

September 2021

IRS Modifies Interim Amendment Deadlines for 401(a) and 403(b) Plan Sponsors

On September 1, 2021, the Internal Revenue Service (IRS) released Revenue Procedures (Rev. Procs.) 2021-37 and 2021-38, modifying interim amendment deadlines for employers who adopt either an IRS pre-approved 401(a) or 403(b) plan.

Rev. Proc. 2021-38 applies to disqualifying provisions requiring an interim amendment to an IRS pre-approved 401(a) plan effective after December 31, 2020. However, deadlines for interim amendments due to changes effective prior to December 31, 2020, including the SECURE Act and the CARES Act, are still controlled by Rev. Proc. 2016-37.

Rev. Proc. 2021-37 applies to form defects requiring an interim amendment to an IRS pre-approved 403(b) plan first occurring on or after July 1, 2020.

Background: “Interim Amendment” for IRS Pre-approved 401(a) Plans

Rev. Proc. 2016-37 defines an interim amendment as an amendment with respect to a disqualifying provision that arises due to a change in the qualification requirements of the Internal Revenue Code. This guidance also provides that the remedial amendment period to adopt an interim amendment begins on the date in which the change becomes effective, or on the first day the plan is operated in accordance with the change, if the change is integral to a disqualifying provision.

Previous Deadline for Interim Amendments to IRS Pre-approved 401(a) Plans

Prior to the issuance of Rev. Proc. 2021-38, the last date by which an interim amendment was required to be adopted was determined by the type of employer that adopted the IRS pre-approved 401(a) plan:

- **For-profit employers** – the deadline for adopting an interim amendment of a single employer IRS pre-approved 401(a) plan was the later of:
 - 1) the due date (including extensions) of the employer’s federal tax filing deadline for the taxable year in which the remedial amendment period begins, or
 - 2) the last day of the plan year in which the remedial amendment period begins.

For plans maintained by more than one employer, the deadline for adopting an interim amendment was the last day of the tenth month following the last day of the plan year in which the remedial amendment period begins.

- **Governmental employers (including public schools)** – the deadline for adopting an interim amendment was the later of:
 - 1) the remedial amendment deadline (the last day of the plan year that includes the date on which the remedial amendment period begins), or
 - 2) 90 days after the close of the third regular legislative session of the legislative body with authority to amend the plan that begins on or after the effective date of the amendment.
- **Employers with a tax exempt status under Section 501(c) of the Internal Revenue Code** – the deadline for adopting interim amendment was the later of:
 - 1) the 15th day of the 10th month after the end of the employer’s tax year (treating the calendar year as the tax year if the employer does not have a tax year), or
 - 2) the due date for filing the Form 990 “Return of Organization Exempt from Income Tax” series (plus extension actually applied for and granted), if applicable.

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New Deadline for Interim Amendments to IRS Pre-approved 401(a) Plans

Rev. Proc. 2021-38 updates these deadlines, replacing the interim amendment with a single rule, regardless of the type of employer adopting the IRS pre-approved 401(a) plan. As modified by Rev. Proc. 2021-38, the last day for timely adopting an interim amendment is the last day of the second calendar year after the calendar year in which the change is effective under the plan.

Background: “Interim Amendment” for IRS Pre-approved 403(b) Plans

Rev. Proc. 2019-39 (see *Voya Alert* dated October 7, 2019) defined an interim amendment reflecting federal legislative and regulatory changes noted in the annual IRS Required Amendments List.

Previous Deadline for Interim Amendments to IRS Pre-approved 403(b) Plans

Prior to the issuance of Rev. Proc. 2021-37, Rev. Proc. 2019-39 noted that the last date by which an interim amendment was required to be adopted by an employer using an IRS pre-approved 403(b) plan:

- Nongovernmental employers (i.e., 501(c)(3) tax-exempt organizations) – December 31 of the calendar year after the calendar year in which the change in 403(b) requirements is effective with respect to the plan.
- Governmental employers (i.e., public schools) – by the later of:
 - 1) December 31 of the calendar year after the calendar year in which the change in 403(b) requirements is effective with respect to the plan, or
 - 2) 90 days after the close of the third regular legislative session of the legislative body with the authority to amend the plan that begins on or after the date the plan amendment becomes effective.

New Deadline for Interim Amendments to IRS Pre-approved 403(b) Plans

Noting the IRS' commitment to commence issuing a Cumulative List of Changes in the Section 403(b) Requirements, Rev. Proc. 2021-37 updates these deadlines, based on the type of employer adopting an IRS pre-approved 403(b) plan. Specifically, as modified by Rev. Proc. 2021-37, the last day for timely adopting an interim amendment is:

- Nongovernmental employers (i.e., 501(c)(3) tax-exempt organizations) – the end of the second calendar year following the calendar year in which the change in IRS Section 403(b) Requirements is effective with respect to the plan.
- Governmental employers (i.e., public schools) – by the later of:
 - 1) the end of the second calendar year following the calendar year in which the change in IRS Section 403(b) Requirements is effective with respect to the plan, or
 - 2) 90 days after the close of the third regular legislative session of the legislative body with the authority to amend the plan that begins on or after the date the plan amendment becomes effective.

Voya continues to monitor any additional IRS guidance.

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