

EXTENDED DEADLINE AVAILABLE FOR CERTAIN DISCRETIONARY AMENDMENTS TO PRE-APPROVED QUALIFIED RETIREMENT PLANS/403 (B) PLANS

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In general, a *discretionary* amendment to a pre-approved qualified retirement plan or 403(b) plan is considered to be timely adopted if the amendment is adopted by the end of the plan year in which the plan amendment is operationally put into effect. Recently, we have seen examples of legislation like the SECURE Act and the CARES Act are offering longer periods (one or two years later) within which to adopt conforming amendments for *discretionary* plan changes (e.g., an amendment allowing coronavirus-related distributions under the CARES Act). To accommodate a statute or regulation that prescribes a later deadline to timely adopt a discretionary amendment, the existing guidance establishing the deadline for pre-approved plans to adopt discretionary amendments needed to be modified. That modification was published in the form of IRS Rev. Proc. 202-40, which revises and updates pre-existing guidance. The modifications made by Rev. Proc. 2020-40 are effective September 2, 2020. These modifications are consistent with the extensions of the plan amendment deadlines for discretionary amendments already allowable with respect to qualified individually designed plans and 403(b) individually designed plans.

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