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## IRS 2016 Required Amendments List Gives First Guidance on Changes Needed to Retain Qualification

By Jane Meacham

The Internal Revenue Service (IRS), in its first “Required Amendments (RA) List” on December 13, 2016, informed individually designed [employer-sponsored retirement plans](#) about required amendments for 2016 that may be needed to reflect changes and ensure the plans keep their qualified status. In the release, IRS [Notice 2016-80](#), the agency also said the plans will have until December 31, 2018 to make needed remedial amendments for the 2016 plan year.



The IRS' 2016 RA List gives statutory and administrative changes to qualification requirements first effective during that plan year, although it omits guidance issued or legislation enacted after the list was prepared. A new RA List will be published after October 1 each year; the agency has said.

It is the first such list to replace the IRS' 5-year remedial cycle system for individually designed plans, established earlier in the year in IRS [Revenue Procedure 2016-37](#). The remedial cycle system ends January 1, 2017.

Specifically, the 2016 RA List excludes:

- Statutory changes in qualification requirements for which the U.S. 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; *or*
- Changes in the tax laws affecting qualified plans that do not change the qualification requirements under tax Code Section 401(a) (such as changes to the tax treatment of plan distributions, or changes to the funding requirements for qualified plans).



The IRS said 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. “Each plan sponsor must determine whether a particular change in a qualification requirement requires an amendment to its plan,” the December notice said.

The 5-year remedial cycle for individually designed plan amendments started nearly 10 years ago with Rev. Proc. 2007-44, but the IRS in June 2016 announced it was eliminating the system to conserve its resources available for reviewing plan amendments via widely used determination letters. Rev. Proc. 2016-37 modifies and supersedes parts of Rev. Proc. 2007-44.

When a plan obtains an IRS determination letter, conditional certainty has been provided that a plan’s form satisfies requirements for tax qualification under Section 401(a) of the federal tax Code. (See a sample current determination letter in Fig. 642-A in *The 401(k) Handbook*.) The IRS has reviewed a plan’s current status for compliance at least once every 5 years, but because of the number of filings, the process is time-consuming and historically caused IRS overload when large batches of filings were made at once.

The IRS is reducing to three instances in which an individually designed plan may request a determination letter. At the same time, it is extending the remedial amendment period for plan amendments under federal tax Code 401(b). Individually designed plans now can request a determination letter from the IRS only when:

- No letter has been received before;
- The plan is terminating; *or*
- The IRS makes an exception.

The agency said it expects to make exceptions related to its program capacity and rulings that will be required in some cases. The IRS said it would measure the need for determination letters after the reduction in issuance begins by seeking annual input from the employer-sponsored plan community, among other ways.

The IRS also announced it plans to provide an annual Operational Compliance List with changes in qualification requirements effective during a calendar year, to help plan sponsors. The deadline for compliant amendments on the RA List generally will be the end of the second calendar year after the year in which the list is issued.

In addition, the IRS said, the time to adopt a newly approved pre-approved defined contribution plan, and for some adopters of these for the second 6-year remedial amendment cycle, is extended to April 30, 2017.

The IRS is thought to expect that the changes in its determination letter system will lead more plan sponsors to adopt simpler pre-approved plans, which are more standardized than individually designed plans. But the generic pre-approved plans won’t meet the need for highly individualized plan design that’s common for large corporate employers and multiemployer plans—which together cover the bulk of U.S. plan participants.

Notice 2016-80 will be published in Internal Revenue Bulletin 2016-52, to be issued on December 27, 2016.



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**IF YOU HAVE QUESTIONS, YOU MAY CONTACT**

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