

2015 Cumulative List of Changes in Plan Qualification Requirements

Notice 2015-84

I. PURPOSE

This notice contains the 2015 Cumulative List of Changes in Plan Qualification Requirements (2015 Cumulative List) described in section 4 of Rev. Proc. 2007-44, 2007-2 C.B. 54. The 2015 Cumulative List is to be used by plan sponsors and practitioners submitting determination letter applications for plans during the period beginning February 1, 2016 and ending January 31, 2017.

Plans using this Cumulative List will primarily be single employer individually designed defined contribution plans and single employer individually designed defined benefit plans that are in Cycle A. Generally an individually designed plan is in Cycle A if the last digit of the employer identification number of the plan sponsor is 1 or 6.

The list of changes in section IV of this notice does not extend the deadline by which a plan must be amended to comply with any statutory, regulatory, or guidance changes. The general deadline for timely adoption of an interim or discretionary amendment can be found in section 5.05 of Rev. Proc. 2007-44.

II. BACKGROUND

Rev. Proc. 2007-44 sets forth procedures for issuing opinion, advisory, and determination letters and describes the five-year remedial amendment cycle for individually designed plans and the six-year remedial amendment cycle for pre-approved plans. In addition, section 5.05 of Rev. Proc. 2007-44 provides the deadline for timely adoption of an interim amendment or discretionary amendment.

Under section 4 of Rev. Proc. 2007-44, the Internal Revenue Service (the Service) announced its intention to annually publish a Cumulative List to identify statutory, regulatory, and guidance changes that must be taken into account in submissions by plan sponsors to the Service requesting opinion, advisory, and determination letters whose submission period begins on February 1st following issuance of the Cumulative List.

In Notice 2014-77, 2014-52 I.R.B. 974, the Service published the 2014 Cumulative List of Changes in Plan Qualification Requirements (2014 Cumulative List).¹

III. APPLICATION OF 2015 CUMULATIVE LIST

This notice relates to the determination letter program for individually designed plans eligible for Cycle A. In accordance with Rev. Proc. 2007-44, the Service will start accepting determination letter applications for Cycle A individually designed plans beginning on February 1, 2016. The 12-month submission period for Cycle A plans will end on January 31, 2017.

The 2015 Cumulative List, set forth in section IV of this notice, informs plan sponsors of issues the Service has specifically identified for review in determining whether a plan filing in Cycle A has been properly updated. Specifically, the 2015 Cumulative List reflects law changes under the Pension Protection Act of 2006 (PPA '06), Pub. L. 109-280; the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA), Pub. L. 110-458; the Small Business Jobs Act of 2010 (SBJA), Pub. L. 111-240; the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (PRA 2010), Pub. L. No. 111-192; the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141; the American Taxpayer Relief Act of 2012 (ATRA), Pub. L. 112-240; the Highway and Transportation Funding Act of 2014 (HATFA), Pub. L. No. 113-159; the Cooperative and Small Employer Charity Pension Flexibility Act (CSEC Act), Pub. L. 113-97; the Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235; and the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, Pub. L. 114-41.

Except as provided below, the Service will not consider in its review of any determination letter application for the submission period that begins February 1, 2016, any:

- (1) guidance issued after October 1, 2015;
- (2) statutes enacted after October 1, 2015;
- (3) qualification requirements first effective in 2017 or later;
- (4) statutory provisions that are first effective in 2016, for which there is no guidance identified in this notice; or

¹ For previous cumulative lists, see Notice 2013-84, 2013-52 I.R.B. 822; Notice 2012-76, 2012-52 I.R.B. 775; Notice 2011-97, 2011-52 I.R.B. 923; Notice 2010-90, 2010-52 I.R.B. 909; Notice 2009-98, 2009-52 I.R.B. 974; Notice 2008-108, 2008-2 C.B. 1275; Notice 2007-94, 2007-2 C.B. 1179; Notice 2007-3, 2007-1 C.B. 255; Notice 2005-101, 2005-2 C.B. 1219; and Notice 2004-84, 2004-2 C.B. 1030.

- (5) proposed regulations or other guidance described solely in any footnote in this notice.

However, in order to be qualified, a plan must comply with all relevant qualification requirements, not just those on the 2015 Cumulative List.

Terminating plans must include all law changes in effect at the time of termination. See section 8 of Rev. Proc. 2007-44 regarding plan termination.

IV. 2015 CUMULATIVE LIST OF CHANGES IN PLAN QUALIFICATION REQUIREMENTS

The following list consists of statutory provisions and associated guidance that reflect changes to plan qualification requirements. The Service has identified below the plan qualification requirements that differ from those that were on the 2014 or earlier Cumulative Lists as “(New).”

Items from the 2010 Cumulative List have been deleted from the 2015 Cumulative List. Thus, the 2015 Cumulative List contains the plan qualification requirements in the 2011, 2012, 2013 and 2014 Cumulative Lists, as well as additional 2015 plan qualification requirements. The deletions have been made to enhance the utility of the cumulative list, by removing items that would have been previously reviewed in the case of a plan that was submitted during the second Cycle A submission period (February 1, 2011 – January 31, 2012). However, if a plan has not been previously reviewed for items on earlier cumulative lists, the items from the earlier cumulative lists must be taken into account. These items can be found in the 2010 Cumulative List, Notice 2010-90, 2010-52 I.R.B. 909.

1. 401(a):

- Rev. Rul. 2011-1, 2011-2 I.R.B. 251, revises the generally applicable rules for group trusts and, if certain requirements are met, permits the participation in group trusts of custodial accounts under § 403(b)(7), retirement income accounts under § 403(b)(9), and governmental retiree benefit plans under § 401(a)(24). This revenue ruling also modifies the transition relief provided in Rev. Rul. 2008-40. (2011 C. L.)
- Notice 2012-6, 2012-3 I.R.B. 293, extends and expands the transition relief provided under Rev. Rul. 2011-1 for certain group trusts, certain retirement trusts that qualify under the Puerto Rico Internal Revenue Code that participate in group trusts, and certain qualified retirement plans that benefit Puerto Rico residents. The notice also provides additional time for governmental retiree benefit

plans described in § 401(a)(24) to be amended to satisfy the applicable requirements of Rev. Rul. 2011-1. (2012 C. L.)

- Notice 2012-29, 2012-18 I.R.B. 872, provides that the Service and Treasury intend to modify the normal retirement age regulations to clarify that governmental plans that do not provide for in-service distributions before age 62 do not need to have a definition of normal retirement age and to modify the age-50 safe harbor rule for qualified public safety employees. The notice also provides that the Service and Treasury intend to amend the normal retirement age regulations to extend the effective date for governmental plans to annuity starting dates that occur in plan years beginning on or after the later of (1) January 1, 2015 or (2) the close of the first regular legislative session of the legislative body with the authority to amend the plan that begins on or after the date that is 3 months after the final regulations are published in the Federal Register. (2012 C. L.)
- United States v. Windsor, 570 U.S. ____, 133 S. Ct. 2675 (2013). The Supreme Court found that Section 3 of the Defense of Marriage Act (DOMA), which provides that in determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife, is unconstitutional because it violates the principles of equal protection. (2013 C. L.)
- Rev. Rul. 2013-17, 2013-38 I.R.B. 201, provides that for Federal tax purposes, the terms "spouse," "husband and wife," "husband," and "wife" include an individual married to a person of the same sex if the individuals are lawfully married under state law, and the term "marriage" includes such a marriage between individuals of the same sex and the Service adopts a general rule recognizing a marriage of same-sex individuals that was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages. (2013 C. L.)
- Rev. Rul. 2014-9, 2014-17 I.R.B. 975, provides procedures a plan administrator may use in order to reasonably conclude that an amount is a valid rollover contribution. (2014 C.L.)
- Notice 2014-19, 2014-17 I.R.B. 979, provides guidance on the application (including the retroactive application) of the decision in

United States v. Windsor, and the holdings of Rev. Rul. 2013-17, to retirement plans qualified under § 401(a). (2014 C.L.)²

- Rev. Rul. 2014-24, 2014-37 I.R.B. 529, modifies the list of group trust retiree benefit plans eligible to participate in group trusts described in Rev. Rul. 81-100, as modified by Rev. Rul. 2011-1 and Notice 2012-6, to include trusts of certain retirement plans qualified only under the Puerto Rico Code, clarifies that assets held by certain separate accounts maintained by insurance companies may be invested in those group trusts, and provides limited transition relief. (2014 C.L.)

2. 401(a)(4):

- Notice 2014-5, 2014-2 I.R.B. 276, provides temporary nondiscrimination relief for certain "closed" defined benefit pension plans. (2014 C.L.)
- Notice 2014-66, 2014-46 I.R.B. 820, provides a special nondiscrimination rule for a qualified defined contribution plan that provides lifetime income by offering, as investment options, a series of target date funds (TDFs) that include deferred annuities among their assets, even if some of the TDFs within the series are available only to older participants. (2014 C.L.)
- Notice 2015-28, 2015-14 I.R.B. 848, extends the temporary nondiscrimination relief previously established in Notice 2014-5 for certain "closed" defined benefit pension plans. (New)

3. 401(a)(9):

- Final regulations that provide a limited modification of the required minimum distribution rules for tax-qualified defined contribution plans holding qualifying longevity annuity contracts were published on July 2, 2014 (79 Fed. Reg. 37633). (2014 C.L.)
- Notice 2015-49, 2015-30 I.R.B. 79, informs taxpayers that the Treasury Department and the IRS intend to propose amendments

² Retirement plans qualified under § 401(a) were required to recognize marriages of same-sex couples pursuant to United States v. Windsor, 570 U.S. ___, 133 S. Ct. 2675 (2013) and Notice 2014-19. Notice 2015-86, which will appear in 2015-52 I.R.B, provides that qualified retirement plans are not required to make additional changes as a result of the decision in Obergefell v. Hodges, 576 U.S. ___, 135 S. Ct. 2584 (2015). However, a plan sponsor may decide to amend its plan following Obergefell to make certain discretionary amendments (also described in Notice 2015-86).

to the required minimum distribution regulations under §401(a)(9) to address the use of lump sum payments to replace annuity payments being paid by a qualified defined benefit pension plan and that these amendments are intended to apply as of July 9, 2015 except with respect to certain accelerations of annuity payments described in the notice. (New)

4. 401(a)(22):

- Notice 2011-19, 2011-11 I.R.B. 550, provides that the terms readily tradable on an established securities market and readily tradable on an established market mean employer securities that are readily tradable on an established securities market within the meaning of § 1.401(a)(35)-1(f)(5) for purposes of § 401(a)(22). Notice 2011-19 is effective for plan years that begin on or after January 1, 2012, except for certain plans that have a delayed effective date. (2011 C. L.)

5. 401(a)(28)(C):

- Notice 2011-19 provides that the terms readily tradable on an established securities market and readily tradable on an established market mean employer securities that are readily tradable on an established securities market within the meaning of § 1.401(a)(35)-1(f)(5) for purposes of § 401(a)(28)(C). Notice 2011-19 is effective for plan years that begin on or after January 1, 2012, except for certain plans that have a delayed effective date. (2011 C. L.)

6. 401(a)(35):

- Notice 2013-17, 2013-20 I.R.B. 1082, provides relief from anti-cutback rules for an amendment to an ESOP that becomes subject to the diversification requirements of § 401(a)(35) to eliminate all in-service distribution options previously used to satisfy the diversification requirements of § 401(a)(28)(B)(i). (2013 C. L.)

7. 401(k) & 401(m):

- Final regulations that provide guidance on permitted mid-year reductions or suspensions of safe harbor nonelective contributions in certain circumstances for amendments adopted after May 18, 2009 and revise the requirements for permitted mid-year reductions or suspensions of safe harbor matching contributions for plan years beginning on or after January 1, 2015 were published on November 15, 2013 (78 Fed. Reg. 68735). (2013 C. L.)

- Notice 2014-37, 2014-24 I.R.B. 1100, provides guidance on a mid-year amendment to a § 401(k) safe harbor plan or § 401(m) safe harbor plan to reflect the outcome of United States v. Windsor, pursuant to Notice 2014-19. (2014 C.L.)
8. 402(a):
- Final regulations clarifying the rules regarding the tax treatment of payments by qualified retirement plans for accident or health insurance were published on May 12, 2014 (79 Fed. Reg. 26838). (2014 C.L.)
9. 402(c)(2):
- Notice 2014-54, 2014-41 I.R.B. 670, provides rules for allocating pretax and after-tax amounts among disbursements that are made to multiple destinations from a qualified plan described in § 401(a). (2014 C.L.)
10. 402A:
- ATRA § 902 added § 402A(c)(4)(E), which provides that rollovers from a plan account to the plan's designated Roth account can include a rollover of an otherwise nondistributable amount. (2013 C. L.)
 - Notice 2013-74 provides guidance regarding § 402A(c)(4)(E) and also provides guidance that applies to all in-plan Roth rollovers under § 402A(c)(4). (2013 C. L.)
 - Notice 2014-54, 2014-41 I.R.B. 670, provides rules for allocating pretax and after-tax amounts among disbursements that are made to multiple destinations under tax-favored retirement plans. (2014 C.L.)
 - Proposed regulations under § 402A were published on September 19, 2014 (79 Fed. Reg. 56310) with respect to the tax treatment of distributions from designated Roth accounts under tax-favored retirement plans. (2014 C.L.)
11. 409:
- Notice 2011-19 provides that the terms readily tradable on an established securities market and readily tradable on an established market mean employer securities that are readily

tradable on an established securities market within the meaning of § 1.401(a)(35)-1(f)(5) for purposes of § 409(h)(1)(B) and § 409(l). Notice 2011-19 is effective for plan years that begin on or after January 1, 2012, except for certain plans that have a delayed effective date. (2011 C. L.)

12. 411(a):

- Rev. Rul. 2012-4, 2012-8 I.R.B. 386, describes whether a qualified defined benefit pension plan that accepts a direct rollover of an eligible rollover distribution from a qualified defined contribution plan maintained by the same employer satisfies §§ 411 and 415 in a case in which the defined benefit plan provides an annuity resulting from the direct rollover. (2012 C. L.)

13. 411(a)(13):³

- Notice 2011-85, 2011-44 I.R.B. 605, extends the deadline for adopting an interim or discretionary amendment under § 411(a)(13) (other than § 411(a)(13)(A)). (2011 C. L.)
- Notice 2012-61, 2012-42 I.R.B. 479, provides that certain provisions in the 2010 final hybrid plan regulations will not be effective for plan years beginning before January 1, 2014. (2012 C. L.)

14. 411(b)(1):

- Final regulations under § 411(b)(1) with respect to a variable interest crediting rate that potentially can be negative in any given year were published on September 19, 2014 (79 Fed. Reg. 56442). (2014 C.L.)

³Amendments to the final regulations under § 411(a)(13) (which final regulations were included in the 2010 C. L.) were published on September 19, 2014 (79 Fed. Reg. 56442) and November 16, 2015 (80 Fed. Reg. 70680). Pursuant to the 2015 amendments, the provisions included in the 2014 and 2015 amendments to the regulations generally apply for plan years beginning on or after January 1, 2017. Neither of these amendments to the regulations is included in the 2015 Cumulative List. Proposed regulations under § 411(a)(13) were published on October 19, 2010 (75 Fed. Reg. 64197) and can be relied upon until the 2014 and 2015 amendments to the regulations under § 411(a)(13) apply.

15. 411(b)(5):⁴

- Notice 2011-85 announces that the Treasury Department and the Service intend to amend the 2010 final hybrid plan regulations to postpone the effective/applicability date of § 1.411(b)(5)-1(d)(1)(iii), (d)(1)(vi), and (d)(6)(i) to plan years that begin on or after a date to be specified in those regulations that is not earlier than January 1, 2013. This notice also extends the deadline for adopting an interim or discretionary amendment under § 411(b)(5). (2011 C. L.)
- Notice 2012-61 provides that certain provisions in the 2010 final hybrid plan regulations will not be effective for plan years beginning before January 1, 2014. (2012 C. L.)

16. 411(d)(6):

- Final Regulations under § 411(d)(6), which provide an additional limited exception to the anti-cutback rules in the case of a plan sponsor who is a debtor in a bankruptcy proceeding, were published on November 8, 2012 (77 Fed. Reg. 66915). (2012 C. L.)
- Notice 2013-17 provides relief from anti-cutback rules for an amendment to an ESOP to eliminate all in-service distribution options previously used to satisfy the diversification requirements of § 401(a)(28)(B)(i). (2013 C. L.)

17. 411(f):

- Division P of the Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, section 2 adds § 411(f) which provides a special rule for determining normal retirement age for certain existing defined benefit plans. (New)

18. 415:

- Rev. Rul. 2012-4 describes whether a qualified defined benefit pension plan that accepts a direct rollover of an eligible rollover

⁴Amendments to the final regulations under § 411(b)(5) (which final regulations were included in the 2010 C. L.) were published on September 19, 2014 (79 Fed. Reg. 56442) and November 16, 2015 (80 Fed. Reg. 70680). Pursuant to the 2015 amendments, the provisions included in the 2014 and 2015 amendments to the regulations generally apply for plan years beginning on or after January 1, 2017. Neither of these amendments to the regulations is included in the 2015 Cumulative List. Proposed regulations under § 411(b)(5) were published on October 19, 2010 (75 Fed. Reg. 64197) and can be relied upon until the 2014 and 2015 amendments to the regulations under § 411(b)(5) apply.

distribution from a qualified defined contribution plan maintained by the same employer satisfies §§ 411 and 415 in a case in which the defined benefit plan provides an annuity resulting from the direct rollover. (2012 C. L.)

- Proposed regulations under § 415 were published on November 15, 2013 (78 Fed. Reg. 68780) with respect to amounts paid to an Indian tribe member as remuneration for services performed in a fishing rights-related activity. (2014 C.L.)

19. 417:

- Rev. Rul. 2012-3, 2012-6 I.R.B. 383, describes how the qualified joint and survivor annuity (“QJSA”) and the qualified preretirement survivor annuity (“QPSA”) rules, described in §§ 401(a)(11) and 417, apply when a deferred annuity contract is purchased under a profit sharing plan. (2012 C. L.)

20. 420:

- MAP-21 §§ 40241 and 40242 amend § 420 to extend the provisions relating to transfers of excess pension assets to retiree health accounts and to expand those provisions to allow transfers to retiree group term life insurance accounts. (2012 C. L.)
- Section 2007 of the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 amends § 420 to extend the provisions relating to transfers to December 31, 2025. (New)

21. 431(b)(8):

- PRA 2010 § 211(a)(2) added § 431(b)(8), which provides two special funding rules available to multiemployer plans. (2011 C. L.)
 - Notice 2010-83, 2010-51 I.R.B. 862, provides guidance with respect to the special funding rules under § 431(b)(8). (2011 C. L.)

22. 432(e)(9):

- Section 432(e)(9), as amended by the Multiemployer Pension Reform Act of 2014 (MPRA), contained in Division O of the Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, permits plan sponsors of multiemployer plans to suspend benefits if certain conditions are satisfied. (New)

- Temporary regulations provide guidance to enable plan sponsors of multiemployer plans to suspend benefits if certain conditions are satisfied (80 Fed. Reg. 35207) (New)⁵

23. 436:⁶

- Section 1.436-1 provides guidance on the application of § 436, which provides a series of limitations on the accrual and payment of benefits under underfunded single employer defined benefit plans. (2012 C. L.)
- Notice 2011-3, 2011-2 I.R.B. 263, provides guidance on the special rules relating to the relaxation of § 436 rules that were included in the funding relief for single employer defined benefit pension plans under PRA 2010. (2012 C. L.)
- Notice 2011-96, 2011-52 I.R.B. 915, provides a sample plan amendment that plan sponsors may adopt to satisfy § 436 regarding limitations on the accrual and payment of benefits. The notice also extends both the deadline to amend a plan to satisfy § 436 and the period during which such an amendment is eligible for relief from the anti-cutback requirements of § 411(d)(6). (2012 C. L.)
- Notice 2012-70, 2012-51 I.R.B. 712, extends the deadline, as set forth in Notice 2011-96, to amend a defined benefit plan to satisfy the requirements of § 436 and provides associated relief from the requirements of § 411(d)(6). (2012 C. L.)
- CSEC Act § 202 exempted certain cooperative and small employer charity pension plans from the limitations of §§ 436 and 401(a)(33), and provided new funding rules for these plans. (2014 C.L.)

The following guidance contains sample or model amendments: Rev. Rul. 2011-1 (group trusts); and Notice 2011-96 (limitations on the accrual and payment of benefits under underfunded single employer defined benefit plans).

⁵ See also temporary regulations providing guidance relating to the administration of the required vote of participants to approve a suspension of benefits (80 Fed. Reg. 52972).

⁶ Notice 2012-61 and Notice 2014-53, 2014-43 I.R.B.737, provide guidance on the application of MAP-21 and HATFA. Notice 2012-55, 2012-36 I.R.B. 332, and Notice 2013-11, 2013-11 I.R.B. 610, provide guidance on the 25-year average segment rates under MAP-21.

DRAFTING INFORMATION

The principal author of this notice is Maxine Terry of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this announcement, contact Ms. Terry at (202) 317-4102 (not a toll-free number)