ABA EMPLOYEE BENEFITS ADMINISTRATIVE PRACTICES SUBCOMMITTEE
Guidance List (2017 - 2019)

I. IRS OPERATIONAL COMPLIANCE LIST (2017 only – nothing listed for 2018)
   (https://www.irs.gov/retirement-plans/operational-compliance-list)

   • **Proposed Regulations regarding QNECs and QMACs in defined contribution plans (82. Fed. Reg. 5477, REG-131643-15, I.R.B. 2017-6, February 6, 2017).** These proposed regulations provide that qualified matching contributions and qualified nonelective contributions must satisfy applicable nonforfeitability and distribution requirements at the time they are allocated to participants’ accounts but need not meet these requirements when they are contributed to the plan. These proposed regulations apply only to taxable years beginning on or after the publication of final regulations, but taxpayers may choose to rely on these proposed regulations currently and for prior periods.

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

      *Note:* Notice 2017-45 further extends this relief to plan years beginning before 2019.

   • **Final regulations regarding partial annuity distribution options for defined benefit pension plans (T.D. 9783).** These regulations, which apply to defined benefit plans that permit partial annuity distributions, modify the minimum present value requirements under Internal Revenue Code (“IRC”) Section 417(e) for such distributions. These regulations apply to distributions with annuity starting dates in plan years beginning on or after January 1, 2017. A taxpayer can elect to apply these regulations with respect to any earlier period. *(Also appears on the 2017 Required Amendments List).*

      *Note:* The regulations provide relief from the anti-cutback rules of IRC Section 411(d)(6) for certain amendments adopted on or before December 31, 2017.

   • **Final regulations regarding cash balance/hybrid plans (T.D. 9693 and T.D. 9743).** These regulations, which apply to cash balance/hybrid plans (other than collectively bargained plans with a delayed effective date pursuant to Treas. Regs. Section 1.411(b)(5)-1(f)(2)(B)(3)), provide rules regarding market rate of return and other requirements for cash balance/hybrid plans. The regulations generally are first effective for plan years beginning on or after January 1, 2017. *(Also appears on the 2017 Required Amendments List).*

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

      *Also see* Notice 2016-67. This notice addresses the applicability of the market rate of return rules to implicit interest pension equity plans.

*Updated January 14, 2019*
Application of benefit restrictions for certain defined benefit plans (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 IRC Section 436 for the 2016 plan year under Section 104 of PPA ordinarily becomes subject to those restrictions for plan years beginning on or after January 1, 2017. However, this rule does not apply to a plan that fits within the definition of a Certain Cooperative and Small Employer Charity Pension Plan (“CSEC plan”) as defined in IRC Section 414(y), unless the plan sponsor has made an election for the plan not to be treated as a CSEC plan. (Also appears on the 2017 Required Amendments List).

II. IRS RECENT EP PUBLISHED GUIDANCE


  *Note:* As of January 14, 2019, the IRS Recent EP Published Guidance Webpage does not include a reference to Rev. Proc. 2019–4.

- **Revenue Procedure 2019-2, 2019-1 I.R.B. 106.** Contains procedures explaining when and how an Associate office within the Office of Chief Counsel provides technical advice, conveyed in technical advice memoranda (TAMs). It also explains the rights that a taxpayer has when a field office requests a TAM regarding a tax matter. Rev. Proc. 2018–2 superseded.

  *Note:* As of January 14, 2019, the IRS Recent EP Published Guidance Webpage does not include a reference to Rev. Proc. 2019–2.

- **Revenue Procedure 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 January 14, 2019, the IRS Recent EP Published Guidance Webpage does not include a reference to Rev. Proc. 2019–1.

- **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

- **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.

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- **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.


- **Revenue Procedure 2018-2, 2018-1 I.R.B. 106.** Procedures explaining when and how an Associate office within the Office of Chief Counsel provides technical advice, conveyed in technical advice memoranda (TAMs). It also explains the rights that a taxpayer has when a field office requests a TAM regarding a tax matter. Rev. Proc. 2017–2 superseded.

- **Revenue Procedure 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.

  **Note:** IRS Recent EP Published Guidance Webpage does not include a reference to Rev. Proc. 2018-1.

- **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.

- **Notice 2017–72, 2017-52 I.R.B. 601.** Contains the 2017 Required Amendments List for individually designed qualified retirement plans. The list identifies certain changes in qualification requirements that became effective in 2017 that may require a retirement plan to be amended in order to remain qualified and establishes the date by which any necessary amendment must be made. *(Details of Required Amendments List are discussed below.)*

*Updated January 14, 2019*

• **Announcement 2017–15, 2017-47 I.R.B. 534.** Provides relief to victims of Hurricane Maria and the recent California wildfires. It permits easier access to funds held in workplace retirement plans and in IRAs, for periods beginning in September and October 2017 and ending March 15, 2018. The relief provided in the announcement is in addition to the relief already provided by the IRS pursuant to several recent news releases.

• **Notice 2017-64, 2017-45 I.R.B. 486.** This notice contains the indexed limitations applicable to qualified plans for 2018, as well as certain limitations applicable for fringe benefit and IRAs. 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. 2017–57, 2017-44 I.R.B. 474.** Updates Rev. Proc. 2000–41 to take into account the enactment of subsequent legislation. This revenue procedure sets forth the procedure for obtaining approval of the IRS for a change in the funding method used for a defined benefit plan, as provided by IRC Section 412(d)(1) and Section 302(d)(1) of ERISA. This revenue procedure also sets forth the procedure for obtaining approval of the IRS to revoke an election relating to interest rates pursuant to IRC Section 430(h)(2)(D)(ii) or Section 430(h)(2)(E) and the corresponding sections of ERISA.

• **Rev. Proc. 2017–56, 2017-44 I.R.B. 465.** Updates Rev. Proc. 2000–40 to take into account the provisions of IRC Section, which was enacted as part of the Pension Protection Act of 2006. This revenue procedure provides automatic approval for certain changes in funding method used for single-employer defined benefit plans for calculations described under Section 430.

• **Notice 2017-60, 2017-43 I.R.B. 365.** This notice sets forth the mortality table that is used for purposes of determining minimum present value under IRC Section 417(e)(3) for 2018. This notice also sets forth static mortality tables for 2018 determined under the methodology of Section 1.430(h)(3)–1 prior to its amendment, which apply for certain plans.

• **Notice 2017-55, 2017-43 I.R.B. 373.** Procedure by which the sponsor of a defined benefit plan that is subject to the funding requirements of IRC Section 430 may request approval from the IRS for the use of plan-specific substitute mortality tables in accordance with Section 430(h)(3)(C) and Section 1.430(h)(3)–2 of the Treasury Regulations.

• **Rev. Proc. 2017–55, 2017-43 I.R.B. 373.** Sets forth the procedure by which the sponsor of a defined benefit plan that is subject to the funding requirements of IRC Section 430 may request
approval from the IRS for the use of plan-specific substitute mortality tables in accordance with Section 430(h)(3)(C) and Section 1.430(h)(3)–2 of the Treasury Regulations.

- **Announcement 2017–13, 2017-40 I.R.B. 271.** Provides relief to victims of Hurricane Irma, which caused damage to Florida and other areas. It permits easier access to victims’ funds held in workplace retirement plans and in IRAs, for the period beginning September 4, 2017, (for Florida) and ending January 31, 2018. The relief provided in the announcement is in addition to the relief already provided by the IRS pursuant to News Release IR–2017–150.

- **Announcement 2017–11, 2017-39 I.R.B. 255.** Provides relief to victims of Hurricane Harvey, which caused damage to Texas. It permits easier access to victims’ funds held in workplace retirement plans and in IRAs, for the period beginning August 23, 2017, and ending January 31, 2018. The relief provided in the announcement is in addition to the relief already provided by the IRS pursuant to News Release IR–2017–135.

- **Rev. Proc. 2017–43, 2017-31 I.R.B. 152.** Revises procedures for applying for Treasury Department approval of a suspension of benefits under a multiemployer defined benefit pension plan that is in critical and declining status under Section 432(e)(9).

- **Rev. Proc. 2017–41, 2017-29 I.R.B. 92.** Modifies and supersedes, in part, Rev. Proc. 2015–36, 2015–27 I.R.B. 20, which sets forth the procedures for issuing opinion and advisory letters on the form of qualified retirement plans submitted under the pre-approved plan program. The revenue procedure simplifies the current program by restructuring the current master and prototype and volume submitter pre-approved programs into a single program that increases the types of eligible plans and permits additional plan design options.

- **Notice 2017–37, 2017-29 I.R.B. 89.** Contains the Cumulative List of Changes in Plan Qualification Requirements for Pre-Approved Defined Contribution Plans for 2017 (2017 Cumulative List). The 2017 Cumulative List identifies changes in the qualification requirements of the Code that are required to be taken into account in a plan document submitted to the IRS under the pre-approved plan program for purposes of receiving an opinion letter.

- **Announcement 2017-4, 2017-16 I.R.B. 1106.** Provides relief from certain excise taxes under IRC Section 4975 and any related reporting requirements to conform to the temporary enforcement policy described by DOL in Field Assistance Bulletin (FAB) 2017–01 with respect to the final fiduciary duty rule.


- **T.D. 9811, 2017-7 I.R.B. 869.** Final regulations regarding the application of the modified carryover basis rules of Section 1022 of the Internal Revenue Code. Specifically, the final regulations modify provisions of the Treasury Regulations involving basis rules by including a reference to section
1022 where appropriate. The regulations will affect property transferred from certain decedents who died in 2010. The regulations reflect changes to the law made by the Economic Growth and Tax Relief Reconciliation Act of 2001 and the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010.


- **REG–112324–15, 2017-4 I.R.B. 547.** Proposed regulations prescribing mortality tables to be used by most defined benefit pension plans. The tables specify the probability of survival year-by-year for an individual based on age, gender, and other factors.

- **REG–131643–15, 2017-4 I.R.B. 865.** Proposed regulations which would amend the regulations under Section 401(k) to provide that amounts used to fund qualified matching contributions and qualified nonelective contributions must satisfy certain nonforfeitability and distribution requirements when they are allocated to participants’ accounts, and not when they are first contributed to the plan.

- **Notice 2017–01, 2017-2 I.R.B. 367.** This notice describes the circumstances under which, in light of changes to the remedial amendment period rules set forth in Rev. Proc. 2016–37, 2016–29 I.R.B. 136, the IRS will treat an application for a determination letter as being filed within a qualifying open remedial amendment period (one of the requirements for the user fee exemption). Specifically, this notice provides that the IRS will treat an application for a determination letter as being filed within a qualifying open remedial amendment period if the plan was first in existence no earlier than January 1 of the tenth calendar year preceding the year in which the application is filed (“the ten-year rule”).

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.
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(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)(5)-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.