Employee Benefit Plan Year-End Deadlines

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Individuals in the employee benefits space are used to dealing with year-end benefit plan amendments and other deadlines. This year, with the delay of the deadline for amending qualified plans, 403(b) plans, and governmental 457(b) plans to comply with the SECURE Act and CARES Act, year-end to-dos are on the light side; however, there are still a few deadlines to be aware of depending on what types of plans an employer sponsors, including the first item mentioned below, a disclosure that applies to the majority of employers.

Prescription Drug Disclosures

The transparency provisions of the Consolidated Appropriations Act, 2021 (CAA) requires group health plans (both fully insured and self-funded) and insurers to report information about prescription drug pricing and health care spending to the Centers for Medicare & Medicare Services. The first report is **due by December 27, 2022** with respect to 2020 and 2021 data, and annually thereafter (with the next report due on June 1, 2023 for 2022 data). These reports will be used to create biannual, publicly available reports prepared by the Departments of Labor, Treasury, and Health and Human Services.

Plans and insurers must report a variety of information about prescription drug spending, including "plan-specific information" and "aggregated information." Plan-specific information includes plan-identifying information, enrollee numbers, and each state where the plan is offered. Aggregated information includes items such as the top 50 most often dispensed prescription drugs and the number of paid claims for each drug, the top 50 most costly drugs by total annual spending and the total annual spending by the plan for each drug, and the top 50 drugs with the greatest increase in plan expenditures over the previous year and each drug's increased amount, among other things.

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Much, if not all, of the aggregated information required to be reported is only available through plan vendors (such as insurers, third-party administrators for self-funded plans, pharmacy benefit managers, etc.), even though the ultimate responsibility for reporting is on the group health plan itself. Plans can contract with vendors to report on their behalf, pursuant to a written agreement, which should be done as soon as possible, if not already done. To make it easier to report aggregated data, a reporting entity that submits data on behalf of more than one group health plan in a state and market segment can combine the aggregated information for the group health plans for each market segment in the state.

125 Plan Deadline for COVID-19 Special Rules

Tax Code Section 125 plans were given a number of reprieves under the CAA due to the COVID-19 pandemic, including eased rules allowing certain mid-year election changes for health flexible spending and dependent care accounts (FSAs and DCAPs, respectively) and relaxed requirements related to FSA and DCAP carryovers and grace periods. IRS Notice 2021-15 extended some of these optional changes to cover 2021 and clarified that amendments for these changes are due by the end of the calendar year beginning after the end of the plan year in which the amendment is effective and that employers must have operated their plans in accordance with the retroactive amendment's terms, beginning on its effective date.

For example, if your 125 plan (i) implemented FSA and DCAP carryovers that permitted unused amounts at the end of 2021 to be carried over and used in 2022, and (ii) allowed employees to make a prospective election change in 2021 to modify FSA and DCAP contributions without a change in status, a 125 plan amendment for these changes is due by December 31, 2022 (if the amendment was not already adopted in 2021 along with a similar amendment for changes in 2020). Employers should contact their 125 plan vendors to be sure amendments will be timely adopted if any of these optional changes were made.

457(b) SECURE Act Amendments

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As noted in the introduction to this article, the deadline for amending plans for the SECURE and CARES Acts was delayed by IRS Notices 2022-33 and 2022-45, generally to December 31, 2025. However, you may have noticed that one type of plan was not mentioned above, and that is 457(b) plans ***sponsored by tax-exempt entities***. Neither IRS notice extended the SECURE Act amendment deadline for tax-exempt 457(b) plans, which are subject to the Tax Code's required minimum distribution (RMD) requirements under Code Section 401(a)(9). The SECURE Act changed the RMD rules by pushing the required beginning date out to age 72 and requiring quicker post-death RMDs in most cases.

In the absence of additional guidance, the original deadline of December 31, 2022 for amending plans to comply with the new RMD rules under the SECURE Act applies to 457(b) plans sponsored by tax-exempt entities. Employers maintaining these plans should contact the vendor that maintains their plan to be sure these amendments will be timely adopted.

If you have questions regarding year-end deadlines for employee benefit plans, contact the author of this article or any member of Frost Brown Todd's Employee Benefits and ERISA practice. For more, visit our Tax Law Defined blog.

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