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The 2017 Operational Compliance List – A Promised Tool from the IRS

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The Internal Revenue Service (IRS) handed sponsors of individually designed plans the second of two annual compliance tools on February 27, 2017, when it published the Operational Compliance List on its [website](#). The first tool was the Required Amendments List, about which we provided an update, [2016 Required Amendments List is a List of One](#).

The compliance tools were promised by the IRS in Sections 9 and 10 of Revenue Procedure 2016-37, issued in July 2016, which ended the cyclical determination letter program for individually designed plans. See [IRS Puts Brakes on Cyclical Determination Letter Program](#).

While the Operational Compliance List is a useful tool, the IRS reminds plan sponsors that a plan must operate in compliance with each relevant qualification requirement, whether or not the requirement is included on the Operational Compliance List, and it must comply operationally with any revision of qualification requirements from the revision's effective date.

The IRS describes the Operational Compliance List as identifying matters that may involve either mandatory or discretionary amendments depending on the specific plan and as containing significant guidance that impacts daily plan operations. The Operational Compliance List is only available on the IRS website. Annual, monthly, or periodic changes that occur routinely (e.g., cost-of-living increases) will be published on the [Recent Published Guidance](#).

For 2017, the Operational Compliance List includes the following items:

- **QNECs and QMACs in defined contribution plans**
Proposed regulations were issued to allow plans to use forfeitures to fund qualified matching contributions (QMACs) and qualified nonelective contributions (QNECs). Plan sponsors may choose to rely on these proposed regulations currently, although the effective date will be the first day of the taxable year beginning on or after publication of the final regulations. **If a plan sponsor wants to take advantage of this new funding source, it should review its plan to determine if an amendment is necessary.** See [IRS: Forfeitures can fund QNECs and QMACs](#).
- **Extension of temporary nondiscrimination relief for closed defined benefit pension plans**
The IRS extended (for another year) previously provided temporary relief in connection with the rules that require qualified plans to not discriminate in favor of highly compensated employees (HCEs). If certain conditions are met, the relief applies for plan years beginning before 2018 for "closed" defined benefit pension plans (closed defined benefit plans provide ongoing accruals but have been amended to limit those accruals to certain employees who participated in the plan on a particular date).
- **Partial annuity distribution options for defined benefit pension plans**
For defined benefit plans that permit partial annuity distributions, the IRS revised the minimum present value requirements under Internal Revenue Code (IRC) Section 417(e). The revisions simplify the calculation for certain optional forms of payment that are paid partly in

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the form of an annuity and partly in a single sum or other accelerated form of payment. These regulations apply to distributions with annuity starting dates in plan years beginning on or after January 1, 2017; however, a taxpayer can elect to apply these regulations with respect to any earlier period.

- **Cash balance/hybrid plans final regulations**

These regulations, which apply to cash balance/hybrid plans (other than collectively bargained plans that have a delayed effective date), 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; however, the relief from the anti-cutback requirements of IRC Section 411(d)(6) applies only to plan amendments that are adopted **before** the effective date of these regulations.

Effective in 2016, the Operational Compliance List includes these items:

- **Loans and hardship distributions to victims of Hurricane Matthew**

The IRS provided relief from certain requirements for loans and hardship distributions to victims of Hurricane Matthew under specified circumstances. See [Hurricane Matthew Victims Get a Helping Hand from the IRS](#).

- **Loans and hardship distributions to victims of the Louisiana Storms**

The IRS provided relief from certain requirements for loans and hardship distributions to victims of the Louisiana Storms under specified circumstances.

- **Midyear changes to safe harbor 401(k) plans** This notice permits midyear changes to safe harbor 401(k) plans under certain circumstances. In general, a midyear change to a safe harbor plan will not violate the safe harbor plan regulations if: (1) it is a midyear change to a plan's required safe harbor notice content, (2) the notice and election

opportunity rules described in the Notice are satisfied, and (3) the midyear change is not described in the list of prohibited midyear changes in the Notice. See [You're Safe! IRS Provides Guidance on Midyear Changes to Safe Harbor 401\(k\) Plans](#).

- **Nondiscrimination testing under section 401(a)(4)**

The IRS proposed changes to the nondiscrimination testing requirements, generally relating to testing contributions or benefits with respect to a closed defined benefit plan. The new proposed rules can only be used once plans have been closed for at least five years, provided that the plan passed certain tests in the first five years after closing. In addition, plans must not have made any significant changes in the five years prior to closing. Plan sponsors may choose to rely on the proposed regulations.

- **Normal retirement age for governmental pension plans**

Proposed regulations provide: (1) safe harbors that satisfy the "reasonably representative" requirement, (2) special safe harbors for qualified public safety employees, and (3) guidance regarding multiple NRAs. These regulations are proposed to be effective for employees hired during plan years beginning on or after the later of January 1, 2017, or 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. Employers may choose to rely on the proposed regulations currently and for prior periods.

- **Restrictions on distributions in bankruptcy for collectively bargained single-employer defined benefit plans**

Collectively bargained single-employer defined benefit plans may not use the adjustment of segment rates under IRC Section 430(h)(2)(C)(iv) in determining the plan's adjusted funding

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attainment percentage for purposes of the restrictions on accelerated distributions in employer bankruptcy under IRC Section 436. This rule is effective for plan years beginning after December 31, 2015. **Plan sponsors should review their plans to determine if the required amendment is necessary.**

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