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Treasury Official Gives Favorable Interpretation of 401(k) Hardship Amendment Deadlines for Volume Submitter and Prototype Plans

And suggests there may be more to come

At the ASPPA Annual Conference on Tuesday, October 22, 2019, Carol Weiser, Benefits Tax Counsel at the Treasury, discussed recent concerns about the deadline for preapproved plans to amend to conform to the recently published final hardship regulations. In effect, she said that the deadline is the due date of the employer's income tax return (e.g., Form 1120), plus extensions, if any, for the tax year which includes January 1, 2020. This is true even if the amendment was put into effect in 2019.

This gives us more time than many of us had feared, based on a conservative reading of the final regulation. She gave three examples to illustrate Treasury's view. In each case, assume the employer is a C corporation and the corporation does not extend the return.

Assume a plan sponsor with a calendar year fiscal year implemented the mandatory changes of the regulations in 2019. The deadline is the due date of the 2020 return (April 15, 2021).

Assume a plan sponsor implemented all of the changes on June 1, 2019 and has a fiscal year and plan year that ends June 30. The deadline is the due date of the employer's return for the tax year ending June 30, 2020 (October 15, 2020).

Assume a plan sponsor delays implementation of the mandatory changes of the regulations to the latest possible date, which is distributions made on or after January 1, 2020. If the plan sponsor has a tax year that begins on February 1, then the change to the plan would be effective for the fiscal year beginning February 1, 2019 and ending January 31, 2020. (May 15, 2020).

She added "We are still looking at whether there is anything else we should be doing to consider whether [the third situation] is perhaps too short a time frame given when we were able to issue the final regulations – so something that we are still looking at, so stay tuned for that." This offers the prospect of a later announcement of a later, or perhaps fixed deadline, unrelated to tax return due dates.

While Ms Weiser prefaced her comments that this was not an "official" pronouncement of the Treasury, the context of the statements put to rest the concerns of those in attendance that the deadlines for calendar year taxpayers might be in early 2020.