



Employee Benefits & Executive Compensation ADVISORY ■

NOVEMBER 2, 2022

Retirement Plan Amendments and 2022 Year-End Action Items

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

Qualified Plan Amendments

Deadlines and Extensions to Amend Plans to Reflect Changes Under Recent Legislation

Extended deadlines for SECURE Act and CARES Act – December 31, 2025

Under the SECURE Act, plan sponsors initially had until December 31, 2022 to amend their plans to implement SECURE Act provisions. These included a number of provisions, such as:

- Changing the required beginning date to April 1 after the year in which a participant reaches age 72 (instead of 70½) for participants born after June 30, 1949.
- Changing the distribution rules for benefits payable after the death of a participant to require distributions within 10 years after the participant's death unless the beneficiary is the participant's spouse or a member of a specific list of other "eligible designated beneficiaries."
- Allowing part-time employees to be eligible to make elective deferrals if they work at least 500 hours of service for 3 consecutive years beginning January 1, 2021.

These provisions were required to be implemented operationally as early as the 2020 plan year; however, plans did not need to be formally amended until December 31, 2022. On August 3, 2022, the IRS issued Notice 2022-33, which extended the deadline to amend plans for these provisions until December 31, 2025.

Similar to the SECURE Act, plan sponsors initially had until December 31, 2022 to amend their plans in response to provisions adopted under the CARES Act. Notice 2022-33 partially extended this amendment deadline for a plan's treatment of 2020 required minimum distributions under the CARES Act. The IRS subsequently issued Notice 2022-45 extending the deadline to December 31, 2025 for the remaining key portions of the CARES Act. This includes amendments related to coronavirus-related distributions, increased loan limits, and loan repayment deferrals.

Due to these extensions, December 31, 2022 is generally no longer a key deadline for plan amendments related to the SECURE Act and CARES Act.

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Discretionary Amendments

Plan sponsors that have made discretionary changes to their qualified retirement plans or may have added operationally optional features other than those discussed above during 2022 (e.g., a plan loan feature) must ensure that the associated “discretionary” amendments are signed no later than December 31, 2022 (for calendar-year plans). If you have made any discretionary amendments to your qualified retirement plan, you should take some time to make sure they have been formally adopted by the end of the year.

Other Action Items

Considerations from Recent DOL Guidance

The Department of Labor (DOL) has issued several pieces of guidance covering a number of topics, including guidance on what constitutes fiduciary advice, warnings regarding cryptocurrency, and recommendations for cybersecurity best practices. Year-end presents an opportunity for plan fiduciaries to discuss these topics with recordkeepers and consider whether it is appropriate to make any additional enhancements. To the extent your recordkeeping agreement has not been amended to reflect items such as fiduciary advice and cybersecurity, this may be something to discuss with your recordkeeper.

A new piece of guidance, the DOL’s Interpretive Bulletin 2022-01, may present additional opportunities as well. The bulletin generally established a new exception to auditor independence, allowing plan fiduciaries to engage a new auditor so long as the auditor disposes of publicly traded securities held during the audit period before the auditor is formally retained. No such exception existed previously, and this may present an opportunity for plan fiduciaries to discuss new services available to a plan and the diligence required to exercise such an option.

Other Items to Consider

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

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

For instance, a recent unpublished Eleventh Circuit case (*Bakos v. UNUM*) reinforced the importance of internal limitations periods in employee benefit plans. If your plan has any of these features, it is recommended to communicate them clearly in participant-facing communications, including summary plan descriptions and written responses to claims and appeals.

We recommend all plan sponsors consider these features and discuss them with their legal advisors, but please be aware that these features are not legally required and might not be appropriate for every qualified retirement plan or for every plan sponsor.

Updates to SPDs and Claim Denial Letters

The “outbreak period” announced by the IRS and DOL guidance in 2020 suspended certain deadlines for participants to appeal claims until the earlier of (1) the end of the national emergency based on the coronavirus outbreak; or (2) one year from the date of denial. Because this is an individual limit, until the national emergency period is formally ended, this will require individual tracking of appeal deadlines. The period has been extended multiple times and

is still ongoing and is currently scheduled to end in early 2023 unless it is extended again. We recommend ensuring your plan administrator is continuing to resolve claims and respond to appeals as required under your plan and take note of the potential end to the extended timelines.

Some plan sponsors reflected the extended claims and appeals period in SPDs and standard form claim denial letters. Those documents may need to be updated.

Conclusion

The end of the year presents an opportunity for plan sponsors to review their qualified retirement plans and consider whether their retirement plans have any legally required amendments and whether they want to add any of the features discussed above even before a legally required deadline. Please do not hesitate to contact your Alston & Bird attorney to discuss any of these plan amendments or other action items.

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