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IRS Updates Retirement Plan Operational Compliance List

IRS has updated its website Operational Compliance list with new items for 2019. The list is designed to help plans comply with changes in qualification requirements beginning on the effective date of each change. The IRS separately issues an annual list of Required Amendments.

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Authors

Marjorie Martin, FSPA, EA,
MAAA
Julia Zuckerman, JD

Background

IRS eliminated its staggered five-year remedial amendment cycle for individually designed plans, effective January 1, 2017. Plans are nonetheless required to keep up on operational compliance and meet amendment deadlines for changes in legal requirements. To assist in this effort, IRS publishes an annual Required Amendments List, as well as an annual Operational Compliance List identifying qualification changes effective during a calendar year. For a review of how IRS changed the determination letter program and the ongoing requirements for amendments and operational compliance, see our [July 8, 2016 For Your Information](#).

IRS has issued the following Required Amendments lists: [Notice 2016-80](#) provides the list for 2016 to describe the amendments generally due no later than December 31, 2018; [Notice 2017-72](#) provides the list for 2017 to describe the amendments generally due no later than December 31, 2019; [Notice 2018-91](#) reports on the list for 2018 — though there are no changes at all for this most recent list.

Operational list released

IRS provides the operational compliance on their website rather than by issuing a notice. The [most recent update](#), released this week, includes two general categories of compliance issues for consideration.

Changes for hardship distributions. These changes reflect the modifications stemming from the Bipartisan Budget Act of 2018 and the proposed regulations issued by IRS to implement those changes. Included are the elimination of the requirement that a participant take a plan loan before

taking a hardship withdrawal, the expansion of the contribution and earnings sources available for withdrawal, and the elimination of the requirement to suspend participant contributions for six-months following the withdrawal. There are some choices available for implementing these changes. See our [November 27, 2018 For Your Information](#) for details on the options.

IRS extended the hardship distribution changes to victims of Hurricanes Florence and Michael. The proposed regulations generally accommodate hardship withdrawals for any disaster, but not quite as broadly as the expanded relief allowed for select disasters. For example, expanded relief typically permits hardship distributions to aid lineal ascendants and descendants. But standard regulatory relief merely covers the costs of the participant. For more on the relief extended for these hurricanes (but not other disasters) see our [December 11, 2018 For Your Information](#).

Temporary nondiscrimination relief for closed defined benefit pension plans. Notice 2018-69 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.

This is merely an extension of the date for using the limited relief in Notice 2014-5 (see our [August 30, 2018 FYI Alert](#)). Plan sponsors facing potential coverage and nondiscrimination testing failures also have more options available in the IRS proposed changes to nondiscrimination regulations — some of which may be relied on currently. Our [February 4, 2016 For Your Information](#) and [April 14, 2016 FYI Alert](#) discuss that relief.

An additional ray of hope for these plans is in proposals that have been repeatedly raised in Congress. Most recently, relief is included in the Retirement Enhancement and Savings Act (RESA) ([H.R. 1007](#)) introduced in February by Rep. Ron Kind (D-Wis.) with a bipartisan list of co-sponsors. Notably, RESA would generally provide relief from the minimum participation requirement for plans that satisfied the rule at the time the plan closed to new participants.

In closing

In addition to planning for current updates as described above, [IRS' Operational Compliance List](#) is useful for reviewing prior year required updates to confirm compliance and that any necessary amendments have been made or are scheduled to be made. Plan sponsors should review this list and take action as warranted.

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