

**MEMO# 32103**

December 16, 2019

# **IRS Announces Extended Deadline for Pre-Approved Plans to Adopt Amendments Related to Hardship Distribution Changes**

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December 16, 2019 TO: ICI Members  
Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: IRS Announces Extended Deadline for Pre-Approved Plans to Adopt Amendments Related to Hardship Distribution Changes

The IRS has issued Revenue Procedure 2020-9,[\[1\]](#) clarifying certain requirements for plan amendments to reflect changes under recently published final regulations under Internal Revenue Code sections 401(k) and 401(m). The new regulations relate to hardship distributions of elective deferrals.[\[2\]](#) As explained further below, the revenue procedure extends the deadline, applicable to pre-approved plans, for adopting an “interim amendment” relating to the hardship distribution regulations. The deadline is extended to December 31, 2021.

The IRS’s hardship distribution regulations published in September 2019 include updates to address changes made by legislation, including the Bipartisan Budget Act of 2018[\[3\]](#) and the tax reform bill enacted in December 2017.[\[4\]](#) The preamble to the final regulations indicates that many plans will require the following amendments to reflect the regulatory changes: (1) an amendment to remove a plan provision suspending an employee’s contributions following a hardship distribution of elective deferrals, and (2) an amendment requiring an employee’s representation relating to his or her need for a hardship distribution, if the plan does not already provide for such a representation. These “required amendments” must be effective for hardship distributions made on or after January 1, 2020 (although a required amendment may be implemented as early as the first day of the plan year that begins after December 31, 2018).

The preamble to the final regulations also explains that certain plan amendments modifying a plan’s hardship distribution provisions will be treated as amending a provision that is integrally related to qualification requirements that have been changed.[\[5\]](#) Such amendments, in addition to the “required amendments,” are considered “interim

amendments” for purposes of the plan amendment deadlines.

Revenue Procedure 2020-9 provides that all plan amendments that relate to a plan’s hardship distribution provisions and that are effective no later than January 1, 2020, are treated as integral to the two “required amendments” described above. The deadline, applicable to pre-approved plans, for adopting interim amendments with respect to the “required amendments” and all amendments that are integral to those amendments is extended to December 31, 2021.

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#### **endnotes**

[1] Revenue Procedure 2020-9 is *available at* <https://www.irs.gov/pub/irs-drop/rp-20-09.pdf>.

[2] See ICI Memorandum No. 31991, dated October 2, 2019, *available at* [https://www.ici.org/my\\_ici/memorandum/memo31991](https://www.ici.org/my_ici/memorandum/memo31991).

[3] See ICI Memorandum No. 31085, dated February 12, 2018, *available at* [https://www.ici.org/my\\_ici/memorandum/memo31085](https://www.ici.org/my_ici/memorandum/memo31085).

[4] See ICI Memorandum No. 30991, dated December 21, 2017, *available at* [https://www.ici.org/my\\_ici/memorandum/memo30991](https://www.ici.org/my_ici/memorandum/memo30991).

[5] Such amendments are those that reflect the following changes: (1) the change to Code § 165 (relating to casualty losses); (2) the addition of the new safe harbor expense (relating to expenses incurred as a result of certain federally declared disasters); and (3) the extension of the relief under Announcement 2017-15, 2017-47 I.R.B. 534, to victims of Hurricanes Florence and Michael that was provided in the preamble to the proposed regulations (83 Fed. Reg. 56763, Nov. 14, 2018).