

# IRS ISSUES OPERATIONAL COMPLIANCE CHECKLIST FOR QUALIFIED RETIREMENT PLANS

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In conjunction with the elimination in 2017 of the determination letter program for individually designed plans, the IRS instituted the publication of the Operational Compliance List (“OC List”). Because operational compliance with changes in the law affecting qualified retirement plans is often required before the deadline for amending plan documents, the OC List describes mandatory and discretionary changes in the qualification requirements for tax qualified and 403(b) retirement plans that are effective in each calendar year.

Alongside the OC List, the IRS issues annual Required Amendments Lists setting forth the statutory and administrative changes in qualification requirements that are first effective during the plan year. In combination, the OC List and the Required Amendments Lists provide plan administrators with a basic inventory of relevant changes in law or IRS guidance affecting their retirement plans.

The 2020 OC List includes the following highlights:

*Hardship Distributions* – The final hardship distribution regulations ended certain restrictions on hardship withdrawal contribution sources, eliminated the six-month suspension of contributions formerly required to rely upon the safe harbor hardship distribution rules, eliminated the requirement that a participant must exhaust available plan loans, and clarified that hardship distributions remain available due to casualty losses to a principal residence.

*Nondiscrimination Testing Relief for Closed Defined Benefit Plans* – The nondiscrimination relief for closed defined benefit plans provided in IRS Notice 2014-5 has been extended through 2020. In addition, IRS Notice 2019-60 provides nondiscrimination relief for closed defined benefit plans regarding whether the plan satisfies the requirement that all benefits, rights, and features of a plan must be currently and effectively available to all plan participants.

## **Attorneys**

Peter Bradley  
Michael Flanagan  
Richard Kaiser  
Ryan Murphy  
Amy Walters

## **Practices & Industries**

Employee Benefits

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Setting Every Community Up for Retirement Enhancement (SECURE) Act provisions, including:

*Increase in Age for Commencing RMDs* - The required beginning date for required minimum distributions (RMDs) from qualified retirement plans has been increased from age 70 ½ to 72, respecting individuals attaining age 70 ½ after December 31, 2019.

*Availability of Distributions for Birth/Adoption* - Participants may take a penalty-free withdrawal of up to \$5,000 from qualified retirement plans (other than defined benefit plans) and 403(b) plans within 12 months after the birth or legal adoption of a child.

*Increase in Maximum QACA Percentage* - The maximum automatic contribution percentage under a qualified automatic contribution arrangement (QACA) has increased from 10% to 15%, but remains 10% for the participant's first year of participation.

*Notice Requirements Eliminated for Nonelective Employer Contribution Safe Harbor 401(k) Plans* – Safe harbor notices no longer need to be provided for 401(k) plans that satisfy the safe harbor requirements through nonelective employer contribution, and plan sponsors may adopt a nonelective 401(k) safe harbor plan within 30 days before the end of the plan year.

*Portability of Annuity Investments* – Tax qualified retirement plans and 403(b) plans may permit transfers and distributions of lifetime income investment options, when the plan removes the option from the plan's investment slate.

*No Credit Card Plan Loan Arrangements* – Loans from qualified retirement plans and 403(b) plans may not be made on a credit card-type arrangement, or the loan will be considered a deemed distribution.

The Taxpayer Certainty and Disaster Tax Relief Act of 2019 - The Act provides special rules for retirement plan distributions and loans to individuals affected by nationally declared disasters from January 1, 2018 through 60 days following enactment (February 18, 2020), other than the California wildfires.

The Bipartisan Miners Act – The Act reduced the minimum age from 62 to 59½ for in-service distributions from qualified defined benefit plans and governmental Code Section 457(b) plans.

Plan administrators should review the OC List with counsel to ensure the qualified retirement plan or 403(b) plan is operated in accordance with each of the relevant requirements, and may review the latest OC List [here](#).