct disqualifying provisions that arise as a result of a change in qualification requirements. Under section 5.05(3), the remedial amendment period for a plan that is not a governmental plan (as defined in § 414(d)) is extended to the end of the second calendar year that begins after the issuance of the RA List on which the change in qualification requirements appears. Section 5.06(3) provides a special rule for governmental plans that could further extend the remedial amendment period in some cases.

Section 8.01 of Rev. Proc. 2016-37 provides that the plan amendment deadline with respect to a disqualifying provision described in section 5 of Rev. Proc. 2016-37 is the date on which the remedial amendment period ends with respect to that disqualifying provision.

Section 9 of Rev. Proc. 2016-37 provides that the Department of the Treasury (the Treasury Department) and the Internal Revenue Service (IRS) intend to publish an RA List annually. In general, a change in qualification requirements will not appear on an RA List until guidance with respect to that change (including, in certain cases, model

amendments) 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 qualification requirements may be included on an RA List in other circumstances, such as in cases in which a statutory change is enacted and the Treasury Department and the IRS anticipate that no guidance will be issued.

III. CONTENT OF RA LIST

In general, an RA List includes statutory and administrative changes in qualification requirements that are first effective during the plan year in which the list is published.¹ However, an RA List does not include guidance issued or legislation enacted after the list has been prepared and also does not include:

- Statutory changes in qualification requirements for which the Treasury Department and the IRS expect to issue guidance (which would be included on an RA List issued in a future year);
- Changes in qualification requirements that permit (but do not require) optional plan provisions (in contrast to changes in the qualification requirements that cause existing plan provisions, which may include optional plan provisions previously adopted, to become disqualifying provisions);² or
- Changes in the tax laws affecting qualified plans that do not change the qualification requirements under § 401(a) (such as changes to the tax treatment of plan distributions, or changes to the funding requirements for qualified plans).

Annual, monthly, or other periodic changes to (1) the various dollar limits that are adjusted for cost of living increases as provided in § 415(d) or other Code provisions, (2) the spot segment rates used to determine the applicable interest rate under § 417(e)(3), and (3) the applicable mortality table under § 417(e)(3), are treated as included on the RA List for the year in which such changes are effective even though they are not directly referenced on that RA List. The Treasury Department and the IRS anticipate that few plans have language that will need to be amended on account of these changes.

¹ RA Lists also may include changes in qualification requirements that were first effective in a prior year that were not included on a prior RA List under certain circumstances, such as changes in qualification requirements that were issued or enacted after the prior year's RA List was prepared.

² The remedial amendment period and plan amendment deadline for discretionary changes to the terms of a plan are governed by sections 5.05(2), 5.06(2), and 8.02 of Rev. Proc. 2016-37, and are not affected by the inclusion of a change in qualification requirements on an RA List.

IV. 2018 REQUIRED AMENDMENTS LIST

There are no entries listing changes in qualification requirements on the 2018 RA List.

V. DRAFTING INFORMATION

The principal author of this notice is Angelique Carrington of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this notice, contact Ms. Carrington at (202) 317-4148 (not a toll-free number).