



Employee Benefits & Executive Compensation ADVISORY ■

OCTOBER 28, 2014

Qualified Retirement Plan Amendments and IRS Filings: Do You Need to Amend or File in 2014?

This advisory reminds plan sponsors of deadlines for amending qualified retirement plans and for submitting certain plans to the IRS for a determination letter.

Plans that define “spouse” or “marriage” in a manner that excludes married couples of the same sex may need to be amended no later than December 31, 2014. See Section I below for details.

Plan sponsors who have added optional features to a retirement plan during 2014 (e.g., a plan loan feature) must ensure the relevant amendments are signed no later than December 31, 2014 (for calendar year plans).

“Cycle D” plans (defined below) will generally need to be amended and restated no later than January 31, 2015. Note: if a Cycle D plan has discretionary amendments, those amendments still must be adopted by December 31, 2014 (for calendar year plans).

Notice regarding changes to Health and Welfare Plans:

This advisory deals primarily with amendments to qualified retirement plans.

However, many health and welfare plans may require action during the upcoming weeks to comply with the Patient Protection and Affordable Care Act. Please see Section IV below for details.

I. Impact of Same-Sex Marriage on Retirement Benefits

Based on a U.S. Supreme Court decision and IRS guidance, qualified retirement plans must treat same-sex married couples as “spouses” for retirement benefit purposes. Plan amendments are required by December 31, 2014,¹ if either of the following applies:

1. The plan desires to recognize same-sex marriages earlier than June 26, 2013; or
2. The plan language defines “marriage” or “spouse” by referencing the Defense of Marriage Act or in a way that does not recognize same-sex marriages. Note that if your plan simply references “federal law” or uses generic terms that do not exclude same-sex marriages, an amendment will generally not be necessary.

¹ Note that some governmental plans may have a later deadline. Consult your plan’s advisor if you have questions regarding the timing of this required amendment.

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Please see our advisory dated [June 24, 2014](#), for more details on what must be amended.

II. Cycle D Filings Due by January 31, 2015

Individually Designed Plans

The IRS has established staggered deadlines for employers to file their qualified retirement plans with the IRS for a determination letter. As a general rule, every individually designed qualified retirement plan is assigned a specific five-year cycle (Cycles A-E) based upon the last digit of the plan sponsor's employer identification number (EIN). If the plan sponsor's EIN ends in 4 or 9, the plan will generally be a Cycle D plan. Additionally, non-governmental multi-employer plans are Cycle D plans, regardless of the plan sponsor's EIN.

Plan sponsors that desire to obtain an IRS determination letter must submit Cycle D plans for a determination letter request no later than January 31, 2015. Plan sponsors should verify the EIN of their subsidiaries or other divisions maintaining their own separate plans. The effect of this system is that plan sponsors generally need to apply for new determination letters only once every five years. Prior to each cycle, the IRS issues guidance (in the form of a notice entitled "Cumulative List of Changes in Plan Qualification Requirements") on the provisions that must be included in each plan that is being submitted for a determination letter. Plan sponsors should review the Cumulative List issued in connection with Cycle D filings (see [Notice 2013-84](#)) to make sure that all required amendments are included in the plan document.

For your information, the general filing cycle information is as follows:

Last digit of Plan Sponsor's EIN	Plan's Filing Cycle	Filing Due Date
1 or 6	A	January 31, 2012 (Next filing due in 2017)
2 or 7 Also all Multiple Employer Plans, regardless of EIN	B	January 31, 2013 (Next filing due in 2018)
3 or 8 Also most Governmental Plans regardless of EIN	C	January 31, 2014 (Next filing due in 2019)
4 or 9 Also all Multi-Employer Plans, regardless of EIN	D	January 31, 2015
5 or 0 Optional delayed filing period for Governmental Plans	E	January 31, 2016

Pre-Approved Plans

Master & prototype (M&P) plans and volume submitter (VS) plans are generally reviewed on a six-year cycle. The remedial amendment period or current cycle for defined contribution plans (e.g., 401(k) plans) runs from May 1, 2014, to April 30, 2016. If you have a defined contribution M&P or VS plan and desire a determination letter, you must file for one during this window. Note, however, that under current IRS rules, most pre-approved plans may only file for a determination letter under limited circumstances. If you sponsor an M&P or VS plan, you should consult your plan's legal advisor as to whether you can and should file for a determination letter.

III. Approaching Deadline to Adopt Certain Special Rules for Cash Balance Plans (Required under the Pension Protection Act)

The IRS issued final regulations regarding cash balance and similar plans in September of 2014. For completeness, we point out that amendments may be required for cash balance and similar plans by December 31, 2015.

IV. Required Amendments for Health and Welfare Plans

Employers are advised to consult their plan advisors and benefits consultants regarding 2014 plan amendments and other actions necessary to bring health and welfare plans into compliance with the Patient Protection and Affordable Care Act. These changes include (but are not limited to) the following:

- Changes to plan (and SPD) eligibility requirements.
- Certain optional changes to cafeteria plans. See our advisory dated [October 8, 2014](#), for additional information.
- Acquisition of a health plan identification number (HPID) (required by November 5, 2014). See our advisory dated [September 2, 2014](#), for additional information.
- Transitional reinsurance fee payment (required by November 15, 2014).

V. Conclusion

Plan sponsors should review their qualified retirement plans and health and welfare plans now to ensure compliance with required amendment and filing deadlines. Please do not hesitate to contact your Alston & Bird attorney if we can assist you in proper filing procedures for your qualified retirement plan and to discuss any plan amendments and applicable deadlines.

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If you have any questions or would like additional information, please contact your Alston & Bird attorney or any of the following:

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