

# IRS Relieves Uncertainty About Timing of Plan Amendments

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By Stephanie Cumings

The IRS has extended the deadline to adopt specific retirement plan amendments in the wake of significant changes made by the hardship distribution regulations.

The guidance provided December 12 in [Rev. Proc. 2020-9](#), 2020-2 IRB 1, is welcome relief, according to Louis Mazawey and Elizabeth Thomas Dold of Groom Law Group.

“It says that certain amendments that are related to hardship changes, but more in the nature of discretionary changes, still get the extended deadline for required hardship plan amendments,” Mazawey told *Tax Notes*.

The revenue procedure provides a December 31, 2021, deadline for amendments required by the hardship regs as well other amendments considered integral to a plan provision.

The final hardship distribution regs ([T.D. 9875](#)), [released in September](#), came in response to the Bipartisan Budget Act of 2018, which eliminated the six-month suspension on contributions immediately after a hardship distribution for 401(k) plans, among several other changes.

Dold said practitioners were left with a lot of uncertainty regarding the timing of the interim amendments for hardships for preapproved plans, with a particular concern for non-calendar-year plans.

## Deadline Dispute

An October [letter](#) from the American Retirement Association said that the regs could mean deadlines for amendments that were mere months away. “This is extremely problematic for plan document providers who must implement the underlying systems, delivery, and communications of the amendments,” the letter said.

The group also said that creating a substantially shorter deadline for preapproved plans as opposed to individually designed plans would undercut the IRS’s goal of fostering compliance.

The IRS addressed those concerns by providing a single deadline for all preapproved plan sponsors that “makes these rules manageable,” Dold said. “This aligns with the deadline for individually designed plans, which is a fair result,” she added.

There are two required amendments that must be made effective for hardship distributions issued in 2020. Those involve the elimination of the six-month suspension and the requirement

for an employee's representation of their need for the distribution.

The revenue procedure clarifies other amendments that are considered "integrally related to a qualification requirement that has been changed." Those include:

- the changes to [section 165](#) on casualty losses;
- the new safe harbor expense regarding expenses incurred because of a federally declared disaster; and
- the extension of the relief in [Announcement 2017-15](#), 2017-47 IRB 534, to victims of hurricanes Florence and Michael that was provided in the proposed regulations.