

IRS PUBLISHES NEW GUIDANCE ON KEY EMPLOYEE BENEFIT PLAN DEADLINES

Hodgson Russ Employee Benefits Alert
June 9, 2020

COVID-19 Disaster Relief. IRS issued Notice 2020-35 which provides relief with respect to a number of time-sensitive deadlines, including deadlines relevant to employee benefit plans, individual retirement arrangements (IRAs), Coverdell education savings accounts, health savings accounts (HSAs), and Archer and Medicare Advantage medical saving accounts (MSAs). This new guidance is in addition to the employee benefit deadline guidance issued in April (as outlined in our previous alert [here](#)). Some of the key deadlines for which new relief, as described in Notice 2020-35, has been granted are as follows:

- *Extension of Initial Remedial Amendment Period for Section 403(b) Plans.* The IRS previously established an initial remedial amendment period that permits an eligible employer to retroactively correct form defects in its written 403(b) plan documents by adopting a pre-approved 403(b) plan document or by otherwise amending its individually designed 403(b) plan by March 31, 2020. The March 31, 2020 deadline for those actions is postponed to June 30, 2020.
- *Pre-Approved Defined Benefit Plans – Remedial Amendment Period Extension.* The last day of the second regular six-year remedial amendment cycle applicable to pre-approved defined benefit plans that was scheduled to expire April 30, 2020 has been postponed until July 31, 2020. Plan sponsors with pre-approved defined benefit plans will have until July 31, 2020 to adopt a pre-approved defined benefit plan document that was approved based on the 2012 Cumulative List. July 31, 2020 also is the date by which an adopting employer of a pre-approved defined benefit plan may apply for an individual determination letter, and correct disqualifying provisions.
- *Defined Benefit Pension Plan Funding Waiver – Application Extension.* Internal Revenue Code Section 412 provides minimum funding standards for qualified defined benefit and other pension plans. Waivers of the minimum funding requirements may be granted in the event of temporary substantial business hardship. For single employer plans to receive a waiver, an application normally must be submitted no later than the 15th day of the 3rd month beginning after the close of the plan year for which the waiver is sought. Applications that are due on or after March 30, 2020, and before July 15, 2020 have a postponed deadline of July 15, 2020. Note that the availability of a minimum funding waiver under Internal Revenue Code Section 412 should not be confused with the relief

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granted by the CARES Act which automatically entitles employers with defined benefit pension plans to delay until January 1, 2021 the making of minimum required contributions under Internal Revenue Code Section 430 that would otherwise be due during calendar year 2020.

- *Substitute Mortality Table – Extension of Time to File Request.* For purposes of the minimum funding standard of Code Section 430, a defined benefit pension plan may request approval to use substitute mortality tables. Any such request must generally be submitted at least 7 months before the first day of the first plan year for which the substitute mortality tables are to apply. For requests due on or after March 30, 2020 and before July 15, 2020, the deadline is postponed until July 15, 2020.
- *Voluntary Correction Program (VCP) Corrective Actions.* With respect to a compliance statement issued under VCP, implementation of all corrective actions, including adoption of corrective amendments, required by the compliance statement generally must be implemented within 150 days of the date of the compliance statement. For corrections under a compliance statement that are due on or after March 30, 2020 and before July 15, 2020, the deadline is postponed until July 15, 2020.
- *Form 5330 - Filing Extension.* The Form 5330 is used to report and pay a variety of excise taxes with respect to employee benefit arrangements and tax-exempt entities. The period beginning on March 30, 2020, and ending on July 15, 2020, will be disregarded in the calculation of any interest or penalty for failure to file the Form 5330 or to pay the excise tax postponed by this notice. Interest and penalties with respect to such postponed filing and payment obligations will begin to accrue on July 16, 2020.
- *Form 5498 Series – Filing Extension.* With respect to the Form 5498, IRA Contribution Information, Form 5498-ESA, Coverdell ESA Contribution Information, and the Form 5498-SA, HSA, Archer MSA, or Medicare Advantage MSA Information, the due date for filing and furnishing the forms is postponed to August 31, 2020. Penalties with respect to such a postponed filing will begin to accrue on September 1, 2020.

Important Dates for Preapproved Defined Contribution Plans. Unrelated to the COVID-19 disaster, the IRS also recently published Announcement 2020-7 prescribing the following key dates relevant to the update and maintenance of pre-approved defined contribution plans (e.g., prototype and volume submitter documents):

- On June 30, 2020 (or, in some cases, as soon as possible thereafter), the IRS plans to issue opinion letters for pre-approved defined contribution plans that (i) were restated for changes in plan qualification requirements listed in the 2017 Cumulative List, and (ii) were filed with the IRS during the submission period for the third six-year remedial amendment cycle.
- By July 31, 2022, an employer adopting a newly approved plan will be required to formally adopt and execute the plan document. Employers already making use of a provider's preapproved defined contribution document platform should anticipate making arrangements with their plan providers to restate their plans in advance of that date.
- During the period from August 1, 2020 through July 31, 2022, the IRS will accept from any employer otherwise eligible to submit a determination letter request an application for an individual determination letter under the third six-year remedial amendment cycle.

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For any questions regarding how these prescribed deadlines would affect your employer-sponsored retirement plans, please contact Peter Bradley (716.848.1446), Ryan Murphy (716.848.1241) or Amy Walters (716.848.1481).

Please check our Coronavirus Resource Center and our CARES Act page to access information related to both of these rapidly evolving topics.

If you received this alert from a third party or from visiting our website, and would like to be added to our Employee Benefits mailing list, or any other mailing list, please visit us [here](#).

