

**FYI**<sup>®</sup>  
For Your Information<sup>®</sup>

Celebrating  
**40**  
years of FYI<sup>®</sup>

## 2019 required amendments list for U.S. individually designed plans

With its 2019 required amendments list, the IRS reminds plan sponsors to monitor operational compliance for changes required to be made this year and to identify any corresponding plan amendments that may be needed before 2022 to memorialize those changes. Discretionary changes implemented in 2019 remain subject to the requirement to adopt plan amendments by the end of the plan year.

Volume 42

Issue 107

December 20, 2019

**Authors**

Kenneth W. Robinson

Jane Lee

### Background

The IRS began publishing an annual required amendments (RA) list of amendments needed to maintain an individually designed plan's qualified status following the elimination of the five-year remedial amendment cycle for determination letters. In general, plan sponsors must adopt any item on the RA list by the end of the second calendar year following the year the RA list is published. In addition to identifying required amendments on the RA list, IRS issues an operational compliance (OC) list to help plan sponsors maintain operational compliance with mandatory and discretionary (optional) changes that become effective during the year.

Plan changes that are discretionary — even if inspired by regulatory changes or other agency guidance — do not get this additional time for plan amendments. Such changes must be memorialized (adopted), by the end of the plan year they are actually put into operation.

### 2019 required amendments list

IRS [Notice 2019-64](#) announces the list of potential required amendments for 2019. If any of these changes are required for a plan, operational compliance is needed for 2019 (unless otherwise indicated), and the formal amendment to bring the plan document into compliance must be adopted by December 31, 2021.

**Final regulations relating to hardship distributions.**

Defined contribution plans (including Code Section 403(b) individually designed plans) must be amended if they (1) suspend employee elective deferrals or employee contributions as a condition for taking a hardship distribution, or (2) do not require the employee's representation that he or she does not have sufficient liquid assets reasonably available to satisfy the "immediate and heavy financial need" created by the hardship. These changes are effective for hardship distributions made on or after January 1, 2020.

**Remedial amendment periods**

Different remedial amendment periods apply to new plans and governmental plans. Additionally, plan termination ends the plan's remedial amendment period and any retroactive or other required amendments must be adopted in connection with the plan termination, even if they are not included on the RA list.

**Final regulations on collectively bargained cash balance/hybrid plans.** Collectively bargained cash balance/hybrid plans that are maintained under one or more collective bargaining agreements ratified on or before November 13, 2015 must be amended to comply with the market rate of return and other aspects of the final regulations that first become applicable for the plan year beginning on or after the later of: (1) January 1, 2017, or (2) the earlier of (i) January 1, 2019, or (ii) the date on which the last of those collective bargaining agreements terminates (without regard to any extension granted on or after November 13, 2015). IRS Notice 2016-67 addresses the applicability of the market rate of return rules to implicit interest pension equity plans.

The relief from the anti-cutback requirements of Code Section 411(d)(6) provided in 1.411(b)(5)-1(e)(3)(vi) applies only to plan amendments that are adopted before the effective date of those regulations.

As a reminder, IRS opened its favorable determination program for certain cash balance/hybrid plans with the release of IRS [Rev. Proc. 2019-20](#). Our [May 6, 2019 FYI](#) discussed the opening of the IRS favorable determination letter program for certain statutory hybrid plans.

## In closing

The 2019 RA list reflects the latest round of required plan amendments and also serves as both a reminder of the operational changes that should already be in place for 2020 and of the need to prepare and execute plan amendments by December 31, 2021. If timely operational changes or amendments are not made, corrections using the IRS EPCRS program is an option.

**Produced by the Knowledge Resource Center**

The Knowledge Resource Center is responsible for national multi-practice compliance consulting, analysis and publications, government relations, research, surveys, training, and knowledge management. For more information, please contact your account executive.

You are welcome to distribute *FYI*® publications in their entirety. To manage your subscriptions, or to sign up to receive our mailings, visit our [Subscription Center](#).

This publication is for information only and does not constitute legal advice; consult with legal, tax and other advisors before applying this information to your specific situation.