

IRS Releases 2017 Operational Compliance List

The IRS has issued its first Operational Compliance List, designed to help plans comply with changes in qualification requirements beginning on the effective date of each change. The timing for amendments, set forth late last year in the first Required Amendments List, is separate from the operational compliance requirement. The OC List can be a helpful compliance tool that plans should review carefully.

Background

The IRS publishes an annual Required Amendments (RA) List of amendments needed to maintain qualified status now that it has eliminated the staggered five-year remedial amendment cycle for individually designed plans. In general, plan sponsors must adopt any item on the RA List by the end of the second calendar year following the year the RA List is published; this deadline is the same for all plan years. A change in qualification requirements will typically not appear on an RA List until IRS provides guidance on that change. (See our [July 8, 2016 For Your Information](#).)

In the meantime, plans must comply in operation with any change in qualification requirements beginning on the effective date of the change. To help plans maintain operational compliance, the IRS promised to provide an annual Operational Compliance (OC) List that identifies mandatory and discretionary (optional) qualification changes that become effective during a calendar year. For discretionary changes, plan amendments generally must be adopted by the end of the plan year in which the amendment is operationally put into effect – meaning when the plan is administered consistent with the change.

The First RA List

The **first RA List**, which the IRS released in December 2016, does not include any qualification changes that generally necessitate an amendment to most plans. It contains one qualification change that might require an amendment – specifically, for collectively bargained defined benefit plans – for the restrictions on accelerated distributions from underfunded single-employer plans in employer bankruptcy under Section 436 contained in the Highway and Transportation Funding Act of 2014. (Non-collectively bargained plans were subject to this change a year earlier.) Collectively bargained plans that must be amended for this change (generally those that did not already use the **model IRS amendment** for Section 436 compliance) have until December 31, 2018 to adopt the amendment.

Comment. If a defect is discovered in a timely discretionary amendment, the IRS provides additional time for correction. This remedial amendment period generally extends to the end of the second calendar year following the calendar year in which the amendment is adopted or effective, whichever is later. Additional time is available for governmental employers.

First OC List for Changes Effective in 2017

On February 27, 2017, the IRS released its [first OC List](#) designed “to help plan sponsors and practitioners achieve operational compliance by identifying changes in qualification requirements effective during a calendar year.”

It identifies matters that may involve either mandatory or discretionary plan amendments – depending on the type of plan. The IRS plans to update the OC List periodically to reflect new legislation and guidance, as well as other significant guidance affecting daily plan operations. However, it cautioned that the OC List is not intended to be a comprehensive tally of all guidance or legislation that could affect a particular plan.

Below are the changes on the 2017 OC List that are effective in 2017 and 2016, respectively, followed by a designation of the type of plan affected and the nature of the change. As noted above, discretionary amendments generally are needed by the end of the first year the plan implements the change.

2017 Changes

The following qualification changes are effective in 2017:

- Proposed regulations allowing the use of forfeitures as QNECs, QMACs, and safe harbor contributions to defined contribution plans. (See our [January 18, 2017 For Your Information](#).) Plans can rely on the proposed regulations currently and for prior periods. **Defined contribution plans; discretionary**
- Extension of temporary nondiscrimination relief for closed defined benefit plans through 2017. (See our [September 19, 2016 FYI Alert](#).) **Closed defined benefit plans; discretionary**
- Final regulations on partial annuity distribution options for defined benefit plans. (See our [September 14, 2016 For Your Information](#).) These regulations, which modify Code minimum present value requirements, apply to distributions with annuity starting dates in plan years starting on or after 2017. Plans can apply them to an earlier period. **Defined benefit plans; mix of mandatory and discretionary after 2016 and discretionary before 2017**
- Final regulations on permitted amendments to cash balance/hybrid plan interest crediting rates and other features modified in the 2014 final regulation. (See our [November 16, 2015 For Your Information](#).) These regulations are generally effective for plan years starting on or after January 1, 2017, but required amendments before the beginning of the 2017 plan year to avoid anticutback issues. **Cash balance/hybrid plans; mix of mandatory and discretionary**
- Application of benefit restrictions for certain eligible cooperative plans or eligible charity plans due to the expiration of the delayed effective date in Section 104 of the Pension Protection Act of 2006. (See our [For Your Information from April 9, 2014 For Your Information](#).) **Eligible cooperative plans, eligible charity plans; mandatory**

2016 Changes

IRS lists the following qualification changes as effective in 2016:

- Relaxed rules for plans that made loans and hardship distributions to victims of Hurricane Matthew and the Louisiana storms. Despite being a discretionary amendment for 2016, IRS allowed additional time for the adoption of amendments – to the end of the first plan year beginning after December 31, 2016. (See our [November 2, 2016](#) and [September 2, 2016](#) issues of *For Your Information*.) **Defined contribution; discretionary**
- Mid-year changes to safe harbor 401(k) plans. This option is effective for permitted changes made on or after January 29, 2016. (See our [February 3, 2016](#) *For Your Information*.) **Defined contribution; discretionary**
- Proposed regulations on nondiscrimination generally relating to testing contributions or benefits for a grandfathered group of employees in a closed defined benefit plan. (See our [February 4, 2016](#) *For Your Information*.) Plans can rely on the proposed rules for plan years beginning on or after January 1, 2014. **Closed defined benefit; discretionary**

Comment. The IRS withdrew the portion of its initial proposal that would have applied a higher nondiscrimination test passing threshold to retirement plan formulas that are not based on a “reasonable business classification.” (See our [April 14, 2016](#) *FYI Alert*.)

- Proposed regulations on normal retirement age for governmental plans. (See our [February 16, 2016](#) *For Your Information*.) As proposed, the regulations would be effective for employees hired during plan years beginning on or after the later of (1) January 1, 2017, or (2) the close of the first regular session of the legislative body with the authority to amend the plan that begins on or after the date that is three months after the final regulations are published in the *Federal Register*. However, plan sponsors can rely on them currently and for prior periods. **Governmental plans; discretionary**
- Extension of temporary nondiscrimination relief for closed defined benefit plans for plan years beginning before 2017. (See our [March 20, 2015](#) *FYI Alert*.) IRS further extended this through 2017 plan years, as noted above. **Closed defined benefit; discretionary**
- Restrictions on distributions in bankruptcy for collectively bargained single-employer defined benefit plans may not be based on stabilized interest rates. This rule, which is noted in the RA List and referenced above, is effective for plan years beginning after December 31, 2015 (plan years beginning after December 31, 2014 for non-bargained plans). (See our [September 15, 2014](#) *FYI Alert*.) **Collectively bargained single-employer defined benefit plans; mandatory**

Not on the OC List

The OC List does not include periodic changes like cost-of-living increases, spot segment rates, and applicable mortality tables. These items are available on the Employee Plans [Recent Published Guidance webpage](#).

In Closing

Plan administrators should review the OC List periodically to ensure compliance with any relevant changes in qualification requirements beginning on the effective date of the change – and make corrections, if necessary. They should assure that appropriate amendments are in place by the end of the year for discretionary amendments and by the date identified in the RA List relevant to the change for mandatory amendments.

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