

# Year-End Plan Amendments

*Thomas E. Clark, Jr., Esq.*

It is that time of year—time to think about wrapping up 2019, and with that, whether 401(k) plan amendments need to be adopted prior to year end. For 401(k) plan sponsors with individually designed plans, the IRS issues an annual Required Amendments List with a list of changes individually designed retirement plans must adopt to remain qualified. Individually designed plans are generally given two years to adopt required changes that are announced in the Required Amendments List.

IRS Notice 2017-72 contains the first such Required Amendments List with required changes that must be adopted prior to December 31, 2019. IRS Notice 2017-72 lists three required changes; none of which apply to 401(k) plans. Although there are no required amendments that must be adopted this year, going forward, it will be important to check the Required Amendment List each year so that required amendments can be made to an individually designed 401(k) plan in a timely manner. IRS Notice 2018-91 contains the 2018 Required Amendment List which states there are no required changes that must be adopted by December 31, 2020. Note that if the revised hardship distribution regulations are included in the 2019 Required Amendments List

(not yet available), the deadline for amending an individually designed plan will be December 31, 2021.

If any optional or discretionary changes to an individually designed plan were made during 2019, amendments implementing such changes will need to be adopted prior to December 31, 2019, assuming the plan is a calendar year plan.

For plan sponsors with pre-approved plan documents, you'll need to check with the document provider for any required amendments, including amendments relating to the revised hardship distribution regulations. Likewise, because optional or discretionary amendments to pre-approved plans can only be made in limited circumstances, the provider of the pre-approved plan will also need to be consulted. Whether your 401(k) plan is an individually designed or a pre-approved plan, it's always a good idea to check with your ERISA counsel if you have any questions about plan amendments.

---

**Thomas E. Clark** is a Partner with *The Wagner Law Group*, a nationally recognized ERISA, employee benefits, executive compensation and estate planning law firm based in Boston. Tom can be reached at 314-236-0065 or [tclark@wagnerlawgroup.com](mailto:tclark@wagnerlawgroup.com).