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IRS tweaks amendment timing rules for preapproved plans

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Sept. 24, 2020*

[Rev. Proc. 2020-40](#) modifies the discretionary amendment timing rules for preapproved qualified and 403(b) plans. Under existing IRS guidance (Rev. Procs. [2016-37](#) and [2019-39](#) for qualified and 403(b) plans, respectively), an employer or institutional retirement plan sponsor must adopt a discretionary amendment by the end of the plan year the change is operationally put into effect, unless a statute, regulation or other guidance sets an earlier deadline. The latest guidance tweaks this timing rule so the deadline can also be extended. This change aligns preapproved plans with the discretionary amendment timing rules for individually designed plans.

IRS may have felt the need to make this clarification now for employers that have implemented certain provisions of the Setting Every Community Up for Retirement (SECURE) Act ([Division O of Pub. L. No. 116-94](#)) or the Coronavirus Aid, Relief and Economic Security (CARES) Act ([Pub. L. No. 116-136](#)). Both laws permit employers to adopt conforming amendments — required and discretionary — as late as the end of the plan year starting in 2022 (2024 for governmental employers). This new guidance eliminates any confusion that an earlier deadline applied to preapproved plans.

Related resources

Non-Mercer resources

- [Rev. Proc. 2020-40](#) (IRS, Sept. 2, 2020)
- [Rev. Proc. 2019-39](#) (IRS, Sept. 30, 2019)
- [Rev. Proc. 2016-37](#) (IRS, June 29, 2016)

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- [IRS creates program for 403\(b\) document compliance](#) (Oct. 18, 2019)

Other Mercer resources

- [Navigating coronavirus](#) (regularly updated)

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