



Employee Benefits & Executive Compensation ADVISORY ■

NOVEMBER 12, 2019

Qualified Retirement Plan Considerations and 2019 Year-End Action Items

This advisory reminds plan sponsors of deadlines for amending qualified retirement plans and highlights other action items for plan sponsors to consider in the near future.

2019 Year-End Action Items

Most plans will not have any legally required amendments that must be adopted in 2019, though as indicated below, some hardship changes may need to be implemented operationally on or before January 1, 2020. Additionally, the following are some action items for plan sponsors to consider as the end of the year approaches:

Discretionary amendments

Plan sponsors who have added operationally optional features to a retirement plan during 2019 (e.g., a plan loan feature) must ensure that the associated “discretionary” amendments are signed no later than December 31, 2019 (for calendar-year plans). If you have made any discretionary amendments, you should take some time to make sure they have been formally adopted by the end of the year.

Changes to hardship withdrawals

The Tax Cuts and Jobs Act and the Bipartisan Budget Act of 2018 changed some of the rules applicable to hardship distributions, and the IRS recently issued final guidance and timelines for implementation of these changes. These include required changes, such as the removal of the automatic six-month delay following a hardship and the addition of a participant certification requirement, as well as optional changes such as expanding the sources available for hardship withdrawals and eliminating the requirement that participants seek plan loans before requesting a hardship withdrawal. A more complete summary of the changes can be found in our advisory on the subject, “[Final Hardship Distribution Rules Are Here: Does Your 401\(k\) or 403\(b\) Plan Comply?](#)”

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Implementing these changes may require a plan amendment. In general, the following deadlines apply to amend calendar-year plans for required changes:

- Individually designed 401(k) plans generally must be amended to adopt required features by December 31, 2021, if the final regulations are included in the 2019 Required Amendments List.
- Preapproved 401(k) plans must amend by the 2020 tax-filing deadline, inclusive of any extensions.
- 403(b) plans must amend by March 31, 2020, unless this is extended through supplemental guidance.

Plans do not need to wait for these deadlines to be amended. Sponsors of plans that may have adopted some of these changes operationally effective January 1, 2019, and already communicated these changes to participants may wish to consult their legal advisors and recordkeepers to discuss whether amending the plan sooner than these deadlines is appropriate.

Less-common amendments

While most plans do not have any required amendments this year, the following are some less-common situations that may affect certain plans:

- **Prior-year disaster relief** – Congress previously provided some relief for victims of Hurricanes Harvey, Irma, and Maria and the 2017 California wildfires. This relief included relief from the 10% early withdrawal penalty and 20% withholding, the ability to defer taxes, the ability to repay certain hardship distributions, and increased plan loan limits. Adoption of this relief was optional, but plans that did allow this relief need to be amended no later than December 31, 2019, to reflect the relief offered.
- **Partial annuity distributions** – Plan sponsors of plans that offer partial annuity distribution forms of payment (for example, allowing participants to receive part of their benefit in a lump sum and part as an annuity) may wish to verify that they are in compliance with the IRS final regulations from 2016. Not all plans offer this feature and not every plan requires an amendment. However, if an amendment is required, the deadline is December 31, 2019.

Other Action Items

Adjustment to the determination letter program

The IRS announced that it is expanding its determination letter program in limited circumstances. You may consider applying for a determination letter if one of the following applies to your plan:

- **Certain plan mergers** – In connection with corporate mergers, acquisitions, or similar transactions, plan sponsors occasionally merge an acquired plan into an existing plan. With some restrictions, the IRS has begun allowing merged plans to file for a determination letter. To be eligible, the plan merger must be completed no later than the end of the plan year after the plan year that includes the date of the corporate transaction, and the determination letter application must be submitted by the

last day of the first plan year beginning after the effective date of the merger. Note that, for eligible mergers of calendar-year plans that occurred in 2017 or 2018, the deadline to file may be as early as December 31, 2019.

- **Certain hybrid plans** – Plans (such as cash-balance plans) that use a statutory hybrid formula have a limited window to apply for a new determination letter. The application must be filed between September 1, 2019, and August 31, 2020.

These new grounds for requesting a determination letter offer plan sponsors an opportunity that wasn't previously available to obtain a determination letter on all amendments to the plan since the last determination letter.

Other items to consider

As you review your plan document, consider whether adding any of the following is appropriate:

- Internal limitations period for filing claims
- Forum selection clause
- Mandatory arbitration provision

We recommend all plan sponsors consider these features, but please be aware that these features are not legally required and may not be appropriate for every plan or every plan sponsor.

Conclusion

Although there are not many significant amendments required for qualified plans in 2019, the end of the year provides an opportunity for plan sponsors to review their qualified retirement plans and consider these action items. Please do not hesitate to contact your Alston & Bird attorney to discuss any of the plan amendments or other action items.

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