

REGULATORY Update



DOL and IRS Guidance in the Works

Twice a year, the Treasury Department/IRS and the Department of Labor (DOL) update their list of to-do's. These regulatory agendas notify the public where these agencies are focusing their attention and what aspects of retirement plans will be affected by upcoming guidance. These agendas also include target dates for completion. While the target dates aren't always met, it provides at least a tentative timeline for plan sponsors and service providers awaiting guidance before making plan design decisions and system changes.

Treasury/IRS Spring 2023 Agency Rule List includes these targets for this year:

- Final regulations on RMDs and beneficiary distributions for SECURE 1.0 changes and proposed regulations on changes made by SECURE 2.0 – June 2023
- Final regulations on multiple employer plans (MEPs) – June 2023
- Proposed regulations on new rules for long-term, part-time employees (SECURE 1.0 and SECURE 2.0) – December 2023

On May 23, 2023, several members of Congress sent a letter to the Treasury/IRS to provide clarification on certain drafting mistakes in SECURE 2.0 and to alert the industry that it will introduce legislation to correct those errors. Congress acknowledged it did not intend to cancel catch-up contributions in 2024 and that the new starting age of 75 for RMDs applies to plan participants who don't reach age 73 by 2033. The RMD age clarification may help the Treasury/IRS move forward with the RMD/beneficiary regulations expected this year.

The DOL also received a letter from Congress in May, asking it to act "effectively and expeditiously" in issuing guidance to implement six changes from SECURE 2.0, including the new in-plan Emergency Savings Accounts and the consolidation of certain participant notices.

The DOL's Spring 2023 update to its Agency Rule List includes the following regulatory actions:

- New proposed regulations on "Conflict of Interest in Investment Advice" to redefine an investment fiduciary under ERISA and the Internal Revenue Code – August 2023
- Final regulations to update the Voluntary Fiduciary Correction Program (VFCP) – comments on proposed regulations to be analyzed in June 2023
- Stakeholder meetings to be held in June 2023 (related to SECURE 2.0)
 - Improving participant engagement and the effectiveness of plan disclosures/notices
 - Pooled employer plans (PEPs)
 - In-plan Emergency Savings Accounts
 - Plan reporting necessary to establish a Retirement Savings Lost and Found database



Disaster Relief for Taxpayers and Retirement Plans

Congress and the IRS have provided different kinds of relief to plan sponsors and participants over the years in the wake of natural disasters. Recently, disasters have become more frequent, and the relief provided has become more standard. Yet, prior to December 29, 2022, plan sponsors and participants who were affected by a disaster had to wait for Congress to enact a law to grant relief specific to each disaster. SECURE 2.0 changed this protocol.

What relief will now be available automatically for plan participants?

With the passage of SECURE 2.0, retirement savers whose homes have been damaged by a federally declared disaster can be certain that relief will be automatically available to them. If the plan sponsor has adopted a disaster relief provision, qualifying participants will be able to take an in-service distribution, generally within 179 days of the disaster declaration, of up to \$22,000 from their retirement plan account, avoid the 10 percent additional tax on early distributions, spread the taxation over three years, and repay the “qualified disaster recovery distribution” within three years. The loan limit will also be expanded to a maximum of \$100,000, and the repayment term extended by one year.

What must wait for the IRS to declare?

After FEMA issues a major disaster declaration, the IRS may postpone certain tax-filing and payment deadlines for those who reside or have a business in counties affected by the disaster or who have records necessary to meet a tax-filing or payment deadline located in a disaster area. This IRS relief applies to individual, business, and retirement plan-related time-sensitive acts, including making plan contributions, completing rollovers, and filing Form 5500. (See [Revenue Procedure 2008-58](#) for a full list of acts covered.) The relief is automatic for taxpayers in the affected areas once the IRS has issued a news release naming the counties or areas covered and the extended deadlines (www.irs.gov/newsroom/tax-relief-in-disaster-situations).



IRS Recommendations for Keeping Records Safe

The IRS recommends that individuals and businesses take proactive steps to keep their records safe—before a disaster occurs.

1. **Keep key documents safe:** Keep original copies of important documents inside a waterproof container in a safe space. Make copies of these documents and store them in a secondary location, or scan documents and store the files on a flash drive.
2. **Create a record of valuables and equipment:** Keep a list with current photos or videos to help support claims for insurance or tax benefits after a disaster. See [IRS Publication 584-B, Business Casualty, Disaster, and Theft Loss Workbook](#) for instructions.
3. **Reconstruct records:** If records need to be reconstructed or replaced after a disaster for tax purposes, claiming federal assistance, or insurance reimbursement, visit the IRS’s webpage on [Reconstructing Records](#).



Changes to Form 5500 Allow More Plans to Streamline Annual Filing

Updated Forms 5500 and regulations governing the Form 5500 reporting requirements include a significant change to how “participants” are counted when plans are determining their status as a small plan or large plan. Ongoing rules require a plan with 100 or more participants to file Form 5500 and related schedules as a “large plan” and obtain a plan audit opinion to be submitted with Form 5500. Plans with fewer than 100 participants are not required to obtain a plan audit and have simplified Form 5500 reporting requirements, saving time and money.

Prior to reporting for the 2023 plan year, plan sponsors had to count all employees eligible for the retirement plan, regardless of whether they were participating, when determining large or small plan status. Effective for plan years starting on or after January 1, 2023, plan sponsors will only have to count participants who had a balance in the plan on the first day of the plan year. The DOL expects this change to result in thousands more plans being able to file as a small plan and avoid paying for plan audits.

Businesses that employ around 100 employees may want to consider these strategies to help keep the participant count down on the first day of the plan year:

- Force out small account balances of terminated employees before the end of each year or per the plan document's terms. SECURE 2.0 increased the cash-out threshold from \$5,000 to \$7,000 for distributions made after December 31, 2023.
- If providing a profit-sharing contribution or other nonelective contribution to employees who aren't otherwise participating in the plan, wait to fund the employer contribution until after the first day of the next plan year to reduce the number of accounts with balances on the first day of that plan year.



Fiduciary Files: Best Practices for Building a Plan Committee

A plan sponsor has overall fiduciary responsibility for the company's retirement plan under ERISA. Fiduciaries must follow strict standards of conduct when performing their duties, including basing decisions solely on what's best for the participants; carrying out their duties with the care, skill, and diligence of a prudent expert; and ensuring that only reasonable fees for necessary services are paid from plan assets. One of the most effective ways a plan sponsor can meet these obligations is to establish a plan committee. By delegating some responsibilities to a plan committee, plan sponsors can:

- Share fiduciary liability for investment oversight and plan administration
- Broaden the knowledge and expertise of individuals managing the plan
- Formalize and document the processes followed in making plan decisions

To establish a plan committee, the board of directors or business owners should authorize the committee by a board resolution or other written business authorization, and determine who will serve on the committee (e.g., human resource manager, chief financial officer, operations manager). The framework for operating the committee should be documented in the form of bylaws or a charter. This document serves to define the purpose of the committee, its responsibilities, and its scope of authority (e.g., investment oversight only). Effective committee charters also include operating guidelines, such as the frequency of meetings (e.g., quarterly, semiannually), the procedures for overseeing specific areas of the plan (e.g., process for hiring and monitoring service providers), the minimum number of members needed to take action (a quorum), and the roles of certain members (e.g., secretary).

Because ERISA fiduciaries are personally liable for plan losses caused by a breach of their fiduciary responsibilities, a charter can help plan committee members understand their duties and how to meet them consistently. Once the committee is formed, set a schedule for regular meetings, and apply a disciplined approach to each meeting. This includes following the meeting schedule outlined in the charter and creating an agenda for each meeting. Designate a member to draft minutes reflecting the key discussions of each meeting and to store materials used in the meeting (e.g., benchmarking information).



We Can Help

We are ready to provide you with the ideas, guidance, and foresight to position your firm for success. If you would like to review your plan's features, operations, or industry developments that may affect your plan, we're here to assist you.

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