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GRIST

SOME RETIREMENT PLANS NEED 2019 YEAR-END AMENDMENTS

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Oct. 23, 2019

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Retirement plan sponsors may need to adopt amendments in 2019 to reflect changes in law or plan design. This GRIST summarizes the amendments that may be required for individually designed defined contribution (DC) and defined benefit (DB) plans.

RETIREMENT PLAN AMENDMENT TIMING RULES

Plan amendments generally fall into two categories: required amendments due to a change in the tax-qualification rules, and discretionary amendments to adopt an optional plan design feature.

Under [Rev. Proc. 2016-37](#), the timing of most required amendments to individually designed plans is dictated by the IRS [Required Amendments \(RA\) List](#), published annually. Plan sponsors must adopt a required amendment by the end of the second calendar year starting after the change first appears on a given year's RA List. For example, amendments for changes appearing on the 2017 RA List are due by Dec. 31, 2019. This timing rule applies to both calendar- and noncalendar-year plans.

In general, plan sponsors must adopt a discretionary amendment by the end of the plan year in which the optional change takes effect. However, in some cases, a discretionary amendment must be adopted before the date it takes effect (for example, to add a 401(k) deferral feature). Sponsors of calendar-year plans that made discretionary design changes in 2019 must amend their plans to reflect the change by Dec. 31.

For both types of amendments, different amendment deadlines set by a statute, regulation or other guidance override the normal timing rules.

DC PLAN AMENDMENTS

The 2017 RA List included no amendments for DC plans. However, some DC plans may need amendments for certain congressionally authorized disaster relief.

Relief for 2017 Hurricanes and Wildfires

In 2017, Congress passed legislation ([PL 115-63](#)) to assist victims of Hurricanes Harvey, Irma and Maria. The relief allows plans to make distributions of up to \$100,000 to victims without early withdrawal penalties; accept repayment of those distributions (as well as hardship distributions taken, but never used to purchase a principal residence in a disaster area); and increase plan loan limits and suspend repayments for disaster victims. In 2018, Congress approved a budget deal ([PL 115-123](#)) granting similar relief to victims of certain 2017 California wildfires.

Sponsors that offered the relief must amend their plans by the end of the first plan year beginning after 2018. For calendar-year plans, the amendment deadline is Dec. 31, 2019. However, Congress established this deadline by statute (it's not on the RA List), so sponsors of noncalendar-year plans have additional time — until the end of their 2019 plan year — to amend their plans.

Amendments for Final Hardship Distribution Rules Not Required This Year

Sponsors may be wondering if they need to amend their plans this year for the final hardship distribution rules issued in September. The deadline for those amendments will not be set until IRS includes the final rules on the RA List. For example, if the 2019 RA List includes the hardship rules, sponsors will have until Dec. 31, 2021, to amend their plans for the rules. This timing applies to amendments that are either:

- Required by the final rules, such as elimination of plan provisions requiring a suspension of elective deferrals after a hardship distribution
- Integral to the final rules but not required, such as adoption of the new safe harbor available for distributions on or after Jan. 1, 2018, to cover losses incurred in federally declared disaster

DB PLAN AMENDMENTS

Depending on plan terms, some DB pension plans may need to be amended for partial annuity distribution regulations issued in 2016 and for updated static mortality tables. Certain eligible cooperative and charity plans that became subject to benefit restrictions rules in 2017 will also need amendments by Dec. 31, 2019. Finally, some nonbargained hybrid plans will need amendments for requirements that appeared on the 2017 RA List.

Partial Annuity Distribution Options

Under [final IRS regulations](#) issued in 2016, DB plans that allow participants to split their benefits into annuity and lump sum (or other accelerated) portions can use one of two methods for calculating those distributions:

- Apply 417(e)(3) actuarial assumptions to determine both the lump sum and annuity portions (the "total 417(e) method")

- Apply a simplified method that applies 417(e)(3) actuarial assumptions to the lump sum portion only and the plan's actuarial assumptions to determine the remaining annuity portion.

Before the 2016 regulations, no formal guidance addressed whether sponsors could use the simplified method for these calculations. Some sponsors used the total 417(e) method based on informal comments by IRS that it was required. The final regulations allowed sponsors that were using the total 417(e) method to switch to the simplified method without protecting a minimum benefit under Code Section 411(d)(6), but they had to amend their plans by Dec. 31, 2017. [Notice 2017-44](#) supplied model amendments that sponsors could (but weren't required to) use for this purpose.

Some sponsors might still need to amend their plans for the final regulations (and can use the model amendments to do so). For example, sponsors that were already using the simplified method before 2017 might need to amend their plans if plan terms are ambiguous. The 2017 RA List included the final regulations, setting a Dec. 31, 2019, amendment deadline. The regulations are on Part B of the RA List, which contains changes that IRS anticipates will only require amendments for plans with unusual provisions. IRS didn't provide additional guidance on which plans might need to be amended for the final regulations, so sponsors that used the simplified method before 2017 may want to consult legal counsel.

Updated Static Mortality Tables for 2017

The annual RA List automatically includes certain periodic updates, even though these items aren't directly referenced on the RA List. Examples of these updates include 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.

[Notice 2016-50](#) updated the static mortality tables used to determine minimum lump sums for distributions with annuity starting dates during stability periods beginning in the 2017 calendar year. The mortality table update is among the items automatically included on the 2017 RA List, so any required plan amendments to reflect the updated mortality tables for 2017 must be adopted by Dec. 31, 2019. However, most plans incorporate the IRS mortality tables by reference, eliminating the need for amendment.

Similar amendment timing rules apply to the updated mortality tables for 2018 and 2019, requiring any amendments by the end of 2020 and 2021, respectively.

Benefit Restrictions for Certain Eligible Cooperative and Charity Plans

Certain eligible cooperative and charity plans described in [Section 104](#) of the Pension Protection Act of 2006 were not subject to the benefit restriction rules under Code Section 436 until the plan year beginning on or after Jan. 1, 2017. The 2017 RA List included the benefit restrictions rules for those plans. Therefore, sponsors of those plans have until Dec. 31, 2019, to adopt compliant benefit restriction language. (However, a plan that falls within the definition of a "CSEC plan" as defined in Code Section 414(y) is exempt from those rules, unless the plan sponsor elects to be treated as a non-CSEC plan.)

Final Regulations on Hybrid Plans

Under the [final rules](#) for hybrid plans, nonbargained plans generally needed amendments for the [market rate of return rules](#) (and other requirements that first became applicable for the plan year beginning in 2017) by the end of the 2016 plan year to get certain anti-cutback relief. The same amendment-timing rules applied to collectively bargained plans, which had to comply with the final regulations by the first plan year beginning on or after the later of these dates:

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

The 2017 RA List included other amendments required to conform to the final regulations (but not needing anti-cutback relief) for hybrid plans. Sponsors must adopt these amendments by Dec. 31, 2019. However, the RA List didn't address collectively bargained plans. Those plans generally must have already adopted any amendments requiring anti-cutback relief before the beginning of the applicable plan year, but IRS hasn't yet specified the deadline for adopting other conforming amendments.

RELATED RESOURCES

- [2017 Required Amendments List for Qualified Retirement Plans](#) (IRS, Dec. 5, 2017)
- [PL 115-123](#), Bipartisan Budget Act of 2018 (Congress, Feb. 9, 2018)
- [PL 115-63](#), the Disaster Tax Relief and Airport and Airway Extension Act of 2017 (Congress, Sept. 29, 2017)
- [Notice 2017-44](#) (IRS, Aug. 18, 2017)
- [Final IRS Regulations on Partial Annuity Distribution Options](#) (Federal Register, Sept. 9, 2016)
- [Notice 2016-50](#) (IRS, Sept. 2, 2016)
- [Final IRS Rule on Transitional Amendments To Satisfy the Market Rate of Return Rules for Hybrid Retirement Plans](#) (Federal Register, Nov. 16, 2015)
- [Final IRS Hybrid Plan Regulations](#) (Federal Register, Sept. 19, 2014)

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