2020 Cumulative List of Changes in Plan Qualification Requirements for Pre-Approved Defined Benefit Plans

Notice 2020-14

I. PURPOSE

This notice sets forth the 2020 Cumulative List of Changes in Plan Qualification Requirements for Pre-Approved Defined Benefit Plans (2020 Cumulative List). As described in section 17 of Rev. Proc. 2016-37, 2016-29 I.R.B. 136, Cumulative Lists identify changes in the qualification requirements of the Internal Revenue Code that are required to be taken into account in a pre-approved plan document submitted under the pre-approved plan program administered by the Internal Revenue Service (IRS) and that will be considered by the IRS for purposes of issuing opinion letters.

The 2020 Cumulative List is to be used by pre-approved plan providers to submit opinion letter applications for pre-approved defined benefit plans during the third six-year remedial amendment cycle, which begins May 1, 2020, and ends January 31, 2025. Defined benefit plans may be submitted for approval during the on-cycle submission period, which begins August 1, 2020, and ends July 31, 2021.

The list of changes in section V 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 is provided in section 15 of Rev. Proc. 2016-37.

II. BACKGROUND

Rev. Proc. 2016-37 sets forth procedures for issuing opinion letters and describes the six-year remedial amendment cycle system for pre-approved plans. Pre-approved defined benefit plans and pre-approved defined contribution plans each have separate six-year cycles. In section 17 of Rev. Proc. 2016-37, the IRS announced its intention to publish Cumulative Lists to identify changes in the qualification requirements that will be considered by the IRS in its review of pre-approved plan documents for purposes of issuing opinion letters. A change in the qualification requirements includes a statutory change or a change in the requirements provided in regulations or other guidance published in the Internal Revenue Bulletin.

Prior to Rev. Proc. 2016-37, Cumulative Lists were used by the IRS in reviewing both pre-approved plan documents and individually designed plan documents. Pursuant to sections 12 and 17 of Rev. Proc. 2016-37, beginning in 2017, the IRS uses Cumulative Lists in its review of pre-approved plan documents submitted for opinion letters and uses Required Amendments Lists, described in section 9 of Rev. Proc. 2016-37, in its review of individually designed plan documents submitted for determination letters. For the Required Amendments List for 2019, see Notice 2019-64, 2019-52 I.R.B. 1505. Notice 2012-76, 2012-52 I.R.B. 775, sets forth the most recent Cumulative List that describes the provisions applicable to requests for opinion letters submitted for pre-approved defined benefit plans (the 2012 Cumulative List). The 2012 Cumulative List applies with respect to the second remedial amendment cycle for pre-approved defined benefit plans, which runs from February 1, 2013, to April 30, 2020.

To assist plan sponsors in achieving operational compliance, the IRS provides an Operational Compliance List on its website that is updated periodically to identify changes in qualification requirements that are effective during a calendar year. For the current Operational Compliance List, see https://www.irs.gov/retirement-plans/operational-compliance-list.

III. APPLICATION OF THE 2020 CUMULATIVE LIST

This notice relates to the third remedial amendment cycle for pre-approved defined benefit plans under the opinion letter program, which begins May 1, 2020, and ends January 31, 2025. Pursuant to Rev. Proc. 2020-10, 2020-2 I.R.B. 295, the on-cycle submission period for the third six-year remedial amendment cycle begins August 1, 2020, and ends July 31, 2021.

The 2020 Cumulative List set forth in section V of this notice lists specific matters the IRS has identified for review in determining whether a defined benefit plan document that has been filed for an opinion letter has been properly updated.

The IRS will not consider any of the following items in its review of any opinion letter application submitted under the third remedial amendment cycle:

1. Guidance issued after December 1, 2019.
2. Statutes enacted after December 1, 2019.
3. Qualification requirements first effective in 2021 or later.
4. Statutory provisions that are first effective in 2020 for which there is no guidance identified in this notice.

In order to be qualified, a plan must comply with all relevant qualification requirements, not only those on the 2020 Cumulative List.

IV. AMENDMENTS WITH RESPECT TO THE SECURE ACT

On December 20, 2019, Congress passed the Further Consolidated Appropriations Act, 2020 (Act), Pub. L. 116-94, which included Division O of the Act, titled “Setting Every Community Up for Retirement Enhancement Act” (SECURE Act). As stated in section III of this notice, the IRS will not consider statutes enacted after December 1, 2019, in its review of any opinion letter application submitted under the third remedial amendment cycle. Therefore, the IRS will not review any defined benefit plan document submitted under the third remedial amendment cycle for any changes in the qualification requirements made by the Act, and pre-approved plan providers should not include Act provisions in plan documents submitted with their opinion letter applications under the third remedial amendment cycle for pre-approved defined benefit plans. However, pre-approved plan providers will need to timely adopt interim or discretionary amendments under these plan documents. Generally, the deadline for adopting any plan amendment made pursuant to the SECURE Act is the last day of the first plan year beginning on or after January 1, 2022. This deadline, provided in section 601 of the SECURE Act, will apply with respect to these interim or discretionary amendments, rather than the general deadlines for timely adoption of interim or discretionary amendments set forth in section 15 of Rev. Proc. 2016-37.

V. CUMULATIVE LIST OF CHANGES IN PLAN QUALIFICATION REQUIREMENTS FOR PRE-APPROVED DEFINED BENEFIT PLANS FOR 2020

Except as described in sections III and IV of this notice, the 2020 Cumulative List sets forth changes in the qualification requirements that were issued, enacted, or effective after October 1, 2012, that relate to pre-approved defined benefit plans. However, if a plan has not been previously reviewed for items on earlier Cumulative Lists or for qualification requirements that applied prior to those earlier Cumulative Lists that relate to pre-approved defined benefit plans, those items and qualification requirements will also be taken into account. The items on earlier Cumulative Lists can be found in the 2012 Cumulative List and in the 2006 Cumulative List of Changes in Plan Qualification Requirements, Notice 2007-3, 2007-1 C.B. 255.

1. *Section 401*:

- *United States v. Windsor*, 570 U.S. 744 (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.
- 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. This revenue ruling also provides that the IRS 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.

- 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).
- Notice 2015-86, 2015-52 I.R.B. 887, 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).
- Proposed regulations under § 401(a) were published on January 27, 2016 (81 FR 4599), and provide safe harbors and other rules regarding normal retirement age under a § 414(d) governmental pension plan. These regulations are proposed to 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 legislative 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, employers may choose to rely on these proposed regulations currently and for prior periods.

- Regulations under § 401(k) were published on September 23, 2019 (84 FR 49651), pursuant to the Bipartisan Budget Act of 2018 (BBA), Pub. L. 115-123, and amend § 1.401(k)-1(d)(3)(iv)(E) to delete the 6-month prohibition on employee contributions to all plans maintained by the employer (including defined benefit plans) after a hardship distribution.

2. ***Section 402***

- Section 306 of the Protecting Americans from Tax Hikes Act of 2015 (PATH Act), Pub. L. 114-113, enacted December 18, 2015, amended § 408(p)(1)(B) to permit rollovers from a qualified plan to a SIMPLE IRA.

3. ***Section 411(a)(13)*****:**

- Regulations under § 411(a)(13) were published on October 19, 2010 (75 FR 64123), and provide guidance on statutory hybrid plans.
- Regulations under § 411(a)(13) were published on September 19, 2014 (79 FR 56442), and provide guidance on statutory hybrid plans, including rules with respect to determining the current account balance, payment of benefits based on a current account balance, and the definition of lump sum-based benefit formula.

- Regulations under § 411(a)(13) were published on November 16, 2015 (80 FR 70680), and extend the effective date for certain provisions of the hybrid plan regulations to plan years beginning on or after January 1, 2017.

4. *Section 411(b)*:

- Regulations under § 411(b)(5) were published on October 19, 2010 (75 FR 64123), and provide guidance on statutory hybrid plans.
- Regulations under § 411(b)(5) were published on September 19, 2014 (79 FR 56442), and provide rules for statutory hybrid plans to comply with age discrimination requirements, including rules expanding the list of rates that satisfy the market rate of return requirement.
- Regulations under § 411(b)(5) were published on November 16, 2015 (80 FR 70680), and provide transition rules for statutory hybrid plans to comply with the requirement that these plans provide interest credits that do not exceed a market rate of return.

5. *Section 415*:

- Proposed regulations under § 415 were published on November 15, 2013 (78 FR 68780), and provide that amounts paid to an Indian tribe member as remuneration for services performed in an activity relating to fishing rights may be treated as compensation for purposes of applying the limits on qualified plan benefits and contributions. Taxpayers may rely on the proposed regulations for periods preceding the effective date of the final regulations.

6. *Section 417*:

- Regulations under § 417 were published on September 9, 2016 (81 FR 62359), and provide methods for defined benefit pension plans to distribute a participant's accrued benefit partially as an annuity and partially as a lump-sum or other accelerated form of payment. The regulations also provide that the minimum present value requirements apply to the distribution of only the portion of a participant's accrued benefit that is paid as a lump-sum or other accelerated form of payment.[1]

7. *Section 436*:

- Section 202 of the Cooperative and Small Employer Charity Pension Flexibility Act (CSEC Act), Pub. L. 113-97, enacted April 7, 2014, amended § 436(a) to exempt certain cooperative and small employer charity pension plans (CSEC plans) from the limitations of § 436. However, under § 414(y), a plan sponsor may elect that a plan that would otherwise be a CSEC plan not be treated as a CSEC plan.[2]
- Section 104 of the Pension Protection Act of 2006 (PPA '06) Pub. L. 109-280, enacted August 17, 2006, as amended by § 202(b) of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, Pub. L. 111-192, enacted June 25, 2010, delays the effective date of the applicability of § 436

[1] 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.

[2] Notice 2015-58, 2015-37 I.R.B. 322, provides guidance with respect to the application of the CSEC Act, including guidance for the sponsor of a plan that otherwise qualifies as a CSEC plan regarding how to elect that the plan not be treated as a CSEC plan.

for certain plans referred to as eligible charity plans until plan years beginning on or after January 1, 2017. However, § 103(b)(2) of the CSEC Act added § 104(d)(2) to PPA '06, providing that a plan sponsor of such a plan can elect for the plan to cease to be an eligible charity plan (so that § 436 applies for the plan) beginning with the 2014 plan year, and it also added § 104(d)(4) to PPA '06, providing that the plan sponsor can make a one-time, irrevocable election for the plan to cease to be an eligible charity plan beginning with the 2008 plan year.[3]

- The Highway and Transportation Funding Act of 2014 (HATFA), Pub. L. 113-159, enacted August 8, 2014, amended § 436(d)(2) to provide that limitations on interest rates based on corresponding 25-year average segment rates do not apply for purposes of accelerated benefit distributions for a plan sponsored by an employer in bankruptcy.

DRAFTING INFORMATION

The principal author of this notice is Arslan Malik of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this notice, contact Arslan at (202) 317-6700 (not a toll-free number).

[3] Notice 2015-58, Q&A 3, provides guidance to the sponsor of an eligible charity plan regarding how to elect that the plan cease to be treated as an eligible charity plan.