

2022 Retirement Plan Year-End Amendments and Operational Compliance

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As the end of 2022 approaches, it's again time for plan sponsors to review their plan documents and plan operations to ensure compliance with increasingly complex qualification requirements and moving deadlines. While there are few, if any, required plan amendments for 2022, plan sponsors must remain diligent about amendment deadlines, operational compliance with changes in law, and ensuring later-adopted plan amendments accurately reflect plan operations.

Year-End Plan Amendments

Plan amendments may be needed before the end of 2022 for plan design changes and in limited cases, for changes in law:

- **2022 Plan Design Changes.** Generally, plan documents should be amended by plan year-end for any "discretionary" changes implemented during 2022. These discretionary changes may include plan design changes (other than required compliance amendments described below), changes in plan administration impacting the plan document, and changes to plan provisions pursuant to collective bargaining agreements. An earlier deadline applies to plan sponsors who choose to adopt a 401(k) safe harbor plan design for 2022, using a 3% nonelective contribution. The safe harbor plan provisions must be adopted, and disclosures provided to participants, at least 30 days before the end of the plan year (*i.e.*, by December 1, 2022 for calendar year plans).
- **Compliance Amendments for Changes in Law.** At the start of 2022, most plan sponsors anticipated a busy year-end to amend plan documents to comply with provisions of the

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SECURE Act, CARES Act, and other recent changes in law.¹ In Notice 2022-33 and Notice 2022-45, the IRS extended these deadlines for non-governmental tax-qualified and 403(b) plans to December 31, 2025. For governmental qualified and 403(b) plans, the extended deadline is 90 days after the close of the third regular legislative session of the legislative body with the authority to amend the plan that begins after December 31, 2023 (potentially later under a special rule for governmental 457(b) plans). (Please see [Year-End Amendments Extended – CARES and 2020 Relief Act](#) and [IRS Provides Three-Year Extension for SECURE Act Amendments and Additional Limited Relief](#) for further information.)

The IRS guidance does not explicitly address an amendment deadline for tax-exempt 457(b) plans, which has resulted in some plan providers asking sponsors to sign SECURE-related amendments by the end of 2022. Moreover, plans that are terminating must be amended to reflect all changes in law by the plan termination date.

As noted below, plan amendments may also be needed, on a prospective basis, for certain 2023 plan design changes. Furthermore, plan sponsors may consider amending their plans now for certain changes in law, to reflect plan operations, even though amendments are not yet required. For example, although most plan sponsors have until the end of the 2025 plan year to adopt CARES Act amendments, delaying those amendment may present challenges in determining how the plan was administered in 2020.

Operational Compliance

The IRS maintains an “[Operational Compliance List](#)” (last updated May 17, 2022) that describes statutory and regulatory changes in requirements for 401(a) and 403(b) plans. Plan sponsors should review this list to ensure their plans are operationally compliant with the relevant provisions.

- ***New Requirement for 2022.*** The Operational Compliance List for 2022 includes only one item, regarding the new minimum required distribution tables for 401(a) defined contribution and 403(b) plans. (Please see [IRS Issues Final Regulations Updating Minimum Required Distribution Rules](#) for additional information.) In addition, however, plans must operationally comply with applicable items added to the list for prior years. This includes, for example, SECURE Act changes generally effective in 2020.

Regardless of the legal deadline for amending plan documents, plan amendments must accurately reflect how the plan was administered for tax-qualification purposes and potentially, in the event of a participant claim or government inquiry. Thus, it is critical for sponsors and plan service providers to be in alignment on when and how changes in plan operation are implemented.

¹ Prior to the relief provided in Notice 2022-33 and Notice 2022-45, plan amendments to reflect provisions of the Setting Every Community Up for Retirement Enhancement Act of 2019 (“SECURE Act”), the Bipartisan American Miners Act of 2019 (“Miners Act”), the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (“Relief Act”), and the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) were generally required by the end of the 2022 plan year (2024 plan year for governmental plans).

Looking Ahead - Timing Considerations for Future Plan Changes

Many plan sponsors are already looking beyond 2023 and evaluating potential future changes to their retirement plans. As part of this process, plan sponsors should plan ahead, taking into account the following:

- ***Prospective Amendments for 2023 Plan Design Changes.*** While plan sponsors generally have until the end of the plan year to adopt discretionary plan design amendments, there are numerous exceptions. For example, plan sponsors that wish to implement a safe harbor 401(k) plan design based on matching contributions must amend their plans before the beginning of the plan year and provide advance notice to participants. In addition, changes that reduce future benefits or are otherwise subject to anti-cutback rules generally must be adopted on a prospective basis, and may also require advance notice to participants. Moreover, a reduction of matching or non-elective/profit sharing contributions, or changes to plans that use a 401(k) safe harbor design, may also be subject to the prospective amendment rules.
- ***Plan Termination Amendments.*** Plans that are terminating must be amended to reflect all discretionary and required amendments, including SECURE Act and CARES Act changes, by the plan termination date. This is the case even if the plans would have an extended deadline had they not terminated.
- ***Future Retirement Plan Enhancements.*** These enhancements may include student loan repayment assistance, automatic reenrollment features (designed to help employees maximize matching contributions), new “non-elective” employer contributions, and financial wellness and investment advice/managed account offerings in defined contribution plans. Plan sponsors should talk to counsel prior to making these changes to ensure they are implemented in an intentional and compliant manner, particularly changes that require advance notice to participants or changes to service-provider agreements and related fees.

Next Steps for Plan Sponsors

In the coming weeks, plan sponsors should take the following next steps to ensure their plan documents and plan operations are compliant:

- ***Review and Amend Plan Documents.*** Review and amend plan documents to ensure they timely reflect all discretionary and required plan changes (including design changes that became effective during the year or, in some cases, will become effective next year).
- ***Review Plan Operations.*** Review plan operations to determine whether conforming plan amendments may be required and to ensure that changes in law are timely implemented.
- ***Consider EPCRS for Any Plan Amendment or Operational Compliance Issues.*** If the plan document and operational review indicates potential non-compliance, talk to counsel to evaluate possible corrective measures in accordance with the Employee Plans Compliance Resolution System (EPCRS) (Rev. Proc. 2021-30). Please see [IRS Makes Helpful Changes to EPCRS and Modifies Anonymous Submission Process](#) for additional information.

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Plan sponsors that missed the July 31, 2022 deadline to adopt “Cycle 3” pre-approved plan restatements should talk to counsel about available corrective measures under recent [IRS guidance](#).

- ***Consider Eligibility for IRS Determination Letter.*** Consider seeking an IRS determination letter for any new individually-designed 401(a) plan, or an updated determination letter for plan changes related to certain merger and acquisition activity or plan terminations. Please see [IRS Reopens Determination Letter Program for Two Significant Groups of Plans](#) for additional information.
- ***Evaluate Potential Future Plan Changes.*** Consider whether future plan changes may require a prospective amendment and stay in front of changes that may require advance notice to participants and changes to service-provider agreements and related fees.

In addition to the above, plan sponsors should confirm that legally-required participant notices (*e.g.*, 401(k) safe harbor notices, QDIA/automatic enrollment notices, fee disclosures) are compliant in form and are being provided by the applicable deadlines using the appropriate delivery method. Plan sponsors should also review participant communications, and remember to provide an updated summary plan description (or summary of material modifications) for any material plan changes within 210 days after the end of the year.

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