

## Rev. Proc. 2020-9

### SECTION 1. PURPOSE

This revenue procedure clarifies which amendments are treated as integral to a plan provision that fails to satisfy the qualification requirements of the Internal Revenue Code (Code) by reason of a change to those requirements made by the recently published regulations under §§ 401(k) and 401(m) relating to hardship distributions of elective deferrals. This revenue procedure also extends the deadline, applicable to pre-approved plans, for adopting an interim amendment relating to those regulations. The deadline is extended to December 31, 2021.

### SECTION 2. BACKGROUND

.01 Rev. Proc. 2016-37, 2016-29 I.R.B. 136, as modified by Rev. Proc. 2017-41, 2017-29 I.R.B. 92, sets forth a six-year remedial amendment cycle system for pre-approved plans. Under this system, a pre-approved plan provider may apply for a new opinion letter from the Internal Revenue Service (IRS) once during each six-year remedial amendment cycle. Section 15.01 of Rev. Proc. 2016-37 provides that, in order to promote compliance with changes to plan qualification requirements during a six-year remedial amendment cycle, the adoption of an interim amendment generally will be required. Pursuant to section 4.02 of Rev. Proc. 2016-37, the requirement for interim amendments does not apply to individually designed plans.

.02 Section 15.02 of Rev. Proc. 2016-37 defines an interim amendment as an amendment with respect to a disqualifying provision that results in the failure of the plan to satisfy the qualification requirements of the Code by reason of a change in those requirements that is effective after December 31, 2001, or that is integral to such a disqualifying provision.

.03 Final regulations under §§ 401(k) and 401(m) were published in the *Federal Register* (84 FR 49651) on September 23, 2019 (Final Regulations). The preamble to the Final Regulations states that the Department of the Treasury and the IRS expect that many plans' hardship distribution provisions will need to be amended to reflect certain provisions of the Final Regulations. Plan amendments required under the Final Regulations are: (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).

.04 The preamble to the Final Regulations provides that a plan amendment

modifying a plan's hardship distribution provisions that is effective no later than the required amendment, including a plan amendment reflecting one or more of the following, will be treated as amending a provision that is integrally related to a qualification requirement that has been changed: (1) the change to § 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 FR 56763, (Nov. 14, 2018)).

.05 Generally, under section 15.04 of Rev. Proc. 2016-37, an interim amendment (described in section 2.02 of this revenue procedure) is timely adopted if it is adopted by the end of the remedial amendment period described in section 2.07 of Rev. Proc. 2016-37. The remedial amendment period begins on the date on which the change becomes effective with respect to the plan or, in the case of a provision that is integral to a qualification requirement that has been changed, the first day on which the plan is operated in accordance with the provision as amended. In the case of a plan maintained by one employer, the remedial amendment period ends on the later of: (1) the due date (including extensions) for filing the income tax return for the employer's taxable year that includes the date on which the remedial amendment period begins; or (2) the last day of the plan year that includes the date on which the remedial amendment period begins.

.06 Under section 15.05 of Rev. Proc. 2016-37, the deadline for adoption of an interim amendment set forth in section 15.04 applies unless "a statutory provision or guidance provides another specific deadline for the adoption of a particular type of interim amendment that is earlier or later than the deadlines under section 15.04."

### SECTION 3. CLARIFICATION OF INTEGRAL AMENDMENT RULES AND EXTENSION OF INTERIM AMENDMENT DEADLINE

.01 This section 3 clarifies which amendments are treated as integral to a plan provision that fails to satisfy the Final Regulations and extends the plan amendment deadline provided in section 15.04 of Rev. Proc. 2016-37, applicable to interim amendments with respect to required amendments described in section 2.03 of this revenue procedure, and all amendments treated as integral to those amendments.

.02 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 required amendments described in section 2.03 of this revenue procedure. This treatment applies even if the required amendments are implemented earlier than for hardship distributions made on or after January 1, 2020.

.03 Pursuant to section 15.05 of Rev. Proc. 2016-37, the deadline, applicable to pre-approved plans, for adopting interim amendments with respect to the required amendments described in section 2.03 of this revenue procedure and all amendments

that are integral to those amendments (as described in section 3.02 of this revenue procedure) is extended to December 31, 2021.

#### SECTION 4. EFFECTIVE DATE

This revenue procedure is effective December 12, 2019.

#### SECTION 5. DRAFTING INFORMATION

The principal author of this revenue procedure is Angelique Carrington of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this revenue procedure, contact Ms. Carrington at (202) 317-4148 (not a toll-free number).