

## Modifications to Rev. Proc. 2016-37 and Rev. Proc. 2019-39

### Revenue Procedure 2020-40

#### SECTION 1. PURPOSE

This revenue procedure modifies section 15.05 of Rev. Proc. 2016-37, 2016-29 I.R.B. 136, and section 12.02 of Rev. Proc. 2019-39, 2019-42 I.R.B. 945, to expand the situations in which the plan amendment deadline for discretionary amendments made to qualified pre-approved plans and § 403(b) pre-approved plans may be extended.

These modifications are consistent with the extensions of the plan amendment deadlines for discretionary amendments set forth in section 8.02 of Rev. Proc. 2016-37 with respect to qualified individually designed plans and section 6.02 of Rev. Proc. 2019-39 with respect to § 403(b) individually designed plans.

#### SECTION 2. BACKGROUND

.01 Rev. Proc. 2016-37 sets forth procedures for obtaining determination letters for qualified individually designed plans and opinion letters for qualified pre-approved plans submitted to the Internal Revenue Service (IRS), including providing plan amendment deadlines for interim and discretionary amendments made to these plans.

.02 Section 15.04(2) of Rev. Proc. 2016-37 sets forth the deadline for the timely adoption of a discretionary amendment to a qualified pre-approved plan. In general, a discretionary amendment is considered to have been adopted timely if the plan amendment is adopted by the end of the plan year in which the plan amendment is operationally put into effect.

.03 Section 15.05 of Rev. Proc. 2016-37 provides that the deadline set forth in section 15.04 applies unless a statutory provision or guidance issued by the IRS sets forth an earlier deadline to timely adopt a discretionary amendment with respect to a plan year.

.04 Rev. Proc. 2019-39 sets forth procedures for obtaining opinion and advisory letters for § 403(b) pre-approved plans submitted to the IRS and provides plan amendment deadlines for interim and discretionary amendments made to § 403(b) pre-approved plans and for discretionary amendments made to § 403(b) individually designed plans.

.05 Section 12.01 of Rev. Proc. 2019-39 sets forth the deadline for the timely adoption of a discretionary amendment to a § 403(b) pre-approved plan. In general, a discretionary amendment is considered to have been adopted timely if the plan amendment is adopted by the end of the plan year in which the plan amendment is operationally put into effect.

.06 Section 12.02 of Rev. Proc. 2019-39 provides that section 12.01 applies unless a statutory provision or guidance issued by the IRS sets forth an earlier deadline to timely adopt a discretionary amendment with respect to a plan year.

### SECTION 3. MODIFICATION OF REV. PROC. 2016-37

.01 Section 15.05 of Rev. Proc. 2016-37 is revised to read as follows:

Section 15.04 of this revenue procedure applies unless (1) a statutory provision, or regulations or other guidance published in the Internal Revenue Bulletin, sets forth a deadline to timely adopt a discretionary amendment with respect to a plan year that is either earlier or later than the deadlines under section 15.04, or (2) a statutory provision or guidance provides another specific deadline for the adoption of a particular type of

interim amendment that is either earlier or later than the deadlines under section 15.04.

#### SECTION 4. MODIFICATION OF REV. PROC. 2019-39

.01 Section 12.02 of Rev. Proc. 2019-39 is revised to read as follows:

Exceptions to section 12.01 plan amendment deadlines. Section 12.01 applies unless (1) a statutory provision, or regulations or other guidance published in the Internal Revenue Bulletin, sets forth a deadline to timely adopt a discretionary amendment with respect to a plan year that is either earlier or later than the deadlines under section 12.01, or (2) 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 12.01.

#### SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2016-37 and Rev. Proc. 2019-39 are modified.

#### SECTION 6. EFFECTIVE DATE

The modifications in this revenue procedure are effective as of September 2, 2020.

#### SECTION 7. DRAFTING INFORMATION

The principal author of this revenue procedure is Arslan Malik of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this revenue procedure contact Employee Plans at (513) 975-6319 (not a toll-free number).