

# IRS ISSUES 2021 OPERATIONAL COMPLIANCE LIST FOR QUALIFIED RETIREMENT PLANS

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In conjunction with the elimination in 2017 of the determination letter program for individually designed plans, the IRS began publishing an Operational Compliance List (“OC List”) for qualified retirement plans. Because operational compliance with changes in the law affecting qualified retirement plans is often required before the deadline for amending plan documents, the OC List describes mandatory and discretionary changes in the qualification requirements for tax qualified and 403(b) retirement plans that are effective in each calendar year.

In addition to the OC List, the IRS issues annual Required Amendments Lists setting forth the statutory and administrative changes in qualification requirements that are first effective during the plan year. In combination, the OC List and the Required Amendments Lists provide plan administrators with a basic inventory of relevant changes in law or IRS guidance affecting their retirement plans.

The 2021 OC List includes the following new operational requirements for 2020, 2021 and 2022:

*Effective in 2020:*

- SECURE Act
  - Rule clarifications reflected in IRS Notice 2020-68, including rules for:
    - Qualified birth or adoption distributions.
    - Treating foster care difficulty-of-care payments as eligible Code Section 415 compensation.
    - Allowing anti-cutback relief for plan amendments to any retirement plan or annuity contract pursuant to amendments made by the SECURE Act.
    - Reducing the minimum age for allowable in-service distributions from qualified pension plans from 62 to 59½.
  - Rule clarifications reflected in IRS Notice 2020-86, including rules for:
    - The increase from a 10%- to a 15%-cap for the 401(k) plan automatic enrollment safe harbor after the initial period of automatic elective contributions.

## **Attorneys**

Peter Bradley  
Michael Flanagan  
Richard Kaiser  
Ryan Murphy  
Amy Walters

## **Practices & Industries**

Employee Benefits

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- Timely adoption of a safe harbor 401(k) plan with nonelective contributions.
- CARES Act
  - IRS Notice 2020-50: addressing implementation and administration of coronavirus-related distributions and COVID-related plan loan relief.
  - IRS Notice 2020-51: addressing implementation of 2020 required minimum distribution waivers, including sample plan amendment language.
- Consolidated Appropriations Act ("CAA")
  - Provides temporary partial plan termination relief.
  - Allows special disaster-related use of retirement funds for major disasters declared during the period beginning January 1, 2020 and ending February 25, 2021.
  - For certain employees in certain multiemployer plans covering workers in the building and construction industry, changes the minimum age for allowable in-service distributions to age 55 (rather than age 59½).
- IRS Notice 2020-42: provides temporary relief during calendar year 2020, from the physical presence requirement for spousal consents under qualified retirement plans.
- IRS Notice 2020-52: offers guidance for implementing mid-year suspensions or reductions of contributions to safe harbor 401(k) plans.

### *Effective in 2021:*

- SECURE Act/IRS Notice 2020-38: provides guidance under which qualified cash or deferred arrangements ("CODAs") must allow long-term employees working at least 500 but less than 1,000 hours per year to become plan participants.
- IRS Notice 2021-03: extends through June 30, 2021 temporary relief from the physical presence requirement for spousal consents under qualified retirement plans.

### *Effective in 2022:*

- Final Regulations provide updated life expectancy and distribution period tables used for purposes of determining minimum required distributions in calendar years beginning on or after January 1, 2022.