I. IRS OPERATIONAL COMPLIANCE LIST

(https://www.irs.gov/retirement-plans/operational-compliance-list)

- **Hardship Distribution Changes in Bipartisan Budget Act of 2018, Sections 41113 and 41114.** These sections of the Bipartisan Budget Act of 2018 (a) provide that a distribution will not fail to be treated as made on account of hardship merely because the employee does not take any available loan from the plan, and (b) expand the types of contributions and earnings a plan may make available for hardship distributions. In addition, this legislation directs the IRS and Treasury to eliminate the safe harbor requirement to suspend participant contributions for six months in order for the distribution to be deemed necessary to satisfy an immediate and heavy financial need. These changes are effective for plan years beginning after December 31, 2018.

- **Proposed Regulations Regarding Hardship Withdrawals (83 F.R. 56763).** The proposed regulations would revise the 401(k) regulations to reflect legislation regarding hardship distributions. The proposed regulations would prohibit a plan from suspending a participant’s contributions as a condition of obtaining a hardship distribution. In addition, the proposed regulations would revise the safe harbor list of expenses deemed to constitute an immediate and heavy financial need, including modifications regarding casualty losses and disaster-related expenses. The proposed regulations are generally proposed to be effective for distributions made in plan years beginning after December 31, 2018, but would permit plans to (a) choose to cease suspension of contributions on the first day of the first plan year that begins after December 31, 2018, even for distributions made before that date, and (b) choose to apply the changes to the list of safe harbor expenses to any hardship distribution made after December 31, 2017. In addition, under the proposed regulations the requirement to obtain a representation that a distribution is necessary to satisfy a financial need would only apply for a distribution that is made after 2019, and the prohibition on a plan providing for a suspension of elective contributions or employee contributions as a condition of obtaining a hardship distribution would only apply for a distribution made after 2019.

Note: The proposed regulations provide that any plan amendments relating to the final regulations will be treated as integrally related to a disqualifying provision, and will thus have the same amendment deadline as a disqualifying provision, as set forth in Rev. Proc. 2016-37. For example, for an individually designed plan that is not a governmental plan, any plan amendments relating to the final regulations must be made by the end of the second calendar year that begins after the issuance of an annual Required Amendments List that includes the final regulations.

Taxpayers may rely on the proposed regulations until the date of publication of final regulations in the Federal Register.

- **Relief for Victims of Hurricanes Florence and Michael (83 F.R. 56766).** The IRS and Treasury extended the retirement plan relief provided under Announcement 2017–15 to similarly situated victims of Hurricanes Florence and Michael, except that the “Incident Dates” (as defined in that

*Updated April 12, 2019*
• **Extension of temporary nondiscrimination relief for closed defined benefit pension plans (Notice 2018-69).** This notice extends, to plan years beginning before 2020, the relief provided to closed defined benefit plans under Notice 2014-5, as extended under Notice 2015-28, Notice 2016-57, and Notice 2017-45.

• **Final QNEC and QMAC Regulations (T.D. 9835).** These regulations provide that employer contributions to a 401(k) plan can be qualified nonelective contributions or qualified matching contributions if they satisfy the applicable nonforfeitability requirements and distribution limitations at the time they are allocated to participants’ accounts. Accordingly, these regulations permit forfeitures to be used to fund qualified nonelective contributions and qualified matching contributions. The regulations apply to plan years beginning on or after July 20, 2018, but taxpayers may apply these regulations to earlier periods.

• **Relief for California Wildfires (Bipartisan Budget Act of 2018, Section 20102).** A plan may offer participants affected by the California wildfires (a) new “qualified wildfire distributions,” subject to special tax treatment and recontribution options, and (b) plan loans of up to $100,000, subject to special repayment rules. To take advantage of the options provided under this legislation, the loans or distributions must be made within a specified time frame ending December 31, 2018. If the plan makes such loans or distributions, any necessary retroactive amendments must be adopted on or before the last day of the first plan year beginning on or after January 1, 2019 (or for IRC Section 414(d) governmental plans, the last day of the first plan year beginning on or after January 1, 2021).

• **Extension of temporary nondiscrimination relief for closed defined benefit pension plans (Notice 2017-45).** This notice extends, to plan years beginning before 2019, the relief provided to closed defined benefit plans under Notice 2014-5, as extended under Notice 2015-28 and Notice 2016-57. See also, Notice 2018-69.

• **Extended rollover periods for certain amounts.** Recent legislation extended the deadline for individuals to roll over certain distributions from qualified retirement plans. A plan that accepts rollovers may choose to permit rollover contributions made within the new extended deadlines. The new rules extend the rollover deadline for:
  
  o **Qualified plan loan offset amounts (Tax Cuts and Jobs Act of 2017, Section 13613).** Qualified plan loan offset amounts (as defined in IRC Section 402(c)(3)(C)(iii)) may be rolled over by the due date (including extensions) for filing the tax return for the taxable year in which such amount is treated as distributed from a qualified employer plan. (Qualified plan loan offsets include only certain offsets made upon separation of service or termination of the plan.)
extended due date applies to qualified plan loan offset amounts which are treated as distributed in taxable years beginning after December 31, 2017. See, IRC Section 402(c)(3)(C).

- **Refunds of improper tax levies (Bipartisan Budget Act of 2018, Section 41104).** A plan may choose to permit participants whose account or benefit under the plan had been subject to an improper federal tax levy to roll over to the plan any refund of such levy (including interest) that the participant subsequently receives from the IRS, no later than the due date (not including extensions) for filing the participant’s tax return for the taxable year in which the refund is received. These rules apply to levy refunds received in taxable years beginning after December 31, 2017. See, IRC Section 6343(f).

- **Modification of deduction for personal casualty losses (Tax Cuts and Jobs Act, Section 11044).** Under IRC Section 165(h)(5), for taxable years 2018 through 2025, the deduction for a personal casualty loss generally is available only to the extent the loss is attributable to a federally declared disaster (as defined in IRC Section 165(h)(5)). However, see proposed Treasury Regs. Section 1.401(k)-1(d)(3)(ii)(B)(6) (related to deemed immediate and heavy financial need), which provide, in part, that expenses for the repair of damage to an employee’s principal residence that would qualify for the IRC Section 165 casualty deduction is determined without regard to IRC Section 165(h). Thus, for example, a plan that made hardship distributions relating to casualty losses deductible under IRC Section 165 without regard to the changes made to IRC Section 165 by this legislation may be amended to apply the revised safe harbor expense relating to casualty losses to distributions made in 2018 so that plan provisions will conform to the plan’s operation. Taxpayers may rely on the proposed regulations until the date of publication of final regulations in the Federal Register.

II. **IRS RECENT EP PUBLISHED GUIDANCE**


- **Recent Interest Rate Notices.** Updates for the corporate bond weighted average interest rates; the 24-month average segment rates; the funding transitional segment rates; and the minimum present value transitional rates. See https://www.irs.gov/retirement-plans/interest-rate-tables.


  *Note: As of April 12, 2019, the IRS Recent EP Published Guidance Webpage does not include a reference to Rev. Proc. 2019-2.*

*Updated April 12, 2019*
• **Rev. Proc. 2019-1, 2019-1 I.R.B. 1.** Contains revised procedures for letter rulings and information letters issued by the Associate Chief Counsel (Corporate), Associate Chief Counsel (Financial Institutions and Products), Associate Chief Counsel (Income Tax and Accounting), Associate Chief Counsel (International), Associate Chief Counsel (Passthroughs and Special Industries), Associate Chief Counsel (Procedure and Administration), and Associate Chief Counsel (Employee Benefits, Exempt Organizations and Employment Taxes). This procedure also contains revised procedures for determination letters issued by the Large Business and International Division, Small Business/Self Employed Division, Wage and Investment Division, and Tax Exempt and Government Entities Division. Rev. Proc. 2018–1 superseded.

  *Note: As of April 12, 2019, the IRS Recent EP Published Guidance Webpage does not include a reference to Rev. Proc. 2019-1.*

• **Notice 2018–95, 2019-52 I.R.B. 1058.** Provides transition relief from the “once-in-always-in” (OIAI) exclusion condition for excluding part-time employees under Treas. Regs. Section 1.403(b)–5(b)(4)(iii)(B). Under the OIAI exclusion condition, for a Section 403(b) plan that excludes part-time employees from making elective deferrals, once an employee is eligible to make elective deferrals, the employee may not be excluded from making elective deferrals in any later exclusion year on the basis that the employee is a part-time employee. In addition, in applying the OIAI exclusion condition for exclusion years after the transition relief ends, this notice provides a fresh-start opportunity for plans.

• **Notice 2018–91, 2018-50 I.R.B 985.** Contains the 2018 Required Amendments List for individually designed qualified retirement plans. There are no entries listing changes in qualification requirements on the 2018 Required Amendments List.

• **REG-107813–18, 2018-49 I.R.B. 841.** These proposed regulations would amend the current regulations under Section 401(k) relating to hardship distributions. Section 41113 of the Bipartisan Budget Act of 2018 directs the Secretary to remove the requirement in the current regulations that an employee’s plan contributions be suspended for at least 6 months following a hardship distribution from the plan.

• **Notice 2018–83, 2018-47 I.R.B. 774.** IRC Section 415 provides for dollar limitations on benefits and contributions under qualified retirement plans. Section 415(d) requires that the Secretary of the Treasury annually adjust these limits for cost of living increases. Other limitations applicable to deferred compensation plans are also affected by these adjustments under Section 415. Under Section 415(d), the adjustments are to be made under adjustment procedures similar to those used to adjust benefit amounts under Section 215(i)(2)(A) of the Social Security Act.

• **Rev. Proc. 2018–52, 2018-42 I.R.B. 611.** Modifies and supersedes Rev. Proc. 2016–51, 2016–42 I.R.B. 465, which sets forth the Employee Plans Compliance Resolution System for sponsors of retirement plans that have failed to satisfy certain requirements under IRC Section 401(a), 403(a),
403(b), 408(k), or 408(p). It sets forth new procedures for using the www.pay.gov website to file VCP submissions and pay user fees. Beginning on April 1, 2019, the IRS will no longer accept paper VCP submissions or process user fees paid with a paper check.

- **Notice 2018–74, 2018-40 I.R.B. 529.** Modifies the two safe harbor explanations in Notice 2014–74, that may be used to satisfy the requirement under IRC Section 402(f) that certain information be provided to recipients of eligible rollover distributions.

- **Notice 2018–69, 2018-37 I.R.B. 429.** Extends the temporary nondiscrimination relief for closed defined benefit plans that is provided in Notice 2014–5 by making that relief available for plan years beginning before 2020 if the conditions of Notice 2014–5 are satisfied.


- **T.D. 9835, 2018-33 I.R.B. 288.** The regulations under sections 401(k) and 401(m) are amended to provide that an employer contribution to a plan may be a qualified matching contribution or qualified nonelective contribution if it satisfies applicable nonforfeitability requirements and distribution limitations at the time it is allocated to a participant’s account but need not meet these requirements or limitations when it is contributed to the plan.

- **Rev. Proc. 2018–21, 2018-14 I.R.B. 467.** Modifies the procedures of the IRS for issuing opinion and advisory letters for pre-approved master and prototype and volume submitter plans as provided in Rev. Proc. 2015–36. In particular, this revenue procedure modifies sections 6.03(7)(c) and 16.03(7)(c) of Rev. Proc. 2015–36 to allow pre-approved defined benefit plans containing a cash balance formula to provide for the actual rate of return on plan assets as the rate used to determine interest credits.

- **Announcement 2018–05, 2018-13 I.R.B. 461.** Provides that the IRS intends to issue opinion and advisory letters for master and prototype and volume submitter defined benefit plans (pre-approved) that were restated for changes in plan qualification requirements listed in Notice 2012–76 and that were filed with the IRS during the submission period for the second remedial amendment cycle. The IRS intends to issue the letters on March 30, 2018 or as soon as possible thereafter.

• Notice 2018-24, 2018-17 I.R.B. 507. Requests comments on potential expansion of the scope of the determination letter program for individually designed plans during the 2019 calendar year. Comments must be submitted to the IRS on or before June 4, 2018.

• Revenue Ruling 2018–04, 2018-4 I.R.B. 304. Provides tables of covered compensation under IRC Section 401(l)(5)(E) and the Income Tax Regulations thereunder, effective January 1, 2018. These tables of covered compensation reflect a revision to the taxable wage base for 2018 that was announced by the Social Security Administration on November 27, 2017 and apply in lieu of the tables that were provided in Revenue Ruling 2017–22, 2017–48 I.R.B. 536, 2017.


• Rev. Proc. 2018-1, 2018-1 I.R.B. 7. Contains revised procedures for letter rulings and information letters issued by the Associate Chief Counsel (Corporate), Associate Chief Counsel (Financial Institutions and Products), Associate Chief Counsel (Income Tax and Accounting), Associate Chief Counsel (International), Associate Chief Counsel (Passthroughs and Special Industries), Associate Chief Counsel (Procedure and Administration), and Associate Chief Counsel (Tax Exempt and Government Entities). This procedure also contains revised procedures for determination letters issued by the Large Business and International Division, Small Business/Self Employed Division, Wage and Investment Division, and Tax Exempt and Government Entities Division. Rev. Proc. 2017–1 superseded.

• Notice 2018–02, 2018-2 I.R.B. 281. Sets forth the updated mortality improvement rates and static mortality tables that are used for purposes of determining minimum funding requirements under Section 430(h)(3) for 2019 and minimum present value under Section 417(e)(3) for distributions with annuity starting dates that occur during stability periods beginning in the 2019 calendar year.

III. IRS REQUIRED AMENDMENTS LIST
(https://www.irs.gov/retirement-plans/required-amendments-list)

The Required Amendments List includes changes in qualification requirements that generally would require an amendment to most plans or to most plans of the type affected by the change. Under Section 5 of Rev. Proc. 2016-37, 2016-29 I.R.B. 136, the remedial amendment period is extended until the end of the second calendar year following publication of the Required Amendments List for the year.

- There are no entries listing changes in qualification requirements on the 2018 Required Amendments List.


(Amendments are generally required by December 31, 2019)

- Final regulations regarding cash balance/hybrid plans (79 Fed. Reg. 56442, 80 Fed. Reg. 70680). Cash balance/hybrid plans must be amended to the extent necessary to comply with those portions of the regulations regarding market rate of return and other requirements that first become applicable to the plan for the plan year beginning in 2017. (This requirement does not apply to those collectively bargained plans that do not become subject to these portions of the regulations until 2018 or 2019 under the extended applicability dates provided in § 1.411(b)-1(f)(2)(B)(3).)

  Note: The relief from the anti-cutback requirements of § 411(d)(6) provided in § 1.411(b)(5)-1(e)(3)(vi) applies only to plan amendments that are adopted before the effective date of these regulations.

  Note: See also Notice 2016-67, 2016-47 I.R.B. 748, which addresses the applicability of the market rate of return rules to implicit interest pension equity plans.

- Benefit restrictions for certain defined benefit plans that are eligible cooperative plans or eligible charity plans described in section 104 of the Pension Protection Act of 2006, as amended ("PPA"). An eligible cooperative plan or eligible charity plan that was not subject to the benefit restrictions of § 436 for the 2016 plan year under § 104 of PPA ordinarily becomes subject to those restrictions for plan years beginning on or after January 1, 2017. However, a plan that fits within the definition of a "CSEC plan" (as defined in § 414(y)) continues not to be subject to those rules unless the plan sponsor has made an election for the plan not to be treated as a CSEC plan.