Year-End Update—Recent Developments and Other Guidance Potentially Affecting Retirement Plans for 2020 and 2021

Prepared by Aon

Empower Results®

Year-End Update—Recent Developments and Other Guidance Potentially Affecting Retirement Plans for 2020 and 2021

Background

This document summarizes certain recent developments for required or discretionary plan amendments or possible changes in the administration of tax-qualified defined benefit (DB) and defined contribution (DC) plans, and other retirement plans. This Year-End Update also identifies certain other items that are likely to impact retirement plans, including the 2018 and 2019 Internal Revenue Service (IRS) Required Amendments (RA) Lists (IRS Notices 2018-91 and 2019-64, respectively), as well as other recent regulatory and administrative policy changes. In general, current IRS guidance requires that legally required plan amendments need to be adopted by the end of the second year following publication in an RA List. "Discretionary" plan amendments generally need to be adopted by the end of the plan year in which the amendment is operationally put into effect (or in advance of any change that would reduce protected benefits that accrue prospectively).[1]

Additionally, in light of the continued termination activity for single-employer DB plans, we have added information for sponsors that are terminating (or that may terminate in the near future) to consider (see Section III). Many of these changes are designed to simplify plan administration and thereby help facilitate the ultimate liability transfer of accrued benefits to one or more insurers in a timely, cost-effective manner.

Many referenced items include citations to applicable guidance.

To the extent that any plan amendments modify information in an existing summary plan description (SPD), a timely summary of material modifications or updated SPD should also be considered.

While this summary is intended to reflect our understanding of certain required or permissive updates to retirement plan documents, the nature, extent, and associated timing of any necessary or discretionary plan amendments to reflect legislative, regulatory, administrative, or case law developments can be quite specific depending on the terms and the operational history of each qualified plan. Moreover, plan requirements and due dates can change or be interpreted differently following issuance of this Year-End Update. As a result, clients may wish to use this summary to evaluate, in consultation with their retirement plan advisers, how their tax-qualified retirement plans are impacted. Any member of Aon's Retirement Legal Consulting & Compliance practice can assist with such a review.

[1] Retirement plans subject to collectively bargaining should not be amended for a "discretionary" change described in this summary before the sponsor discusses any proposed changes with labor counsel and determines if such changes are subject to "effects bargaining" thereby triggering notice and negotiation with each applicable union.

Contents

I. Required Amendments for DB and DC Plans

The summary provided below considers certain announcements as well as recent statutory and regulatory changes and case law that may need to be reflected in a plan amendment or updated restatement of a plan that is intended to be qualified under Section 401(a) of the Internal Revenue Code of 1986, as amended (Code), is subject to Section 403(b) of the Code, or is otherwise subject to Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA). Additional resource or other background material is also included. Plan amendments to address changes made by the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) or the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) generally must be adopted by the end of the 2022 plan year. Governmental plans and plans covering collectively bargained employees generally have delayed adoption dates (*e.g.*, end of the 2024 plan year).

Change	Reference	Requirement	Comment	Links to Additional Guidance
The Pension Benefit Guaranty Corporation (PBGC) issued final regulations on September 9, 2020 announcing that after December 31, 2020 it will discontinue the monthly calculation and publication of lump-sum interest rate assumptions used by private sector single employer DB plans (sometimes referred to as the "Appendix B rates" under ERISA § 4022)	PBGC Final Regulations under ERISA § 4022	Sponsors should evaluate if plan amendments between now and year end 2020 will be prudent. While many DB plans no longer use or reference PBGC rates in calculating distributions (*e.g.*, lump sums), a percentage of plans continue to develop lump sums and other distributions by reference to PBGC rates. Depending upon current plan language, sponsors that wish to move from a PBGC "Appendix B" interest rate to a Code § 417(e) interest rate effective January 1, 2021 may find that a plan amendment is not required based on current plan language, the plan's prior operational history and the effect of the PBGC's rule making change. Sponsors considering adoption of the PBGC's new Appendix C rates may wish to revise language in their plan documents to clarify such intent. However, if current plan provisions would not result in a desired "automatic" change to Appendix B or C, as applicable, any plan amendment to effectuate the change should comply with rules regarding the protection of current accrued benefits.	Prior to 1994, DB plans were generally required to calculate lump-sum distributions using interest rates published by the PBGC. Around that time, the mandated PBGC methodology was removed from the Code and replaced with a new methodology. Nevertheless, some private employer pension plans decided at that time to "grandfather" the use of PBGC interest rates when developing benefit payments subject to Code § 417(e) (*e.g.*, lump sums) through the use of a formulation which compares the result derived from the use of PBGC interest rate assumptions and interest rate assumptions specified under Code § 417(e)(3) to provide a "greater of" lump sum. The PBGC regulations note the IRS has confirmed the "anti-cutback" rules under Code § 411 are not violated if a plan's application of the new PBGC regulation results in a change in the interest rate used to develop lump-sum payments where the plan currently provides that a lump sum is determined using the "PBGC's lump-sum interest rate." Based on the express terms of the "anti-cutback" relief offered by the IRS, however, Code § 411 issues may need to be addressed if plan sponsor determines that an amendment is required or advisable. In addition, sponsors of hybrid plans (*e.g.*, cash balance plans) that currently provide for PBGC rates governing the conversion of lump-sum values to annuities should determine how to interpret those plan provisions and whether they should be amended for future accruals. Plan sponsors considering year-end amendments should also evaluate (very soon) if the adoption of an amendment, if any, will trigger notification rights to affected participants under ERISA § 204(h) where the change in actuarial factors may result in a significant reduction in the future rate at which benefits accrue.	***Regulatory Guidance*** Lump-Sum Payment Assumptions FR - 85 Fed. Reg. 55587 ***Aon Article*** "New PBGC Rule Updates Assumptions Used to Pay Lump Sums" 4Q2020 Legal Consulting & Compliance *Quarterly Update*

Change	Reference	Requirement	Comment	Links to Additional Guidance
Required Beginning Date (RBD) Extended from April 1 Following Year of Attainment of Age 70½ to April 1 Following Year of Attainment of Age 72 for Participants Attaining Age 70½ after 2019	SECURE Act § 114	Minimum distribution rules under Code § 401(a)(9) require commencement of retirement benefits no later than the RBD. Prior to the SECURE Act, employees have been required to commence as of the April 1 of the calendar year following the later of (i) the calendar year in which they attain age 70½; or (ii) if they are not a 5% owner, the calendar year in which they retire. The SECURE Act extends the RBD for individuals attaining age 70½ after December 31, 2019 (*i.e.*, born after June 30, 1949) to the April 1 of the calendar year following the later of the calendar year in which the participant attains age 72 or (if not a 5% owner) retires.	The new RBD rules provide the latest date by which benefits must commence—sponsors of qualified plans are not required to amend their plans to allow otherwise eligible participants to defer commencement until the new, later RBD. Nevertheless, most DC plan sponsors will likely amend their plans to allow at least certain participants to delay benefit commencement until the latest RBD permitted by the SECURE Act. DB Plan sponsors already facing challenges to pay benefits timely to vested terminated or missing participants, however, should evaluate the likely impact to plan administration before deciding to adopt the SECURE Act change to allow eligible participants to defer commencement to the new, later RBD. Additionally, it is important to note that while the SECURE Act revised the definition of the RBD for participants born after June 30, 1949, the SECURE Act did not change the long-standing qualification requirement that most DB plans provide for an actuarial increase for the period from April 1 following the year a participant attains age 70½ until actual benefit commencement. This actuarial increase requirement continues to apply to all participants regardless of their RBD. Therefore, before amending their DB plans to permit otherwise eligible DB plan participants to defer benefit commencement until their new, latest RBD, employers should assess the resulting administrative implications and plan costs that the amendment may have. Also, note that distributions prior to age 72 under the SECURE Act changes for eligible participants are not RMDs for purposes of the rollover rules. Finally, plan sponsors should determine whether the new rules apply to the surviving spouses of participants who died prior to 2020 but would have attained age 70½ after December 31, 2019 (the SECURE Act simply provides that the new rules apply for individuals who attain age 70½ after December 31, 2019). The IRS has not yet issued guidance on this possible issue.	***Legislation*** H. R. 1994 - SECURE Act ***Regulatory Guidance*** IRS Notice 2020-68 ***Aon Articles*** "SECURE Act Becomes Law in Year-End Spending Bill" 1Q2020 Legal Consulting & Compliance *Quarterly Update* *Quarterly Update* - Special Edition "IRS Provides Guidance on SECURE Act and Miners Act" 4Q2020 Legal Consulting & Compliance *Quarterly Update*

Change	Reference	Requirement	Comment	Links to Additional Guidance
Modification of Required Distribution Rules for Non-Spousal Beneficiaries (DC Plans)	SECURE Act § 401	DC plans (*e.g.*, 401(k) and 403(b) plans) will often need to distribute a participant's entire vested account balance within 10 years after the participant's death for employees who die after 2019 without a surviving spouse beneficiary. The new 10-year rule does not apply if the beneficiary is an eligible beneficiary and benefits commence, over the life or a period not exceeding the life expectancy of the participant or over the lives or a period not exceeding the joint life expectancy of the participant and eligible beneficiary, within one year after the participant's death (in the case of a non-spousal eligible beneficiary) or by the end of the year in which the participant would have attained age 70½ or 72, as applicable (in the case of a spousal beneficiary).	For purposes of the exception to the new 10-year rule, an eligible beneficiary is a beneficiary who is (i) a surviving spouse; (ii) a minor child; (iii) "totally and permanently" disabled; (iv) chronically ill; or (v) not more than 10 years younger than the employee. Under the SECURE Act, minor children will generally lose their status as eligible beneficiaries (and will be subject to the 10-year rule) upon reaching the age of majority. These new RBD rules do not apply to employees who died prior to 2020.	***Legislation*** H. R. 1994 - SECURE Act
Expansion of Deferral Opportunities in 401(k) Plans for Long Service Part-Time Employees	SECURE Act § 112	Part-time employees who complete more than 500 hours of service for three consecutive years starting in 2021 (excluding periods prior to January 1, 2021) will be eligible to participate in their employer's 401(k) plan for purposes of making elective deferrals. However, all service (even prior to January 1, 2021) generally must be taken into account for purposes of determining the employee's vested interest in employer contributions (if any) under the plan, unless the service can be disregarded under "traditional" pre-SECURE Act service crediting rules.	This new service counting rule for long service part-time employees applies to elective deferrals under 401(k) plans only and does not apply to other retirement plans. The general age and service participation rules under Code § 410(a) that have long applied to all qualified retirement plans (*e.g.,* age 21 and 1,000 hours of service) continue to apply. For example, a part-time employee, age 25, who completes 501 hours in 2021 and then more than 1,000 hours in 2022 would generally need to participate in the employer's 401(k) plan no later than the first applicable entry date in 2023, since the one-year service requirement that applies under Code § 410(a) would have been satisfied in 2022. Employers may, but are not required to, make any employer contributions for long service part-time employees. In addition, employers may exclude long service part-time employees from the nondiscrimination rules of Code § 401(a)(4), ADP testing under Code § 401(k), and ACP testing under Code § 401(m), as well as the minimum coverage rules of Code § 410(b).	***Legislation*** H. R. 1994 - SECURE Act

Change	Reference	Requirement	Comment	Links to Additional Guidance
Hardship Withdrawals Bipartisan Budget Act of 2018	Code §§ 401(k) and 403(b)	Consistent with the Bipartisan Budget Act of 2018, final IRS regulations eliminate the rule under which a hardship distribution is deemed necessary to satisfy a financial need only if elective deferrals and employee contributions are suspended for at least six months. Effective January 1, 2020, plans cannot suspend an employee from making elective and employee contributions after receiving a hardship distribution. Also, effective January 1, 2020, the final regulations require that employees represent they have insufficient cash or other liquid assets reasonably available to satisfy the need for the withdrawal (which representation is not contradicted by actual knowledge of the plan administrator), and that they obtain all other currently available non-hardship distributions under the plan and all other plans of deferred compensation, whether qualified or nonqualified, maintained by the employer in addition to other requirements. Hardship distributions from 401(k) plans and 403(b) annuity contracts may now include qualified nonelective contributions (QNECs), qualified matching contributions (QMACs), earnings on such amounts, and (for 401(k) plans) earnings on employee elective contributions. Plan sponsors also have the option of providing certain other hardship distribution conditions, including a requirement that participants obtain any available plan loans prior to a hardship distribution.	The final IRS regulations are included in the 2019 RA List. Therefore, the deadline to update a plan for a required change will be December31, 2021. Note that these regulations include potential amendments that are both required and discretionary. An appropriate plan amendment is required by the end of the plan year in which a discretionary change is operationally put into effect (*e.g.*, by December 31, 2020, for calendar year plans, with respect to any discretionary hardship withdrawal changes that are effective in 2020) unless such change is "integrally related" to a plan qualification requirement. Sponsors should be aware that the IRS has indicated in Revenue Procedure 2020-9 that the concept of "integrally related" will be interpreted very broadly, so that most hardship-related plan amendments can be delayed until the end of 2021. Note that, because the Bipartisan Budget Act of 2018 did not amend Code § 403(b), QNECs and QMACs in a 403(b) custodial account continue to be ineligible for hardship distributions even if later transferred to an annuity contract. Also, earnings on elective contributions under a 403(b) plan are ineligible for a hardship distribution.	***Legislation*** Bipartisan Budget Act of 2018 ***Regulatory Guidance*** Final Regulations for §401(k)-1: FR - 84 Fed. Reg. 49651 ***2019 Required Amendments List*** IRS Notice 2019-64 ***Timing of Amendments*** Revenue Procedure 2016-37 ***Aon Articles*** "401(k) Hardship Distributions—New Developments" 4Q2018 Legal Consulting & Compliance *Quarterly Update* "Application of Proposed Hardship Distribution Regulations to 403(b) Plans" 1Q2019 Legal Consulting & Compliance *Quarterly Update* "Hardship Withdrawals a Little Less Hard for Plan Sponsors" 4Q2019 Legal Consulting & Compliance *Quarterly Update* "IRS Guidance Extends Deadline for Hardship Withdrawal Plan Amendments" 1Q2020 Legal Consulting & Compliance *Quarterly Update* Update: New Hardship Withdrawal Rules Create Fewer Hardships for Plan Sponsors *Journal of Deferred Compensation* (Winter 2020)

II. Discretionary Amendments for DB and DC Plans

The summary provided below considers certain recent announcements or law changes that may involve discretionary amendments to an employer's DB or DC plans. To the extent that a plan sponsor has made any discretionary design changes or operationally introduced other discretionary features to its retirement plan that are effective during 2020, the sponsor should be certain that it has adopted conforming plan amendment language no later than the last day of the applicable plan year (*e.g.*, by December 31, 2020, for calendar year plans). Note, however, that certain discretionary changes relating to provisions of the SECURE Act or the CARES Act may apparently be delayed until at least the end of the 2022 plan year, consistent with the provisions of those recent laws. Aon anticipates that the 2020 RA List, when published, will clarify due dates for these and other amendments.

Change	Reference	New Guidance	Comment	Links to Additional Guidance
Qualified Plan Lump-Sum Windows/Payments—Potential Impact on Certain Grandfathered Nonqualified Plans	Code § 409A	Some nonqualified retirement plans that decided to "grandfather" or exempt pre-2005 accruals from being subject to Code § 409A also link the time and form of payment in the grandfathered plan to the time and form of payment in the employer's qualified plan. To maintain its grandfathered status, the nonqualified plan may not be materially modified.	The amendment of a qualified DB plan to add a temporary lump-sum window generally should not be applied to an otherwise linked nonqualified plan, since the addition of a temporary right to a lump-sum payment under the qualified plan may represent an indirect material modification of the grandfathered nonqualified plan subjecting the nonqualified plan to Code § 409A. Therefore, consideration should be given to excluding from the window any grandfathered participants in the linked nonqualified plan if retention of grandfathered status is intended.	***Aon Publications*** IRS Releases Final Section 409A Regulations (May 2007) Nonqualified Deferred Compensation 2007 Strategic Planning for IRC Section 409A
Coronavirus-Related Distributions (CRDs) in the CARES Act	CARES Act § 2202	"Qualified individuals" (*e.g.*, participants diagnosed with SARS-CoV-2 or COVID-19 or who suffered an adverse financial condition because of SARS-CoV-2 or COVID-19) may treat a distribution (or series of payments) of up to $100,000 received in 2020 as a CRD. CRDs are entitled to favorable tax treatment, including income recognition over a 3-year period (2020-2022) and relief from the 10% additional tax under Code § 72(t) for an early distribution, if applicable. A plan is permitted, but not required, to treat an eligible plan distribution as a CRD.	The $100,000 limit must be monitored by plan sponsors across all plans that are maintained within their Code § 414 controlled group. Because of this requirement, sponsors may not want to add a CRD provision to more than one qualified plan as monitoring the $100,000 limit across more than one eligible retirement plan (and perhaps more than one recordkeeping platform) may be difficult. Any payment received by a qualified individual in 2020, including monthly annuity payments paid to retirees who commenced distribution of their accrued benefit (or vested account balance) prior to 2020, can be treated by the individual as a CRD. Additionally, distributions received during 2020 can be treated as a CRD by a qualified individual regardless of whether the plan sponsor amends its retirement plan to add a CRD feature. Although the CARES Act added a special CRD distribution opportunity for eligible DC plans, the law change did not likewise add a new CRD distribution event for DB plans. As a result, CRDs in a DB plan can only be paid to participants who are otherwise entitled to a distribution (*e.g.*, current employees who have attained age 59½ or older, or former employees with a deferred vested benefit) under long-standing tax principles and a plan's specific provisions.	***Legislation*** CARES Act ***Regulatory Guidance*** IRS Notice 2020-50 ***Aon Article*** "Guidance Issued on CARES Act Distributions" 3Q2020 Legal Consulting & Compliance *Quarterly Update*

Change	Reference	New Guidance	Comment	Links to Additional Guidance
Expanded Loan Limits	CARES Act § 2202	There was a temporary increase in the available loan limit under Code § 72(p) from $50,000 (or 50% of the vested account balance or accrued benefit) to $100,000 (or 100% of the vested account balance or accrued benefit) for loans that were originated between March 27, 2020 and September 22, 2020, inclusive.	CARES Act relief also provides for a temporary suspension in loan repayments otherwise due between March 27, 2020 and December 31, 2020, inclusive. The amortization schedule for a qualified individual with a loan can be deferred for up to one year beyond the original schedule.	***Legislation*** CARES Act ***Aon Article*** "Proposed Plan Loan Rollover Regulations Provide Relief" 4Q2020 Legal Consulting & Compliance *Quarterly Update*
Guidance on Waiver of 2020 Required Minimum Distributions (RMDs)	CARES Act § 2203	The CARES Act provides a waiver of RMDs for 2020 under a DC plan (*e.g.*, 401(k) or 403(b) plan) or an IRA. This relief also extends to individuals who turned age 70½ in 2019 and who would have otherwise had to take their first RMD (for 2019) by April 1, 2020. Participants who previously received waived RMDs may roll over the distribution back into the same plan if the plan permits incoming rollovers and the rollover rules are otherwise satisfied.	The IRS has issued a sample plan amendment for DC plans that plan sponsors may adopt to implement this change. The sample amendment, which provides participants and beneficiaries the choice between receiving and not receiving RMDs for 2020, would need to be adopted by the end of the first plan year beginning on or after January 1, 2022. The CARES Act RMD waiver does not apply to DB plans.	***Regulatory Guidance*** IRS Notice 2020-51
In-Service Distributions under DB Plans Permitted upon Attainment of Age 59½	Bipartisan American Miners Act of 2019 ("Miners Act") § 104	Before enactment of the Miners Act, in-service distributions under a DB plan generally could not be paid to participants prior to the attainment of age 62. The Miners Act reduces the permissible age for in-service distributions under a DB plan from age 62 to 59½.	This Miners Act change aligns the permissible minimum age to receive an in-service distribution in DB plans to the long-standing rule for receipt of non-hardship in-service distributions of elective deferrals in 401(k) plans.	***Legislation*** H. R. 1994 - SECURE Act Bipartisan American Miners Act of 2019 ***Aon Publication*** *Quarterly Update* - Special Edition
Disaster Related Distributions (DRDs) for Puerto Rico Qualified Plans	Puerto Rico Internal Revenue Circular Letters 20-09 and 20-29	In response to recent earthquakes that have impacted Puerto Rico and the global COVID-19 pandemic, the Puerto Treasury Department (Hacienda) has authorized favorable tax treatment on DRDs of up to $100,000 covering eligible disaster or COVID-19 expenses. Under the issued guidance, eligible DRDs of up to $10,000 can be paid tax-free to qualifying participants and DRDs above $10,000 but not more than $100,000 are subject to a flat 10% tax.	Plan sponsors that want to amend their Puerto Rico plans to reflect a DRD feature in 2020 must adopt the amendment by December 31, 2020. The DRD amendment does not typically need to be submitted to the Hacienda for approval. One exception to the foregoing would be where the sponsor is making other tax qualification changes to the plan in 2020 that do require approval by the Hacienda (*e.g.*, changes to eligibility or to the benefit or allocation formula). In that latter instance, sponsors should consider submitting the DRD amendment for approval, as well.	***Regulatory Guidance*** Note: The links below are to documents that are only available in Spanish. IR CL 20-09 IR CL 20-29

Change	Reference	New Guidance	Comment	Links to Additional Guidance
Uncashed Checks	Rev. Rul. 2019-19	Revenue Ruling 2019-19 provides that a participant who receives a check for an involuntary cash-out from a tax-qualified retirement plan in a calendar year must include the check amount in taxable income for that year unless the amount distributed is eligible for rollover and is timely rolled over to another eligible retirement plan. The participant's failure to cash the check does not permit the participant to exclude the amount of the distribution from gross income and does not change the plan sponsor's obligation to apply appropriate withholding and to report the income on Form 1099-R. As noted by the IRS in its October 29, 2019 Employee Plans News bulletin, the guidance published in Revenue Ruling 2019-19 only covers mandatory cash-outs. Although not stated in that guidance, the tax principles of constructive receipt may apply in the same manner to all distributions received by participants. Additionally, the IRS indicated that it was continuing to look at other situations involving retirement plans and uncashed checks, including situations involving missing participants.	In light of Revenue Ruling 2019-19 and the possibility for future ERISA claims from participants who may wish to defer or disclaim benefit payments, plan sponsors should consider whether explicit language in the plan document or Special Tax Notice provided to a participant should refer to the determinations reached by the IRS in Revenue Ruling 2019-19. Different considerations may apply with respect to checks that are uncashed by missing participants (compared with participants who actually receive, but fail or refuse to cash, a benefit check or who return the check to the plan sponsor). (See discussion on Missing Participants below.)	***Regulatory Guidance*** Revenue Ruling 2019-19

Change	Reference	New Guidance	Comment	Links to Additional Guidance
RMDs for Missing Participants	Internal Revenue Manual (IRM) § 4.71.1	On November 29, 2019, the IRS issued revisions to its IRM regarding Form 5500 Examination Procedures, including updated provisions regarding searching for missing participants. On October 19, 2017, a directive was issued by the IRS , to its examination agents not to challenge the qualified status of a retirement plan that fails to commence or make a RMD to a missing participant or beneficiary. Consistent with that directive, the revised IRM provides that before a participant is considered missing a plan must conduct a diligent search, including all of the following: (i) search plan, related plan, plan sponsor, and publicly available records or directories for alternative contact information (*e.g.*, address, telephone, email, etc.); (ii) use a commercial locator service, credit reporting agency, or proprietary internet search tool to attempt to locate individuals; and (iii) mail a contact letter to the individual via U.S. Postal Service certified mail to the last known address and any other alternate address found.	Because a potential plan disqualification for failure to pay benefits to missing participants may be avoided if the conditions described in the IRM are satisfied, plan sponsors should evaluate whether additional language should be added to the plan document or to plan requirements documentation to ensure that the steps described in the IRM are taken in the administration of the plan. Plan sponsors should also be aware that while the IRS may not challenge the Code § 401(a) qualification requirements regarding the failure to pay plan benefits to missing participants, the Department of Labor (DOL) may nevertheless, upon a plan investigation, make a determination that the failure to locate and pay missing plan participants represents a fiduciary breach of duty under ERISA. Sponsors also should review their plans to determine whether the benefit of missing participants is considered to be forfeited, subject to restoration if the participant is located, consistent with Treas. Reg. § 1.411(a)-4(b)(6). The existence of this plan language should help the plan to avoid possible escheat claims from applicable state governmental or administrative authorities. Plan sponsors may also wish to consider adding “deemed deferral” language to their retirement plans, including benefit election materials, to potentially have additional time to find missing participants.	***Regulatory Guidance*** IRS (Employee Plans) Memo, October 19, 2017 Internal Revenue Manual § 4.71.1 ***IRS Issue Snapshot*** IRS Procedures Regarding Missing Participants and Beneficiaries
Participant Notice Requirements for Electing Safe Harbor 401(k) Plan Status	SECURE Act § 103	Rules regarding the election of safe harbor 401(k) plan status through the use of nonelective employer contributions have been liberalized.	The safe harbor notice requirement is eliminated with respect to nonelective 401(k) safe harbor plans effective for plan years beginning after December 31, 2019. A 401(k) plan can now be amended to provide nonelective contributions that satisfy the safe harbor requirements under Code § 401(k) for a plan year, if the amendment is adopted before the 30th day before the end of the plan year or, if the nonelective contribution is at least 4% (rather than 3%), before the end of following plan year. It appears (but is not entirely clear) that the notice requirement still applies to 401(k) plans that intend to satisfy the matching contributions safe harbor requirements under Code § 401(m).	***Legislation*** H. R. 1994 - SECURE Act
Increase in 10% Cap for Automatic Enrollment Safe Harbor 401(k) Plans after First Plan Year	SECURE Act § 102	The maximum automatic deferral rate under a qualified automatic contribution arrangement (QACA) safe harbor design 401(k) plan is increased from 10% to 15% (10% for the initial deferral period).	The employer may, but is not required to, amend its 401(k) plan that uses a QACA safe harbor design to increase the maximum automatic deferral rate to 15% after the first deferral period.	***Legislation*** H. R. 1994 - SECURE Act

Change	Reference	New Guidance	Comment	Links to Additional Guidance
Closed Plan Relief	SECURE Act § 205	Nondiscrimination relief is provided with respect to benefit accruals for a closed class, and with respect to benefits, rights, and features for a closed class of participants, under a DB plan that meets certain requirements. Additionally, nondiscrimination relief is provided to contributions in a DC plan (''make-whole'' contributions) provided for certain participants in order to make up, at least in part, for the loss of future DB plan accruals amended to cease or be reduced, if the DB and DC plans meet certain requirements. A closed or frozen applicable DB plan may satisfy the Code's minimum participation requirements if it met the requirements when the plan was closed or frozen.	DB plans containing any groups with benefits or features closed to new entrants and/or with frozen accruals should be reviewed to ensure they satisfy the new rules. Similarly, related DC plans providing make-whole contributions to closed groups from a DB plan should also be reviewed. In addition, amendments to a DC plan may be desirable to provide new make-whole contributions. Appropriate nondiscrimination testing will be required. Care should be taken to ensure that no current or future amendments to closed group benefits or features relying on relief substantially favor HCEs.	***Legislation*** H. R. 1994 - SECURE Act
Pooled Employer Plans	SECURE Act § 101	Effective January 1, 2021, multiple employer DC plans in which unrelated employers participate may become pooled employer plans. A pooled employer plan is not subject to Code provisions that, in effect, could result in the disqualification of the entire plan if one participating employer fails to satisfy applicable qualification requirements. A pooled employer plan is treated as a single plan for ERISA purposes.	Significant changes to an existing multiple employer DC plan would need to be made to convert it to a pooled employer plan. The IRS has been directed to publish model plan language for pooled employer plans but has not yet done so. In addition, a pooled employer plan must have a pooled plan provider that registers as such with the U.S. Department of Labor and IRS. Employers currently sponsoring their own individually designed or IRS preapproved DC plans may wish to consider whether they should join a pooled employer plan after 2020.	***Legislation*** H. R. 1994 - SECURE Act
Distributions for Birth or Adoption of a Child	SECURE Act § 113	DC plans (401(a), 403(b), or governmental 457(b) plans) may offer a new, permissible in-service distribution option of up to $5,000 per child (per parent) for the one-year period beginning on the child's birth or adoption.	Eligible distributions are not subject to the 10% additional tax under Code § 72(t) for early withdrawals. A plan that makes an eligible distribution must accept a recontribution by the recipient if the recipient is eligible to and wants to make a rollover contribution to the plan.	***Regulatory Guidance*** IRS Notice 2020-68 ***Aon Article*** "IRS Provides Guidance on SECURE Act and Miners Act" 4Q2020 Legal Consulting & Compliance *Quarterly Update*

III. Discretionary Amendments to Consider When Terminating DB Plans [2]

Provision	Reference	Possible Update	Comment	Links to Additional Guidance
Plan Administrator	ERISA §§ 404–414	If the plan sponsor or, perhaps less commonly, a single individual is designated as the "plan administrator" under ERISA and the plan document, the sponsor may wish to consider adopting a plan amendment designating a committee to make the selection of the insurer or insurers from which an annuity contract will be purchased.	The nature and financial significance of a plan's selection of a "safest available annuity" provider within the meaning of DOL Interpretive Bulletin 95-1 (as revised in 2008) are such that most plan terminations proceed by having a fiduciary committee of, for example, three or five individuals decide on the eventual annuity placement.	***Regulatory Guidance*** 2509.95-1 Interpretive Bulletin 2008 Amendment to Interpretive Bulletin-95-1
QJSA Election and QPSA Waiver Periods	Code § 417(a) Treas. Reg. § 1.401(a) 20, Q&A 8	If the plan currently has a 90-day maximum benefit election period, plan sponsors may wish to consider adopting a plan amendment to extend the period to 180 days. Also, sponsors may wish to consider amending a plan that provides a QJSA benefit (and modifying election materials) to provide that an election of an optional form and a waiver of the QJSA includes a waiver of the QPSA, in case the participant dies before payments commence. This change should avoid a possible need to revert to payment as a QPSA, if the participant dies prior to the annuity starting date. Plan sponsors who implement a DB plan lump-sum window immediately prior to a plan termination will want to consider whether they will honor a lump-sum election by a participant who dies after making a valid election but prior to commencement.	Expanding the maximum benefit election period from 90 to 180 days may assist with potential DB plan termination election timing, particularly if the sponsor is evaluating whether or not to proceed with a lump-sum window opportunity ahead of the plan termination.	***Regulatory Guidance*** Internal Revenue Manual § 4.72.9.4.5.1: Internal Revenue Manual
Commencement at Age 65	Code §§ 401(a)(14) and 401(a)(9) Treas. Reg. § 1.401(a) 14	Evaluate if plan terms should be revised to clarify whether terminated vested participants are required to commence benefits upon attainment of normal retirement age (*e.g.*, 65) or, alternatively, if there is a right to defer commencement (*e.g.*, to April 1 of the year following attainment of age 70½ or 72, as applicable). If there is a right to defer, the steps necessary to exercise that deferral right should also be described in sufficient detail.	Prior operational history should be evaluated, since a prior, consistent administrative practice may have either required mandatory commencement at normal retirement age or given rise to a right to defer payment of the vested benefit up to the RBD. Evaluation should consider whether any such right to defer may be a protected optional form of payment subject to anti-cutback protections.	***Regulatory Guidance*** Required Distributions: IRS Explanation 9, Required Distributions

[2] Changes to DB plans subject to collectively bargaining should not be amended before the sponsor discusses any proposed changes with labor counsel and determines if such changes are subject to "effects bargaining" and require notice and negotiation with each applicable union.

Provision	Reference	Possible Update	Comment	Links to Additional Guidance
Suspension of Benefits	DOL Reg. § 2530.203-3	If the plan provides that participants who remain in active employment with the sponsor after normal retirement age (*e.g.*, age 65) or are reemployed will receive a suspension of benefits notice meeting the requirements of DOL Reg. § 2530.203-3 such that the participant is not entitled to benefit payments or an actuarial increase for any period payments are not made until after April 1 of the calendar year following the calendar year in which the participant attains age 70½, the sponsor may want to consider amending the plan to eliminate the suspension of benefits provision effective upon the successful transfer of liabilities to one or more insurers. As a result, participants who have attained their normal retirement age (or perhaps earlier) or who are reemployed after the plan termination date may elect to receive in-service benefits from the insurer.	Insurance companies are reluctant (or will decline) to administer a suspension of benefits provision. As a result, plan sponsors should consider adopting a plan amendment before the plan is terminated, effective coincident with the transfer of accrued benefit liabilities from the plan to an insurer, or possibly earlier, such that no suspension of benefit notice will be provided and that any participant who remains in active employment with the employer past their normal retirement age or are reemployed after the plan termination date may elect to commence or (as applicable) continue benefits in-service or have their accrued benefit actuarially increased to reflect the time period that such accrued benefit is not being paid.	***Regulatory Guidance*** Retirement Plan Participant Notices: Suspension of Benefits Notice
Supplemental Disability Benefits	Treas. Reg. §§ 1.411(d)-3(g)(2) and 1.411(d)-4	If the plan provides for a protected optional form of payment triggered by a qualifying disability, evaluate if those terms must or should be retained in the plan. In addition, if the plan provides for additional service to be recognized in certain situations where a participant incurs a qualifying disability, consider whether the plan can be permissibly amended to remove the additional service recognition (*e.g.,* for participants who become disabled after the amendment date).	The employer should determine whether any such plan amendment would be subject to collective bargaining (*e.g.*, hourly plans) or is otherwise not permitted.	***Regulatory Guidance*** Treasury Regulations: Treas. Reg. 1.411(d)-3 Treas. Reg. 1.411(d)-4
Supplemental Death Benefits	Treas. Reg. §§ 1.411(d)-3(g)(2) and 1.411(d)-4	Plan sponsors should check plan provisions regarding what benefits are payable if a participant dies while actively employed. In addition to reflecting certain required QPSA provisions for married participants and required provisions for participants performing qualified military service, the plan may also include certain discretionary provisions regarding a participant's ability to name a non-spousal beneficiary to receive some or all of the participant's preretirement death benefits under the plan.	Preretirement death benefits other than the QPSA preretirement survivor annuity can often be removed from a plan, at least to the extent they apply to non-collectively bargained employees. The proposed elimination of non-QPSA death benefits may require coordination with the changes described above regarding QJSA election and QPSA waiver periods.	***Regulatory Guidance*** Treasury Regulations: Treas. Reg. 1.411(d)-3 Treas. Reg. 1.411(d)-4

Provision	Reference	Possible Update	Comment	Links to Additional Guidance
Plan Termination	IRM § 7.12.1.17.1.2	Plan sponsors should consider modifying the plan to include certain provisions that are specific to terminating plans if those provisions are not already in the plan document, including adding (i) certain relevant plan termination authority to the enumerated list of specified fiduciary duties within the purview of the designated plan administrator (*e.g.*, settling of all liabilities, purchasing an irrevocable annuity contract, etc.); (ii) required provisions applicable to the interest crediting rate under terminating cash balance plans (such provisions, if applicable, must be included); and (iii) provisions regarding the ability to direct any surplus plan assets in a terminating DB plan to a "qualified replacement plan" or to any other eligible purpose that will not trigger a reversion and excise tax.	A terminating plan should be amended before the termination date to include all required or desirable provisions. It is not uncommon for a DB plan to have surplus assets following the final annuity purchase for a variety of reasons, including demographic adjustments made by the sponsor and the insurer. Sponsors should carefully evaluate their options with respect to such surplus assets, particularly where the DB plan previously required mandatory employee after-tax contributions. Additionally, if the terms of the plan document have not allowed reversions for at least five calendar years preceding the plan proposed termination date, excess plan assets must be allocated among plan participants in accordance with existing plan provisions.	***Regulatory Guidance*** Internal Revenue Manual § 7.12.1.17.1.2: Internal Revenue Manual
Cash-outs and Missing Participants	Code § 411 ERISA § 4050	If current plan terms provide for involuntary cash-outs of the accrued benefit only for benefits that are not in excess of $1,000, consider adding a voluntary or involuntary cash-out provision for accrued benefits over $1,000 but not more than $5,000 for participants and surviving beneficiaries. Also, to ensure participants receive their vested accrued benefits, consider amending plans to specify how to handle missing participants and stale-dated checks and implement consistent administrative procedures to locate participants.	In light of the PBGC's administrative position on "missing participants," including unresponsive distributees, sponsors amending plan documents for termination will need to carefully evaluate their policies regarding involuntary cash-outs and stale-dated checks. In many situations, sponsors may decide to direct payment of the accrued benefits of missing participants in a terminated DB (or DC) plan to the PBGC.	***Regulatory Guidance*** Protected Benefits: Treas. Reg. 1.411(d)-4 Missing Participants: ERISA Reg. 4050.101 through 107 PBGC PR 17-12: Missing Participants Program for PBGC-insured Single-Employer Plans

Provision	Reference	Possible Update	Comment	Links to Additional Guidance
Deemed Cash-outs	Code § 411(a)(11)	If a plan does not include "deemed cash-out" language for participants whose employment terminates before they are vested to any extent in their accrued benefit, evaluate whether it would be advisable to add such language to the plan.	DB plans may include a "deemed cash-out" provision. However, ERISA § 4044(d)(2)(A) provides that any amendment increasing the amount which may be distributed to the employer following a plan termination cannot be treated as effective before the end of the fifth calendar year following the date the amendment is adopted. DB plan terms should be reviewed regarding the treatment of participants who previously separated from service and have not yet incurred a five-year break in service when the plan terminates.	***Regulatory Guidance*** Deemed Cash-outs: Improper Forfeiture by Defined Benefit Plans Breaks-in-Service: IRS Employee Plans News (Vol. 2, Fall 2002) PBGC Guidance: PBGC Standard Termination Filing Instructions (footnote 17b) ***Aon Article*** Plan Terminations, Strategic Planning For 2012 and Beyond (*Journal of Compensation and Benefits* July/August 2011)
Plan Expenses	ERISA §§ 401–409	Determining what plan termination expenses are payable from plan assets depends on plan provisions and ERISA requirements. Evaluation should also consider the DOL's enforcement position that expenses associated with a discretionary amendment adopted in connection with a plan termination (*e.g.,* a lump-sum window) are not properly payable from plan assets until the amendment is both authorized and adopted (signed).	Plan sponsors should evaluate whether the timing of a plan amendment to reflect various plan termination changes should be accelerated to follow more closely the decision to terminate. The applicable plan fiduciary should determine what expenses are properly payable from plan assets. The decision to pay expenses with plan assets is a fiduciary decision.	***Regulatory Guidance*** DOL Advisory Opinion 2001-01A DOL Hypothetical Fact Patterns

IV. Other Discretionary Amendments and Considerations (Litigation/Risk Mitigation)

Topic	Comments	Pertinent Litigation/Other Guidance
Forum Selection (Choice of Law) Provisions	Federal court decisions support the enforceability of plan-specified forum selection provisions in ERISA benefit plans provided that adequate notice is given to participants.	*Clause v. Sedgwick Claims Management Services, Inc.,* 2016 WL 213008 (D.C. Ariz. 2016) *Mathias v. Caterpillar, Inc.*, 203 F. Supp. 3d 570 (E. D. Pa. 2016)
Plan-Specified Limitation Periods	ERISA plans may include provisions that reasonably limit the time during which a claim for benefits may be filed.[3] Aon is aware, however, of one situation where a DOL investigator challenged similar language on plan audit and required that the provision be limited to civil actions under ERISA Section 502(a)(1)(B). (If such provisions exist in a plan, they should also be included in the related summary plan description.)	*Heimeshoff v. Hartford Life & Accident Insurance Co.*, 571 U.S. 99 (2013)
Mandatory Arbitration Provisions	Plan provisions requiring participants to seek relief for a claim for benefits or on behalf of a plan for a fiduciary breach can be subject to a mandatory arbitration provision.	*Dorman v. Charles Schwab Corp.*, No. 18-15281 (9th Cir. August 20, 2019)
Cybersecurity	Cybersecurity issues should be carefully evaluated. Several recent complaints filed in federal courts involve alleged cybersecurity thefts from participants' DC plan accounts. For example, a complaint filed in 2019 in federal court in California (*Berman v. Estee Lauder Inc.*) alleged, among other things, that plan fiduciaries breached their fiduciary duties by (i) causing or allowing unauthorized distributions of plan assets from a participant's plan account and failing to confirm authorization for distributions with the plan participant; (ii) not providing timely notice of distributions to the plan participant by telephone or email; (iii) failing to identify and halt suspicious distribution requests; and (iv) failing to establish appropriate distribution procedures to prevent unauthorized distributions, and monitor other distribution processes, protocols, and activities. In another complaint, filed in federal court in` Illinois in 2020 (*Bartnett v. Abbott Laboratories*), the plaintiff similarly alleged the recordkeeper committed a breach of ERISA's fiduciary duties by distributing the participant's benefits to someone other than the participant. A federal court in Pennsylvania held (in *Leventhal al. v. The MandMarblestone Group LLC)* that co-fiduciaries may assert counterclaims for contribution and indemnification where cybersecurity fraud has occurred. These (and other) cases, and general fiduciary considerations, suggest that plan fiduciaries should periodically review the adequacy of plan provisions and procedures that are designed to safeguard plan assets (which, in addition to plan benefits, may include personally identifiable participant information) against cybersecurity and other threats, and determine whether any amendments are desirable.	*Berman v. Estee Lauder Inc. et al.,* Case No. 3:19-cv-06489 (N.D. Cal., filed October 9, 2019) *Bartnett v. Abbott Laboratories et al.,* Case No. 2020 CV 2127, (N.D. Ill., filed April 3, 2020) *Leventhal, et al. v. The MandMarblestone Group LLC, et al.,* Case No. 18-cv-2727, 2020 WL 2745740 (E.D. Pa., May 27, 2020)
Actuarial Equivalence	Several class action lawsuits have been filed between 2018 and 2020 alleging that actuarial equivalence definitions used by DB plans for benefit calculation purposes are out-of-date and unreasonable. Typical allegations include breach of ERISA fiduciary duty claims and demands for benefits to be recalculated or for increased amounts to be paid.	Refer to Appendix A for a detailed list of the class action lawsuits.

[3] Any decision made by the plan in response to a formal claim for benefits or on the appeal of a denied claim should include reference to the plan terms that seek to enforce a choice of law, plan-specified limitations period, or mandatory arbitration provisions. Beyond these threshold disclosures, plan sponsors may wish to also consider other opportunities to communicate and highlight these types of plan changes to participant.

V. IRS Determination Letter Guidance—Reminder

The IRS announced significant changes to the determination letter program for individually designed qualified plans beginning in 2015. Announcement 2015-19, Notice 2016-03, Rev. Proc. 2016-37 (subsequently modified by Revenue Procedure 2019-20), and Revenue Procedures 2020-4 and 2020-5 (pages 148 and 241, respectively in Internal Revenue Bulletin 2020-1) provide related advice to taxpayers, including procedures for requesting determination letters from the IRS.

- In Announcement 2015-19, the IRS advised that it eliminated the then-current staggered five-year determination letter remedial amendment cycle for ongoing individually designed qualified retirement plans. Effective February 1, 2017, determination letter filings for individually designed retirement plans were limited to determinations regarding initial qualification (*e.g.*, at plan establishment) and at plan termination.
- Notice 2016-03 provides further guidance for employers that:
  - Rely on a determination letter issued prior to January 4, 2016;
  - May establish or adopt a pre-approved DC plan; and
  - Are in a controlled group or affiliated service group and previously made a "Cycle A" election to file a determination letter request on a consolidated basis by January 31, 2017
- The IRS issued further guidance in Revenue Procedure 2016-37, which clarifies, modifies, and supersedes Revenue Procedure 2007-44 and is generally effective January 1, 2017. Revenue Procedure 2016-37, among other things, provides guidance regarding the determination letter program and remedial amendments for individually designed qualified plans and revises the remedial amendment cycle system for pre-approved qualified plans.
- Revenue Procedure 2019-20 modifies the ongoing IRS determination letter program for individually designed plans by also permitting (in addition to determination letter requests for initial plan qualification and for qualification upon plan termination) a determination letter application if two or more plans have been merged into a single plan, provided that the plan merger involves plans sponsored by two or more previously unrelated entities and is in connection with a corporate merger, acquisition, or other similar business transaction among those entities. A plan sponsor is eligible to obtain a determination letter for the merged plan only if the plan merger described above is completed by the end of the plan year after the plan year that includes the corporate merger or other similar business transaction, and the determination letter application is submitted to the IRS by the end of the first plan year of the merged plan that begins after the date of the plan merger.
- Revenue Procedure 2020-4 updates Revenue Procedure 2019-4 and makes changes to:
  - The determination letter program; and
  - The Voluntary Correction Program (VCP) submission fees under the IRS Employee Plans Compliance Resolution System (EPCRS)
- Revenue Procedure 2020-9 clarifies which amendments are treated as integral to a plan provision that fails to satisfy the qualification requirements of the Code by reason of a change to those requirements made by the recently published regulations under Sections 401(k) and 401(m) relating to hardship distributions of elective deferrals. This revenue procedure also extends the deadline, applicable to pre-approved plans, for adopting an interim amendment relating to those regulations.

Aon's Retirement Legal Consulting & Compliance colleagues are available to assist plan sponsors with required updates to an individually designed DB or DC plan or the merger of one individually designed plan into another and, where available, assist with IRS determination letter submissions. Additionally, Aon's Retirement Legal Consulting & Compliance colleagues are available to review of plan documents and related administrative and operational requirements to assess compliance. This may be particularly helpful to plan sponsors in the absence of future IRS determination letters regarding the qualification of most ongoing individually designed plans.

VI. Other IRS Guidance

The IRS has previously issued certain publications to assist plan sponsors (as well as IRS examination specialists) identify various issues regarding DB and DC plans that might impact the plan's tax-qualified status. The worksheets attached to each publication were provided by the IRS to describe complex plan qualification requirements generally and to help identify possible issues and deficiencies regarding the last regular IRS cycle submission period (Cycle A Submission Period—February 1, 2016 – January 31, 2017). It is important to note that there may be issues not mentioned in the worksheets that could affect a plan's qualification. The following provides a link to each publication:

Publication No. (Rev. April 2016)	Description	Reference
Publication 4962	Explanation No. 2A: Minimum Vesting Standards, DB Plans	Code § 411
Publication 4964	Explanation No. 5B: Permitted Disparity	Code § 401(l)
Publication 4965	Explanation No. 5A: Safe Harbor Nondiscrimination Requirements, DB Plans	Treas. Reg. § 1.401(a)(4)-3(b); Code § 414(s)
Publication 5139	Explanation No. 14: Section 436 Limitations, DB Plans	Code § 436
Publication 6388	Explanation No. 1: Minimum Participation Standards	Code § 410(a)
Publication 6389	Explanation No. 2: Minimum Vesting Standards (DC Plans)	Code § 411
Publication 6391	Explanation No. 3: Joint and Survivor Determination of Qualification	Code §§ 401(a)(11) and 417
Publication 6392	Explanation No. 4: Miscellaneous Provisions	Various sections of the Code and Regulations
Publication 6393	Explanation No. 5: Safe Harbor Nondiscrimination Requirements, DC Plans	Treas. Reg. § 1.401(a)(4)-2(b); Code § 414(s)
Publication 7001	Explanation No. 6: Limitations on Contributions and Benefits	Code § 415
Publication 7002	Explanation No. 7: Top-Heavy Requirements	Code § 416
Publication 7003	Explanation No. 8: Employee Leasing	Code § 414(n)
Publication 7004	Explanation No. 9: Required Distributions	Code § 401(a)(9)

Appendix: Actuarial Equivalent Class Action Case Summary

Case Name	Chief Complaint	AE Def	Case Filed	Motion to Dismiss Status	Class Action Status	What's Next
Torres, et al v. American Airlines	Option factors unreasonable, old mortality table	UP-84/5%	12/11/2018	**Denied** 8/7/2019	Class Action Certification **Denied** 5/26/2020	Parties Settled Case after Class Action denial **Case dismissed** 7/17/2020
DuBuske v. PepsiCo	Flat option factors out of date	Defined factors	12/12/2018	**Granted** 9/25/2019		**Case dismissed** 11/22/2019
Smith v. U.S. Bancorp	Early retirement reduction factor unreasonable	Defined factors	12/14/2018	**Denied** 6/27/2019	Must file by 11/2/2020 – extension requested	Settlement Conference
Masten v. MetLife	Option factors unreasonable, old mortality table	71-GAM/6%	12/30/2018	Filed 2/21/2019 **Still pending**		Still arguing Motion to Dismiss; multiple motions to submit decisions from other cases
Smith v. Rockwell Automation	Option factors unreasonable, old mortality table	71-GAM/7% UP-84/6%	4/8/2019	**Denied** 2/10/2020 Judge rejected argument that assumptions only have to be reasonable when put in plan	Must file by 2/15/2021	Scheduling order 4/8/2020 – gives lots of 2021 deadlines, no trial date set
Duffy v. Anheuser-Busch	Option factors unreasonable, old mortality table	UP-84/6.5% or 7%	5/6/2019	**Denied** 3/27/2020	Must file by 1/8/2021	Joint scheduling order 4/13/2020. Discovery in 2020, no trial date set
Herndon v. Huntington Ingalls	Option factors unreasonable, old mortality table	71-GAM/6%	5/20/2019	**Denied** 2/20/2020 Summary Judgment Motion filed 1/27/2020 Magistrate recommends denial 8/28/2020	**Class Certified** 2/25/2020 Parties agreed, limited to one collectively bargained group for specific time period (5/20/2013 – 1/17/2020)	Discovery

Case Name	Chief Complaint	AE Def	Case Filed	Motion to Dismiss Status	Class Action Status	What's Next
Cruz v. Raytheon	Option factors unreasonable, old mortality table, factors out of date	Factors; 71-GAM/ PBGC interest rate; 71-TPF&C/7%	6/27/2019	**Denied** 1/18/2020	Stayed	Discovery scheduling order entered 2/3/2020 – limited to one issue (0.90 conversion factor used for representative plaintiff). All other issues stayed. Dates range from 3/6/2020 – 9/21/2020
Belknap v. Partners Healthcare System	Option factors unreasonable, old mortality table	51-GAM projected to 1960/ 7.5%	6/28/2019	First Motion to Dismiss **Denied** 1/24/2020 New Motion to Dismiss **Denied** 8/5/2020		Discovery
Eliason v. AT&T	Option factors unreasonable	Factors	10/1/2019	First Motion to Dismiss filed 12/2/2019 – **Voluntarily withdrawn** Plaintiffs filed amended complaint 12/23/2019 New Motion to Dismiss filed 1/29/2020. **Granted** 9/28/2020		**Case Dismissed** 9/28/2020; Four named plaintiffs took lump sums and weren't impacted by the optional form factors at issue; early retirement factors deemed reasonable
Brown v. UPS	Option factors unreasonable, old mortality table	83-GAM/6%; others for grandfathered group	1/31/2020	Filed 4/14/2020 **Granted** 8/27/2020		**Case Dismissed** 8/27/2020 for failure to exhaust administrative remedies (claims procedure)
Scott v. AT&T	Option factors unreasonable	Factors	10/12/2020			Defendants will most likely file a Motion to Dismiss

Aon Contacts

For additional information, please contact:

Thomas Meagher	Senior Partner, Retirement – Legal Consulting & Compliance	thomas.meagher@aon.com
Hitz Burton	Partner, Retirement – Legal Consulting & Compliance	hitz.burton@aon.com

About Aon

Aon plc (NYSE:AON) is a leading global professional services firm providing a broad range of risk, retirement, and health solutions. Our 50,000 colleagues in 120 countries empower results for clients by using proprietary data and analytics to deliver insights that reduce volatility and improve performance.