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IRS Updates Operational Compliance List for 2020



The IRS recently updated its [Operational Compliance List](#) to include 2020 legislation and guidance to help plan sponsors identify changes that may affect their

plan's compliance.

The Operational Compliance List ("OC" List) is provided per [Rev. Proc. 2016-37](#), Section 10, and Rev. Proc. 2016-37, Section 9, to help plan sponsors and practitioners achieve operational compliance by identifying changes in qualification requirements effective during a calendar year. The OC List:

- Identifies matters that may involve either mandatory or discretionary plan amendments depending on the particular plan.
- May reference other significant guidance that affects daily plan operations.

Effective in 2020

Final regulations relating to hardship distributions (84 Fed. Reg. 49651).

These [regulations amended the rules relating to hardship distributions](#) from IRC Section 401(k) plans to reflect statutory changes affecting those plans, including changes made by the Bipartisan Budget Act of 2018, Pub. L. 115-123 (BBA 2018), and the Tax Cuts and Jobs Act, Pub. L. 115-97 (TCJA). In response to BBA 2018, the regulations modified the former IRC Section 401(k) regulations by, among other things: (1) deleting the 6-month prohibition on elective contributions following a hardship distribution; (2) providing that the maximum amount available for distribution upon hardship includes elective contributions, qualified nonelective contributions, qualified matching contributions, and earnings on all these contributions; (3) providing that a distribution is not treated as failing to be made upon the hardship of an employee solely because the employee does not take any available loan under the plan; and (4) requiring that an employee requesting a hardship distribution provide a representation that the employee's immediate and heavy financial need cannot reasonably be relieved from resources specified in Treasury Regs. Section 1.401(k)-1(d)(3)(iv)(C).

The regulations also modified the rules for determining when a distribution is necessary to satisfy a financial need and revised the list of expenses for which a distribution is deemed to be made on account of an immediate and heavy financial need, including modifying the expense for casualty losses by disregarding the changes to IRC Section 165 made by TCJA. New IRC Section 165(h)(5) provides that a casualty loss is deductible for taxable years 2018 through 2025 only if it results from a federally declared disaster. (Added May 2020)

These regulations generally also apply to hardship distributions under IRC Section 403(b) plans. However, income attributable to IRC Section 403(b) elective deferrals continues to be ineligible for distribution on account of hardship. Qualified nonelective contributions and qualified matching contributions in an IRC Section 403(b) plan that are not in a custodial account may be distributed on account of hardship, but qualified nonelective contributions and qualified matching contributions in an IRC Section 403(b) plan that are in a custodial account continue to be ineligible for distribution on account of hardship. (Added May 2020)

These regulations apply to distributions made on or after January 1, 2020. However, the regulations may be applied to distributions made in plan years beginning after December 31, 2018, and the prohibition on suspending an employee's elective contributions and employee contributions as a condition of obtaining a hardship distribution may be applied as of the first day of the first plan year beginning after December 31, 2018, even if the distribution was made in the prior plan year. In addition, the revised list of safe harbor expenses may be applied to distributions made on or after a date that is as early as January 1, 2018. (Added May 2020)

Note: Rev. Proc. 2020-9 clarifies that all plan amendments that relate to a plan's hardship distribution provisions and that are effective no later than January 1, 2020, are treated as integral to amendments that must be made to a plan as a

result of the final IRC Section 401(k) hardship regulations. This treatment applies even if the required amendments are implemented earlier and made applicable to hardship distributions before January 1, 2020. Rev. Proc. 2020-9 also extends (to December 31, 2021) the deadline applicable to pre approved plans for the adoption of interim amendments with respect to amendments that must be made to a plan as a result of the hardship regulations. Consistent with this treatment of IRC Section 401(k) plans, this same deadline will be applied with respect to amendments made to IRC Section 403(b) plans to reflect related changes made to the IRC Section 401(k) hardship regulations. (Added May 2020)

Extension of temporary relief for closed defined benefit pension plans (Notice 2019-49).

This notice extends, to plan years beginning before 2021, relief from the nondiscrimination in amount requirement of Treasury Regs. Section 1.401(a)(4)-1(b)(2) provided to closed defined benefit plans under [Notice 2014-5](#), as extended under [Notice 2015-28](#), [Notice 2016-57](#), Notice 2017-45, and Notice 2018-69. (Added May 2020)

Additional temporary nondiscrimination relief for closed defined benefit pension plans (Notice 2019-60).

This notice provides additional temporary relief from the requirements of Treasury Regs. Section 1.401(a)(4)-4 relating to benefits, rights, and features to a closed defined benefit plan that generally meets the eligibility conditions for the temporary relief under Notice 2014-5, as extended under Notice 2015-28, Notice 2016-57, Notice 2017-45, Notice 2018-69, and Notice 2019-49. (Added May 2020)

Increase in 10 percent cap for automatic enrollment safe harbor after first plan year (SECURE Act, Section 102).

This section of the [SECURE Act](#) provides that the qualified percentage applicable to qualified automatic contribution arrangements under IRC Section 401(k)(13) is increased from 10

percent to 15 percent (but retains the current 10 percent limit for the first plan year in which an employee defers). The amendments made by Section 102 apply to plan years beginning after December 31, 2019. (Added May 2020)

Rules relating to election of safe harbor 401(k) status (SECURE Act, Section 103).

This section of the SECURE Act removes the requirement to provide an annual safe harbor notice for nonelective safe harbor IRC Section 401(k) plans. This section also permits plan sponsors to adopt a safe harbor IRC Section 401(k) plan with nonelective contributions any time before the 30th day before the close of the plan year. Plan sponsors that make nonelective safe harbor contributions of at least 4 percent of compensation for a plan year may adopt this safe harbor design before the last day under IRC Section 401(k)(8)(A) for distributing excess contributions for the plan year. The amendments made by Section 103 apply to plan years beginning after December 31, 2019. (Added May 2020)

Portability of lifetime income options (SECURE Act, Section 109).

This section of the SECURE Act provides that qualified defined contribution plans under IRC Section 401(k) and IRC Section 403(b) plans may permit certain transfers and distributions of lifetime income investment options in cases in which such investment options are no longer authorized to be held as an investment option under the plan. The amendments made by Section 109 apply to plan years beginning after December 31, 2019. (Added May 2020)

Employees of church-controlled organizations participating in section 403(b)(9) retirement income accounts (SECURE Act, Section 111).

This section of the SECURE Act clarifies that an employee described in IRC Section 414(e)(3)(B), which includes any ministers (regardless of the source of income), employees of a

tax-exempt organization controlled by or associated with a church (whether or not it is a qualified church-controlled organization described in IRC Section 3121(w)(3)(B)), and certain employees who separate from the service of a church, may participate in an IRC Section 403(b)(9) retirement income account. The amendment made by Section 111 applies to years beginning before, on, or after December 20, 2019 (the date of enactment of the Act). (Added May 2020)

Penalty-free withdrawals from retirement plans for individuals in case of birth or adoption (SECURE Act, Section 113).

This section of the SECURE Act amends IRC Section 72(t) to provide that the 10 percent additional tax on early distributions from certain retirement plans does not apply to qualified birth or adoption distributions. This section also (i) provides that qualified birth or adoption distributions are treated as meeting plan distribution requirements, (ii) provides that these distributions are not eligible rollover distributions for purposes of the direct rollover rules of IRC Section 401(a)(31), the notice requirements of IRC Section 402(f), and the mandatory withholding rules of IRC Section 3405, and (iii) provides certain rules for repayment of these distributions. The amendments made by Section 113 apply to distributions made after December 31, 2019. (Added May 2020)

Increase in age for required beginning date for mandatory distributions (SECURE Act, Section 114).

This section of the SECURE Act modifies IRC Section 401(a)(9) to increase the age on which the determination of required minimum distributions is based from age 70½ to age 72. The amendments made by Section 114 apply to distributions required to be made after December 31, 2019, with respect to individuals who attain age 70½ after that date. Present law continues to apply to individuals who attained age 70½ prior to January 1, 2020. (Added May 2020)

Difficulty of care payments treated as compensation for retirement contribution limitations (SECURE Act, Section 116).

This section of the SECURE Act amends IRC Section 415(c) to provide that, with respect to an individual who, under IRC Section 131, excludes from gross income a qualified foster care payment that is a difficulty of care payment, compensation under IRC Section 415(c)(1)(B) is increased by the amount so excluded. The provision further provides that contributions allowed due to the increase in compensation are treated as investment in the contract and do not cause the plan to be treated as failing to meet any income tax requirements. This amendment is effective for plan years that begin on or after December 31, 2015. (Added May 2020)

Modification of nondiscrimination rules to protect older, longer service participants (SECURE Act, Section 205).

This section of the SECURE Act changes the nondiscrimination testing requirements (generally relating to testing contributions or benefits and compliance with the minimum participation rules) for a grandfathered group of employees with respect to a closed defined benefit plan by providing alternative nondiscrimination testing methods that the plan sponsor may choose to use. The amendments made by Section 205 are generally effective December 20, 2019 (the date of enactment of the Act), but there are special rules for earlier application in Section 205(c)(2), including that a plan sponsor may elect for the amendments made by this section of the SECURE Act to apply to plan years beginning after December 31, 2013. (Added May 2020)

Modification of required distribution rules for designated beneficiaries (SECURE Act, Section 401).

This section of the SECURE Act changes the after-death required minimum distribution rules applicable to defined contribution plans. Generally, these rules are effective for distributions from defined contribution plans with respect to individuals who die after December 31, 2019. A later effective

date may apply if a plan is an IRC Section 414(d) governmental plan, collectively bargained plan, or in other special circumstances. (Added May 2020)

Provisions relating to plan amendments (SECURE Act, Section 601).

This section of the SECURE Act provides relief from the anti-cutback rules of IRC Section 411(d)(6) for amendments to any retirement plan or annuity contract pursuant to any amendment made by the SECURE Act or pursuant to any Treasury or Department of Labor regulation under this Act. This relief generally extends to the last day of the first plan year beginning on or after January 1, 2022, or such later time as the Secretary of the Treasury shall provide, and extends to the last day of the first plan year beginning on or after January 1, 2024, for IRC Section 414(d) governmental plans and collectively bargained plans. In order to qualify for the relief, the plan or contract generally must be operated in accordance with the legislative or regulatory amendment between its effective date and the date the amendment to the plan or contract is adopted. (Added May 2020)

Reduction to minimum age for allowable in-service distributions (Bipartisan American Miners Act of 2019, Section 104). Prior to enactment of the Act, IRC Section 401(a)(36) provided that a pension plan does not fail to be qualified solely because the plan provides that a distribution may be made from the plan to an employee who has attained age 62 and who is not separated from employment at the time of the distribution. The Act lowers the minimum age for allowable in-service distributions under IRC Section 401(a)(36) from 62 to 59½. The amendments made by Section 104 apply to plan years beginning after December 31, 2019. (Added May 2020)

Relief for certain major disasters (Taxpayer Certainty and Disaster Tax Relief Act of 2019, Section 202). A plan may offer participants affected by major disasters declared during

the period beginning on January 1, 2018, and ending on February 18, 2020, (a) new distribution options for “qualified disaster distributions,” which are provided 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 distributions must be made within the period beginning on the first day of an incident period for a qualified disaster and ending on June 16, 2020, and the loans must be made within the period beginning on December 20, 2019, and ending on June 16, 2020. If the plan makes such distributions or loans, any necessary retroactive amendments implementing the special rules must be adopted on or before the last day of the first plan year beginning on or after January 1, 2020 (or for IRC Section 414(d) governmental plans, on or before the last day of the first plan year beginning on or after January 1, 2022), and, for an amendment with a retroactive effective date, the plan must be operated as if the amendment were in effect. (Added May 2020)



The OC List is not intended to be a comprehensive list of every item of IRS guidance or new legislation for a year that could affect a particular plan. The Further Consolidated Appropriations Act, 2020 (Act), Pub. L. 116-94, was enacted on December 20, 2019. The Act includes Division O, titled “Setting Every Community Up for Retirement Enhancement Act of 2019” (SECURE Act), Division M, titled “Bipartisan American Miners Act of 2019,” and Division Q, titled “Taxpayer Certainty and Disaster Tax Relief Act of 2019.” The OC List above sets forth relevant qualification and IRC Section 403(b) requirements related to these divisions of the Act. The OC List will be updated as guidance relating to these statutory provisions is issued. [The Coronavirus Aid, Relief, and Economic Security Act \(CARES Act\), Pub. L. 116-136](#), was enacted on March 27, 2020. Relevant qualification and IRC Section 403(b) requirements related to the CARES Act will be included on the OC List at a later date.



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Who We Are

Torrillo & Associates, LLC specializes in employee benefit plan audits including 401k audits, 403b audits, pension plan audits, and other retirement plan audits. We are licensed in 10 states including Pennsylvania, New Jersey, Delaware, New York and Florida. We are also able to practice in additional states that have passed firm mobility.

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