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GRIST**IRS ISSUES 2019 RA LIST, GUIDANCE ON
HARDSHIP AMENDMENTS**

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Dec. 17, 2019*

Two pieces of recent IRS guidance address amendments for retirement plans. The 2019 Required Amendments (RA) List in [Notice 2019-64](#) for individually designed qualified retirement and 403(b) plans includes changes relating to the final hardship distribution rules for defined contribution plans, as well as one item for certain collectively bargained cash balance and other hybrid plans. [Rev. Proc. 2020-9](#) clarifies the deadline for sponsors to make certain optional hardship distribution amendments and extends the deadline to amend preapproved plans for the final hardship rules.

2019 REQUIRED AMENDMENT LIST

This is the first time that the RA List applies to 403(b) plans (prior lists applied only to qualified plans). Sponsors generally have until Dec. 31, 2021, to adopt the amendments identified on the list, but plans must comply with revised requirements in the meantime. The same deadline applies to calendar-year and noncalendar-year plans. (Sponsors of governmental plans may have later deadlines.)

Hardship Rules

In September, IRS issued final regulations updating the hardship distribution rules for 401(k) and 403(b) plans. The RA List includes two changes made by the final regulations that plans must follow for hardship distributions made on or after Jan. 1, 2020 (and could opt to use for distributions made in the 2019 plan year).

- **Suspension of deferrals prohibited.** The new hardship rules prohibit suspensions of elective deferrals and other employee contributions after any hardship distribution. Under the prior rules, plans using the old safe harbor for determining financial need had to suspend these contributions for six months. Some plans that didn't use the safe harbor might have required suspensions as well. Sponsors must eliminate plan provisions requiring these suspensions by Dec. 31, 2021.
- **Representations about financial need.** Employees must represent that they have insufficient cash or other liquid assets to meet the financial need for the distribution. Sponsors whose plan documents don't already include language requiring these representations must add it by Dec. 31, 2021.

Deadline for optional hardship changes. The year-end 2021 deadline also applies to optional amendments to a plan's hardship provisions that are integrally related to the required amendments — which means sponsors can adopt their required and integral amendments at the same time. These optional amendments include, for example, amendments disregarding the new limits on deductible casualty losses under Section 165 and adding the new expense safe harbor for losses incurred in federally declared disasters.

Rev. Proc. 2020-9 clarifies that this treatment extends to “all amendments that relate to a plan's hardship distribution provisions and that are effective no later than Jan. 1, 2020” — even if a sponsor chose to make the required amendments effective earlier. This broad language appears to have two implications:

- Any amendment to plan's hardship provisions that is effective by Jan. 1, 2020, is apparently considered integrally related to the required amendments.
- Integral amendments taking effect after the required amendments receive the same Dec. 31, 2021, deadline, as long as the integral amendments are effective no later than Jan. 1, 2020. This is less stringent than the preamble to the final regulations, which says the Dec. 31, 2021, deadline applies to integral amendments that are effective no later than the required amendments.

For instance, if the sponsor of a calendar-year plan implemented the required amendments in 2019 but didn't apply the new expense safe harbor until Jan. 1, 2020, the sponsor would have until Dec. 31, 2021, to amend the plan for that optional change (rather than Dec. 31, 2020, as would ordinarily be required).

Collectively Bargained Hybrid Plans

Some collectively bargained plans first became subject to the final hybrid plan rules in 2018 or 2019. Those plans generally had to adopt amendments requiring anti-cutback relief before the beginning of the applicable plan year (e.g., by 2018 plan year-end for plans with 2019 effective dates). But until now, IRS hadn't specified a deadline for adopting other conforming amendments. The 2019 RA List gives affected sponsors two years to incorporate those changes.

For reference, the final regulations apply to collectively bargained plans as of the first plan year beginning on or after the later of:

- Jan. 1, 2017
- The earlier of Jan. 1, 2019, or the expiration date of the last bargaining agreement ratified on or before Nov. 13, 2015 (regardless of any extension)

Certain Periodic Updates Automatically on RA List

In addition to the identified amendments, each RA List automatically includes certain periodic updates — changes in cost-of-living adjustments, spot segment rates used to determine the 417(e)(3) applicable interest rate, and 417(e)(3) applicable mortality tables for the year in which such changes are effective. IRS anticipates that few plans will need amendments for these updates, which are typically incorporated by

reference to a Code section or index. Plans that don't incorporate these updates by reference will need to be amended by the end of 2021 for the 2019 changes.

PREAPPROVED PLAN INTERIM AMENDMENTS

Rev. Proc. 2020-9 also extends until Dec. 31, 2021, the deadline for preapproved plan sponsors to adopt interim amendments to comply with the final hardship distribution regulations. Under the final regulations, the interim deadline was the sponsor's tax-filing deadline for the tax year that includes Jan. 1, 2020. The extended deadline applies to both the required amendments and any integral amendments adopted by the employer.

RELATED RESOURCES

Non-Mercer Resources

- [Rev. Proc. 2020-9](#) (IRS, Dec. 12, 2019)
- [Notice 2019-64](#) (IRS, Dec. 4, 2019)
- [Required Amendments List](#) (IRS, Oct. 17, 2019)
- [Final IRS Regulations on Hardship Distributions](#) (Federal Register, Sept. 23, 2019)

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- [IRS Creates Program for 403\(b\) Plan Document Compliance](#) (Oct. 18, 2019)
- [IRS Finalizes Hardship Distribution Rules](#) (Sept. 25, 2019)

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