

2017 Required Amendments List for Qualified Retirement Plans

Notice 2017-72

I. PURPOSE

This notice contains the Required Amendments List for 2017 (2017 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. Pursuant to section 5.05(3) of Rev. Proc. 2016-37, this notice provides that December 31, 2019, is generally the last day of the remedial amendment period with respect to a disqualifying provision arising as a result of a change in qualification requirements that appears on this 2017 RA List. As a result, under sections 8.01 and 5.05(3) of Rev. Proc. 2016-37, December 31, 2019, is also generally the plan amendment deadline for a disqualifying provision arising as a result of a change in qualification requirements that appears on the 2017 RA List. However, a later date may apply to a governmental plan (as defined in § 414(d)) pursuant to sections 8.01 and 5.06(3) of Rev. Proc. 2016-37.

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.

Rev. Proc. 2016-37 eliminates, as of January 1, 2017, the five-year remedial amendment cycle system for individually designed plans that was set forth in Rev. Proc. 2007-44, 2007-2 C.B. 54.

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 annually an RA List. 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 AND ORGANIZATION 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

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.

- 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).

The RA List is divided into two parts. Part A covers changes in qualification requirements that generally would require an amendment to most plans or to most plans of the type affected by the change.

Part B includes changes in qualification requirements that the Treasury Department and the IRS anticipate will not require amendments to most plans, but might require an amendment because of an unusual plan provision in a particular plan. If a change affects a particular qualification requirement that most plans incorporate by reference, Part B would include the change because a particular plan might not incorporate the qualification requirement by reference and, thus, might contain language inconsistent with the change. For example, as provided in the 2016 RA List, if a defined benefit plan incorporates the limitation of § 436(d)(2) by reference to the statute or regulations (or through the use of the sample amendment in Notice 2011-96, 2011-52 I.R.B. 915), no amendment to the plan would be required to comply with the changes made by section 2003 of the Highway Transportation and Funding Act of 2014, P.L. 113-159. However, a plan that sets forth the substantive requirements of § 436(d)(2) and that does not incorporate the limitation of § 436(d)(2) by reference to the statute or regulations, or through the use of the sample amendment in Notice 2011-96, may need to be amended.

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.

The fact that a change in a qualification requirement is included on the RA List does not mean that a plan must be amended as a result of that change. Each plan sponsor must determine whether a particular change in a qualification requirement requires an amendment to its plan.

IV. 2017 REQUIRED AMENDMENTS LIST

Part A. Changes in qualification requirements that generally would require an amendment to most plans or to most plans of the type affected by the change.

- *Final regulations regarding cash balance/hybrid plans (79 Fed. Reg. 56442, 80 Fed. Reg. 70680).* Cash balance/hybrid plans must be amended to the extent necessary to comply with those portions of the regulations regarding market rate of return and other requirements that first become applicable to the plan for the plan year beginning in 2017. (This requirement does not apply to those collectively bargained plans that do not become subject to these portions of the regulations until 2018 or 2019 under the extended applicability dates provided in § 1.411(b)(5)-1(f)(2)(B)(3).)

Note: The relief from the anti-cutback requirements of § 411(d)(6) provided in § 1.411(b)(5)-1(e)(3)(vi) applies only to plan amendments that are adopted before the effective date of these regulations.

Note: See also Notice 2016-67, 2016-47 I.R.B. 748, which addresses the applicability of the market rate of return rules to implicit interest pension equity plans.

- *Benefit restrictions for certain defined benefit plans that are eligible cooperative plans or eligible charity plans described in section 104 of the Pension Protection Act of 2006, as amended (“PPA”).* An eligible cooperative plan or eligible charity plan that was not subject to the benefit restrictions of § 436 for the 2016 plan year under § 104 of PPA ordinarily becomes subject to those restrictions for plan years beginning on or after January 1, 2017. However, a plan that fits within the definition of a “CSEC plan” (as defined in § 414(y)) continues not to be subject to those rules unless the plan sponsor has made an election for the plan not to be treated as a CSEC plan.

Part B. Other changes in qualification requirements that may require an amendment.

- *Final regulations regarding partial annuity distribution options for defined benefit pension plans (81 Fed. Reg. 62359).* Defined benefit plans that permit benefits to be paid partly in the form of an annuity and partly as a single sum (or other accelerated form) must do so in a manner that complies with the § 417(e) regulations. Section 1.417(e)-1(d)(7) provides rules under which the minimum present value rules of § 417(e)(3) apply to the distribution of only a portion of a participant’s accrued benefit.

Section 1.417(e)-1(d)(7) applies to distributions with annuity starting dates in plan years beginning on or after January 1, 2017, but taxpayers may elect to apply § 1.417(e)-1(d)(7) with respect to any earlier period.

Note: The regulations provide relief from the anti-cutback rules of § 411(d)(6) for certain amendments adopted on or before December 31, 2017.

Note: Model amendments that a sponsor of a qualified defined benefit plan may use to amend its plan to offer bifurcated benefit distribution options in accordance with these final regulations are provided in Notice 2017-44, 2017-36 I.R.B. 226.

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).