



IRS Officially Extends Pre-Approved Plan Interim Amendment Deadline for the Hardship Distribution Regulations to December 31, 2021

The Internal Revenue Service has officially extended the deadline for pre-approved plan providers and adopting employers to adopt interim amendments relating to the final hardship distribution regulations. **The deadline is extended to December 31, 2021.** In addition to announcing the extension, Revenue Procedure 2020-9 also clarifies that “all plan amendments” relating to a plan’s hardship distribution provisions are considered integral to the required amendments under the final regulation and, thus, also have the December 31, 2021 interim amendment deadline.

While Revenue Procedure 2020-9 only applies to pre-approved plans qualified under Code §401(a) (such as 401(k) plans), previous IRS guidance under Revenue Procedure 2019-39 provides the same December 31, 2021 deadline for pre-approved 403(b) plan providers and adopting employers to adopt a hardship distribution interim amendment. Under IRS Notice 2019-64, the December 31, 2021 deadline also applies to individually designed defined contribution and 403(b) plans.

BACKGROUND

On September 23, 2019, the IRS issued final regulations relating to hardship distributions under 401(k) plans (“Final Regulations”). In the preamble to the Final Regulations, the IRS attempted to explain the deadline for pre-approved plan providers and adopting employers to adopt interim amendments relating to the Final Regulations. Unfortunately, the preamble explanation created considerable confusion, especially in light of the current pre-approved plan interim amendment rules that are tied to the tax return due dates of adopting employers. Given this confusion, ASC, along with other industry practitioners, requested the IRS to clarify the interim amendment deadline and preferably provide a reasonable, single date deadline.

ASC Insight – On December 4, 2019, ASC, along with other mass submitters and industry practitioners, participated in a conference call with the IRS to discuss issues relating to the hardship distribution interim amendment for pre-approved plans. During the call, the IRS indicated that it intended to issue official guidance providing an extension of the interim amendment deadline for pre-approved plans and clarifying other issues. Revenue Procedure 2020-9 provides that guidance.

During the conference call, the IRS also indicated that it would consider addressing the more general issue of interim amendments for pre-approved plans. (Revenue Procedure 2020-9 only addresses the hardship distribution interim amendment issue.) ASC (and others) agreed to provide the IRS with recommendations. We intend to ask for the IRS to provide a single, reasonable deadline for pre-approved plan providers and adopting employers to adopt interim amendments; to issue guidance, similar to the Required Amendments List for individually-designed plans, that pre-approved plan providers may use; and to provide consistent amendment deadlines for pre-approved 401(a) and 403(b) plans.

DECEMBER 31, 2021 DEADLINE

Under Revenue Procedure 2020-9, the IRS provides a single deadline date (December 31, 2021) for pre-approved plan providers and adopting employers to adopt interim amendments relating to the Final Regulations. A single deadline date avoids the confusion caused by the current interim amendment rules incorporated into relevant revenue procedures that tie the timing of pre-approved plan interim amendments to an adopting employer’s tax return filing date. Technically, Revenue Procedure 2020-9 does not change the current interim amendment rules, but instead cites the IRS’ ability to provide a “specific deadline for the adoption of a particular type of interim amendment.”

The December 31, 2021 deadline applies even if an adopting employer decided to implement certain hardship distribution rules (as permitted under the Final Regulations) prior to their general effective date (i.e., for hardship distributions made on or after January 1, 2020).

ASC Insight – The December 31, 2021 interim amendment deadline provides welcomed clarity to the timing for pre-approved plan providers and adopting employers to adopt hardship distribution interim amendments. The timing issue has created considerable discussion among industry practitioners; some of whom have provided confusing (and sometimes incorrect) guidance to document providers and adopting employers. Hopefully, the IRS’ announcement of a single deadline date will eliminate further confusion.

ALL AMENDMENTS CONSIDERED “INTEGRAL” TO REQUIRED AMENDMENTS

Revenue Procedure 2020-9 clarifies 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 required amendments under the Final Regulations. Required amendments are those that must be effective for hardship distributions made on or after January 1, 2020 (even if implemented at an earlier time as allowed under the Final Regulations). The required amendments: (1) remove the plan provision suspending an employee’s contributions following a hardship distribution of elective deferrals; and (2) require an employee’s representation relating to his or her need for a hardship distribution.

Because all plan amendments relating to the plan’s hardship provisions are integral to the required amendments, then all such amendments fall under the December 31, 2021 interim amendment deadline.

ASC Insight – The clarification that all plan amendments that relate to a plan’s hardship distribution provisions are treated as “integral” to the required amendments puts to rest the issue as to whether so-called “discretionary” hardship distribution amendments to a plan are necessary before the required amendments. The use of the term “all plan amendments” is broad and, therefore, does not require document providers and adopting employers to distinguish between different types of hardship distribution-related amendments and their amendment deadlines. It is clear that no hardship distribution-related amendments are required by the end of 2019!

NEXT STEPS FOR DOCUMENT PROVIDERS AND ADOPTING EMPLOYERS

Pre-approved plan providers will need to adopt a hardship distribution interim amendment for the pre-approved plans (prototype and/or volume submitter plans) that they sponsor. Mass submitters of the pre-approved plans may assist in drafting these interim amendments. Most interim amendments will be drafted to include “default” provisions. However, adopting employers who wish to choose options other than the “default” options selected by the pre-approved plan provider will need to execute the interim amendment by December 31, 2021.

Below are suggested steps for pre-approved defined contribution and 403(b) document providers and adopting employers to adopt a hardship distribution interim amendment. (Other mass submitter may suggest other methods for document providers and adopting employers to adopt the interim amendment. You should contact your mass submitter for more information.)

1. Draft (or review drafts provided by your mass submitter) the provisions for a hardship distribution interim amendment.
2. Well before the December 31, 2021 interim amendment deadline, pre-approved defined contribution and 403(b) document providers should formally adopt the hardship distribution interim amendment(s), including any default elections, at the document-provider level.
3. Well before the December 31, 2021 interim amendment deadline, provide the hardship distribution interim amendment to all adopting employers of the pre-approved defined contribution and 403(b) plans that you sponsor. If an adopting employer accepts the “defaults” (if any) in your hardship distribution interim amendment, the adopting employer generally will not need to execute the interim amendment. However, if the adopting Employer does not want to use the interim amendment defaults, the adopting Employer may elect alternative plan design options. **EMPLOYERS ELECTING ALTERNATIVE PLAN DESIGN OPTIONS MUST EXECUTE THE INTERIM AMENDMENT BY DECEMBER 31, 2021.**

ASC Insight – ASC has drafted and programmed a hardship distribution interim amendment package that is currently available for users of its DGEM Plan Document system. See our December 2019 DGEM Update available on the DGEM Download page for more information.

With the IRS’ announced extension of the deadline for the adoption of the hardship distribution interim amendment to December 31, 2021, document providers may decide to delay the adoption of the hardship distribution interim amendment and coordinate the adoption of the hardship distribution interim amendment with the Cycle 3 pre-approved defined contribution plan restatement period, which ASC expects will begin August 1, 2020.

On January 14, 2020, ASC will provide a free, one-hour webcast for ASC clients to discuss detailed information on the ASC hardship distribution interim amendments and generating them in the DGEM system.

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