

## WHAT IS THE “OPERATIONAL COMPLIANCE LIST” FOR QUALIFIED PLANS?

“Qualified Retirement Plans” such as 401(k) plans, pension plans and others must satisfy Section 401(a) of the Internal Revenue Code (and related Code Sections) in both form and operation. In some situations, plans are required to begin operational compliance with changes in the law even before the plan document is required to be updated. However, plans must be operated in compliance with a change in tax qualification requirements from the effective date of the change. Failure to comply can result in plan disqualification: [401(k) Retirement Plan Disqualification: <http://www.boutwellfay.com/wp-content/uploads/2016/06/Plan-Disqualification-FAQ-160609.pdf>].

### **What is the Operational Compliance List?**

The “Operational Compliance List” is a list of plan qualification requirements that is intended to help plan sponsors and their advisors identify changes in plan qualification requirements that became effective during a calendar year. The Operational Compliance list identifies matters that may involve either mandatory or discretionary plan amendments depending on the particular plan and may contain other significant guidance that affects daily plan operations. The list is available at: <https://www.irs.gov/retirement-plans/operational-compliance-list>.

**Note** – although the Operational Compliance List is updated periodically to reflect new legislation and IRS guidance, it 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. To be qualified, a plan must comply operationally with *each relevant qualification requirement*, even if the requirement is not included on the Operational Compliance List. And, unless an exception applies (such as an extended remedial amendment period), *each qualified plan must be operated in accordance with its terms – failure to follow the terms of the plan is a common qualification defect*.

**Important** – in addition to satisfying the Internal Revenue Code’s requirements for tax qualified status, the plan document also defines the benefits due to a participant under Title I of the Employee Retirement Income Security Act of 1974 (“ERISA”). Where a plan is not operated in accordance with its terms, issues may arise under Title I of ERISA as well. Benefit claims and other claims under Title I of ERISA may be enforced in the courts by participants, plan fiduciaries and the United States Department of Labor, Employee Benefits Security Administration irrespective of any IRS position on the plan qualification requirements.

For other annual, monthly, or other periodic changes that routinely occur (such as, cost-of-living increases, spot segment rates, and applicable mortality tables), please refer to: <https://www.irs.gov/retirement-plans/recent-ep-published-guidance>.

### **How do I use the Operational Compliance List?**

Plan sponsors and administrators and their advisors should establish a regular practice and procedure to review their plan documents and plan operations for compliance, including a review of the Operational Compliance List, a review of plan operations as compared to the plan document and a review of any required or recommended discretionary plan amendments.