

Qualified Retirement Plans in 2017 and Beyond: Resources & Considerations for Employers

December 29, 2016 – UPDATED March 8, 2017

In Revenue Procedure 2016-37, the IRS formally announced the elimination, effective January 1, 2017, of the five-year remedial amendment cycle system for individually designed, qualified retirement plans.¹ The IRS further announced that it would publish each year a Required Amendments List (“RA List”) and provide an Operational Compliance List (“OC List”) in place of the Cumulative List of amendments that previously provided guidance to these plans. The first RA List was published in early December 2016, and the first OC List was provided on the IRS website at the end of February 2017. The RA List and the OC List present an opportunity to develop procedures for maintaining qualified status in 2017 and beyond. *In this client alert, we discuss some resources and considerations that can help inform employers in such actions as plan sponsor.*

I. The Required Amendments List Is Not Exhaustive

The RA List published in IRS Notice 2016-80 includes a single amendment potentially applicable only to certain defined benefit plans. This brevity highlights both the scope and limitations of an RA List.

The IRS has stated that an RA List is intended to include statutory and administrative changes in qualification requirements that are first effective during the calendar year in which the list is published.² In general, plans being amended for such requirements must do so no later than the end of the second calendar year that begins after the issuance of the RA List in which the change in qualification requirements appears (the “Remedial Amendment Period”), i.e., December 31, 2018 with respect to the recently published RA List.

An RA List is not intended to include:

- Statutory changes in qualification requirements for which the Treasury Department and the IRS expect to issue guidance (which could be included on a future RA List);
- Changes in qualification requirements that permit (but do not require) optional plan provisions; or
- Changes in the tax laws affecting qualified plans that do not change the qualification requirements per se, such as changes to funding requirements.

This suggests that, while an RA List can serve as the starting point for determining whether any plan amendments are required, it should not be treated as definitive. Rather, employers will need to undertake a more extensive review of a given plan’s terms in the context of existing legal rules. At the same time, not all

¹ Individually designed plans in Cycle A (those with plan sponsors whose EINs end in 1 or 6) have a final opportunity to submit a request for an advance determination letter in the Cycle A submission period ending January 31, 2017.

² See Rev. Proc. 2016-37.

amendments listed on the RA List will be appropriate for every plan. The responsibility for determining whether and when an amendment is required will continue to rest with the plan sponsor.

II. Operational Compliance May Be Required Prior to Plan Amendment

The OC List provided on the IRS website identifies changes in qualification requirements effective during a calendar year. These may involve either mandatory or discretionary plan amendments, as well as other significant guidance that affects plan operations. At present, the OC List addresses both 2016 and 2017. For 2016, items include permitted mid-year changes to safe harbor 401(k) plans and proposed regulations regarding normal retirement age for governmental plans. For 2017, they include guidance applicable to specific types of defined benefit plans, such as closed plans and cash balance/hybrid plans, and proposed regulations regarding QNECs and QMACs in defined contribution plans. The OC List will be updated on the IRS website but will not otherwise be formally published. Therefore, employers will want to consult it periodically to remain apprised of the most recent updates.

While the OC List may assist employers in achieving operational compliance with the enumerated changes, the IRS website notes that a plan must continue to comply operationally with respect to each relevant qualification requirement, even if the requirement is not included on an OC List. It is also important to note that operational changes may be required immediately, i.e., prior to the end of the Remedial Amendment Period for any corresponding plan amendment which permits retroactive adoption. The resulting period of time between required operational and required documentary compliance can extend to a year or more, so employers will want to develop strategies for ensuring consistency between plan operations and the required terms of the amendments that memorialize them.

III. Reliance on Existing Determination Letters Is Limited

Determination letters issued prior to January 4, 2016 included automatic expiration dates which are no longer operative. Instead, the IRS has stated that plan sponsors that maintain a qualified plan for which a favorable determination letter has been issued and that are otherwise entitled to rely on the determination letter may not continue to rely on the determination letter with respect to a plan provision that is subsequently amended or that is subsequently affected by a change in law. However, a plan sponsor may continue to rely on a determination letter with respect to plan provisions that are not amended or affected by a change in law.

Although the ability to rely on an existing determination letter is therefore limited, it is nonetheless significant. In order to maximize the available reliance, employers may wish to:

- Preserve the version of the plan document for which the most recent determination letter was issued, so that any subsequent amendments can be clearly identified;

- Weigh stylistic revisions to the plan document (whether via amendment or restatement) against their potential impact on reliance; and
- Consider the desired reliance on the existing plan document when drafting future amendments, e.g., in assessing which sections to amend and how best to do so.

This client alert has discussed some resources and considerations for maintaining the qualified status of individually designed retirement plans in and after 2017. For more information about the rules applicable to qualified retirement plans or other issues concerning your benefit plans in general, please contact [Joanne C. Youn](mailto:jyoun@capdale.com) at jyoun@capdale.com / 202.862.7855 or [Ronald G. Cluett](mailto:rcluett@capdale.com) at rcluett@capdale.com / 202.862.5094.



About Caplin & Drysdale

Having celebrated our 50th Anniversary in 2014, Caplin & Drysdale continues to be a leading provider of [tax](#), [tax controversy](#), and [litigation](#) legal services to corporations, individuals, and nonprofits throughout the United States and around the world. We are also privileged to serve as legal advisors to accounting firms, financial institutions, law firms, and other professional services organizations.

The firm's reputation over the years has earned us the trust and respect of clients, industry peers, and government agencies. Moreover, clients rely on our broad knowledge of the law and our keen insights into their business concerns and personal interests. Our lawyers' strong tactical and problem-solving skills - combined with substantial experience handling a variety of complex, high stakes, matters in a boutique environment - make us one of the nation's most distinctive law firms.

With offices in New York City and Washington, D.C., Caplin & Drysdale's core practice areas include:

- | | |
|--|--|
| - Bankruptcy | - International Tax |
| - Business, Investment & Transactional Tax | - Political Law |
| - Complex Litigation | - Private Client |
| - Corporate Law | - Tax Controversies |
| - Employee Benefits | - Tax Litigation |
| - Exempt Organizations | - White Collar Defense |

For more information, please visit us at www.caplindrysdale.com.

Washington, DC Office:
One Thomas Circle, NW
Suite 1100
Washington, DC 20005
202.862.5000

New York, NY Office:
600 Lexington Avenue
21st Floor
New York, NY 10022
212.379.6000

Disclaimer

This communication does not provide legal advice, nor does it create an attorney-client relationship with you or any other reader. If you require legal guidance in any specific situation, you should engage a qualified lawyer for that purpose. Prior results do not guarantee a similar outcome.

Attorney Advertising

It is possible that under the laws, rules, or regulations of certain jurisdictions, this may be construed as an advertisement or solicitation.

Caplin & Drysdale

A T T O R N E Y S

© 2017 Caplin & Drysdale, Chartered
All Rights Reserved.