



Employee Benefits & Executive Compensation ADVISORY ■

NOVEMBER 8, 2017

Qualified Retirement Plan Amendments: 2017 Year-End Update

This advisory reminds plan sponsors of deadlines for amending qualified retirement plans and certain year-end legal updates.

Year-End Amendments

Discretionary amendments

Plan sponsors who have added optional features to a retirement plan during 2017 (e.g., a plan loan feature) must ensure that the associated “discretionary” amendments are signed no later than December 31, 2017 (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.

2016 storm relief

Additionally, some plans may have taken advantage of IRS relief in 2016 or 2017 available to employees affected by either the August 2016 Louisiana storms or 2016’s Hurricane Matthew. As described in IRS Announcements [2016-30](#) and [2016-39](#), the relief allowed more flexible loans and hardship distributions to employees who were affected by the storms. Depending on the terms of your plan, a plan amendment may be necessary to allow this relief. If an amendment is necessary, the plan needs to be amended before December 31, 2017 (for calendar-year plans).

2017 disaster relief

Similar to the relief for storms in 2016, the IRS has provided some relief for loan and hardship distributions for victims of Hurricanes Harvey, Irma, and Maria and the California wildfires in Announcements [2017-11](#), [2017-13](#), and [2017-15](#). If an amendment is required to provide the relief permitted by the IRS, the plan must be amended by December 31, 2018 (for calendar-year plans). In addition to the IRS relief for the 2017 disasters, Congress has also provided some relief for victims of Hurricanes Harvey, Irma, and Maria. The [Disaster Tax Relief and Airport and Airway Extension Act of 2017](#) (the “Relief Act”) generally provides

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victims of the three hurricanes with tax relief for distributions (relief from 10% early withdrawal penalty and 20% withholding, and ability to defer taxes or pay no taxes at the time of distribution), the ability to repay hardship distributions intended to pay for the purchase or construction of a participant's residence in affected areas, and increased plan loan limits. If a plan wants to provide any relief available under the Relief Act, a calendar-year plan must be amended by December 31, 2019.

Required amendments

Although most plans do not have a required amendment that must be adopted in 2017, some plans may have the following required amendments.

- **2016 Required Amendments List:** According to the 2016 Required Amendments List, a plan may need to be amended to specify how the adjusted funding target attainment percentage (AFTAP) would be calculated for determining whether a prohibited payment can be paid under Code Section 436(d)(2). If a plan does not incorporate the limitation by reference to the statute or regulation, or through the use of the sample Section 436 amendment, an amendment may be required. The deadline to adopt such an amendment is December 31, 2018.
- **Cash Balance Final Regulations:** Under the final IRS regulations on cash balance plans issued in 2015, most calendar-year plans with noncompliant interest crediting rates had to be amended by December 31, 2016, in order to be eligible for anticutback relief. However, the deadline to adopt the amendment is delayed for certain calendar-year collectively bargained plans to as late as December 31, 2018, depending on the termination date of the relevant collective bargaining agreement. For these collectively bargained plans, an amendment to comply with the final IRS regulations may be required in 2017.
- **Bifurcated Lump Sum Option:** [IRS Notice 2017-44](#) provides anticutback relief to certain plans amended to implement bifurcated distribution options under Treas. Reg. § 1.417(e)-1(d)(7). In order to be eligible for this relief, the amendment must be adopted by December 31, 2017.
- **Updated Disability Claims Procedures:** The Department of Labor has issued final regulations amending the disability claims procedures regulations, which included operational changes to disability claims procedures. Although the regulations are effective for disability benefit claims filed on or after January 1, 2018, the Department of Labor has proposed to delay the effective date of the regulations and has indicated that the final regulations could be amended. Formal plan amendments are generally not required at this time, though action may be required in the future based on upcoming guidance.

Conclusion

Although there are not many significant amendments required for qualified plans in 2017, these changes are expected to have a significant impact on plan compliance in the future. The end of the year provides an opportunity for plan sponsors to review their qualified retirement plans and prepare for upcoming filing deadlines and other changes. Please do not hesitate to contact your Alston & Bird attorney if we can assist you with 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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