

FYI® In-Depth

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2015 Planning for ERISA Single-Employer Defined Benefit Plan Operations

The calendar provided in this *For Your Information* will help you set up your own schedule of activities to address as the year progresses so that you do not miss important deadlines for your qualified plans. As you evaluate the various tasks, you can confirm suitable deadlines with your vendors for getting them done. Our recently updated [Reporting and Disclosure Guide](#) will also aid you in identifying and addressing other activities that are event-based and participant specific. As you make your plans, in addition to the calendar deadlines, we have a number of key issues for you to consider as we head into 2015.

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Review of Plan Administration



In addition to checking to ensure routine tasks are monitored in accordance with plan terms and administrative policies — such as making required minimum distributions, sending suspension of benefits notices, and attending to the myriad annual reporting and disclosure requirements — administrators must be on the alert to some not-so-common tasks. Here are some key areas to watch:

Implement benefit restrictions if funding shortfall or top 25 highly compensated employees rules apply. Plans that encounter funding shortfalls below select thresholds are required to hold the line on making lump sum distributions and certain other options. Our [October 28, 2009](#) *For Your Information* provides an overview of the Code section 436 distribution restrictions. In addition, there are distribution limitations for the employer's (controlled group) top 25 highly compensated employees. These restrictions in one form or another have been in the IRS regulations dating before ERISA, but occasionally fall under the radar screen. Consider putting a date on your calendar to assess whether these restrictions apply.

Key Point: The Highway and Transportation Funding Act of 2014 (HATFA) extends the interest rate adjustments introduced by the 2012 Moving Ahead for Progress in the 21st Century Act (MAP-21). The

changes are optional for 2013 minimum funding and/or benefit restriction purposes and mandatory for 2014. Take a careful look at the options available for compliance to assure the plan is operated correctly and in accordance with the plan sponsor's objectives. Our [September 15, 2014 For Your Information](#) reviews the available options.

Get set to trigger automatic payments. In addition to the automatic cashout of small payments, two situations may trigger payments without affirmative action by plan participants. Many defined benefit plans specify that deferred vested participants are required to commence benefit distributions when reaching the plan's normal retirement age. Plan administrators need to provide suitable qualified joint and survivor (QJSA) notices prior to that date and then put the benefit in pay status as the plan requires. In the absence of a waiver of the QJSA, the plan would automatically begin distributions in that form. The second trigger for automatic payments would be for active participants who are required to commence distributions under the Code section 415 regulations because their benefits are approaching the 100% high-three-year average compensation limit. Plans are not permitted to forfeit previously accrued benefits and for post-normal retirement date periods must either suspend benefits (if appropriate under the terms of the plan), or put the benefit in pay status.

Remind participants of any opportunity to name beneficiaries. Many a plan administrator has faced having to sort out competing claims for death benefits because of unclear or missing beneficiary designations. Most plans must make the participant's spouse the default beneficiary. If the plan offers a choice, and the participant wants plan benefits diverted to someone else such as children, parents, or a favorite charity, a properly executed beneficiary designation is the ticket. Make a point of reminding plan participants to update their designations.

Identify lost participants with vested benefits. Returned plan notices, statements, or distribution checks should be researched timely to identify lost participants. The sooner the search is started, the more likely that a terminated participant whose address has changed can be located. Funds covering any check that remains outstanding for a significant period of time should be redeployed to the trust or, depending on the amount, rolled into an IRA. Adjustments will be needed to address any income tax that had been withheld. On August 14, 2014, the DOL issued guidance on how fiduciaries of terminated defined contribution plans can try to locate missing participants / beneficiaries and distribute balances that offers good advice for defined benefit plan fiduciaries as well. With the removal of the IRS and SSA letter-forwarding services, the use of internet search tools is required. (See our [September 3, 2014 For Your Information](#).)

File Form 8955-SSA electronically. On September 29, the IRS finalized regulations on electronic filing requirements for Form 8955-SSA. Under the IRS' final regulation, any filer of 250 or more forms per year must electronically file Form 8955-SSA to report deferred vested participants using the IRS Filing Information Returns Electronically (FIRE) system. The IRS final regulations apply to Form 8955-SSA for plan years that begin on or after January 1, 2014, but only for filings with a deadline (not including extensions) on or after July 31, 2015. Additional information is in our [October 17, 2014, For Your Information](#).

Obtain penalty relief for late filings of Form 5500, 5500-SF, or 8955-SSA. On May 9, 2014, the IRS issued Notice 2014-35 updating the terms for obtaining relief from IRS penalties for failure to timely comply with the annual reporting requirements of the Code for ERISA Title I retirement plans. To obtain relief, the delinquent Form 5500/5500-SF filing must be submitted to the DOL electronically under the DOL's DFVC program and the delinquent Form 8955-SSA for that year must be filed on paper with the IRS. If these actions are taken, the IRS will not impose penalties for late filings for a year that a filing was required. For any Form 8955-SSA, the filer must

check the box on Line C, Part I (Special extension) and enter “DFVC” in the space provided on Line C. The delinquent Form 8955-SSA must be submitted to the IRS no later than 30 days after completing the DFVC filing for the late Form 5500/5500-SF or December 1, 2014, whichever is later. (See our [June 16, 2014 For Your Information](#).)

Address foreign asset reporting obligations. In an effort to address tax evasion, money laundering, and terrorist financing, compliance requirements have expanded to include the reporting of assets held by foreign financial institutions (including retirement plans) and benefit distributions to foreign individuals. Plan fiduciaries will want to assess compliance with these requirements, particularly the Foreign Account Tax Compliance Act (FATCA), the Report of Foreign Bank and Financial Accounts (FBAR), and regulations issued by Treasury’s Office of Foreign Assets Control (OFAC). Our [June 12, 2014 For Your Information](#) outlines these requirements.

Update fidelity bond. A fidelity bond is required for every fiduciary of an employee benefit plan and every person who handles funds or other property of such a plan, with a few exceptions. On an annual basis, plans that require a fidelity bond should review existing bonds to ensure they have at least the required minimum coverage and that the elected level is appropriate for the plan.

Plan Amendments, Filings, and Documentation

Do your plan documents correctly describe the plan provisions as intended, and are summary plan descriptions and administrative procedures in sync with the official documents?

Evaluate the need for plan amendments — and deadlines. IRS procedures call for executing amendments by the end of the plan year for discretionary amendments and provide extended amendment periods generally based on the employer’s tax filing deadline for modifications necessary to address changes in legal requirements. If you implemented discretionary changes during the year, make sure documentation is inked before the plan year is over.

Same-sex marriages: Some plan sponsors are finding that plan language defining “spouse” needs to be revised because of the Supreme Court *Windsor* opinion. IRS provided guidance on the *Windsor* change that allows plan sponsors to limit recognition of same-sex marriages prior to June 26, 2013. The deadline for amending retirement plans with terms that conflict with the *Windsor* decision is generally December 31, 2014. See our [April 9, 2014 For Your Information](#) about that IRS guidance.

Cash balance and other hybrid plans: Next up for 2015 will be amendments to come in line with the market rate of return final regulation for hybrid plans. IRS’ regulation anticipates plan sponsors will get any necessary revision in place before the January 1, 2016 effective date (for calendar year plans). See our [October 2, 2014 For Your Information](#) for details on the new rules.

If you miss making required amendments, consider IRS’ correction program. The applicable fee for a Voluntary Correction Program submission that contains only nonamender failures is reduced by 50% if it is submitted within a one-year period following the expiration of the plan’s remedial amendment period for complying with such changes.

Get IRS review of your document. Do you have an up-to-date determination letter from the IRS? The IRS permits plan sponsors of individually designed plans to request a determination on the tax qualification of a retirement plan generally just once every five years. Individually designed plans of employers with EINs ending in “4” or “9” (and some others) should be alert to the upcoming January 31, 2015 deadline for their five-year-cycle review. If you

submit a request after this date, your application will be moved to the bottom of the pile. Likewise, plan sponsors, may want to get a jump on Cycle E filings for individually designed plans of employers with EINs ending in a "5" or "0." Submissions to the IRS for a determination letter must include a restated plan document (working copies are no longer accepted). Therefore, although the filings for these plans are not due until January 31, 2016, it would be wise to work on the plan restatement during 2015.

Make sure your summary plan description matches your plan document. In 2011, the Supreme Court held (in *Amara*) that a summary plan description (SPD) is not a plan document, so that the plan document language prevails in the case of a conflict. However, the SPD still played an important role; the Court found a way to compensate plan participants based on the SPD and other employee disclosures rather than the actual plan document. This interpretation was applied in 2013 in the Sixth Circuit (in *Liss*), where the court held that the SPD is still "one of the documents or instruments governing the plan," and in 2012 the Ninth Circuit (in *Skinner*) held that the administrative committee had no fiduciary duty to enforce the terms of the SPD instead of the terms of the plan master document, but it may have breached its duty to provide plaintiffs with an accurate and comprehensive SPD.

In sum, the SPD can still play an important role in ERISA disputes, and a well-drafted and well-integrated plan and SPD will minimize successful challenges to plan determinations or fiduciary breaches. Make sure it, or a timely summary of material modifications (SMM), reflects any plan amendments made during the plan year.

Key Point. A factor in many plan challenges is the statute of limitations for taking an official complaint to the federal courts for review. Sponsors should confirm that plan documents state a statute of limitations period and announce that period in summary plan descriptions as well as benefit claim denial communications.

Assemble and maintain documentation. Keeping plans up-to-date is key — but don't toss the old documents. Plan participants and beneficiaries may request prior plan materials and plan administrators need to address requests within a 30-day window. Failure to comply can lead to legal challenges with the court holding the plan administrator who fails to comply personally liable for up to \$110 per day per affected person from the date of failure. In addition to plan documents, SPDs, and SMMs, be sure to create and maintain records of participant data such as proof of benefit distributions, benefit elections, and beneficiary designations. Make arrangements for continued access even after termination of the plan.

Note. PBGC is considering asking plan sponsors for additional information about close-out distributions to address this issue, but until there is a reliable resource available for this, plan sponsors need to be mindful of this responsibility.

Communicating with Your Actuary

New funding changes, pending mortality table updates and reality-based funding, should be on your checklist for serious discussions with the plan's actuary.

HATFA choices. As noted above, earlier this year, HATFA added several phase-in years to the MAP-21 relief. Read up on the details about this legislation in our [August 1, 2014 FYI Alert](#). The extended phase-in was optional for 2013, and IRS guidance allows some additional 2014 prospective treatment as explained in our [September 15, 2014 For Your Information](#). Careful planning with the plan's actuary will assure that proper elections are in place to implement desired choices.

Evaluate funding trends. Eventually, the funding rates will move closer to the reality of lower interest rates and thus higher liabilities. Employers should keep in mind that the ultimate cost of a plan is the amount paid out in benefits. Reduced budgets today will translate to higher budgets tomorrow, or budgets extending out further in time. That said, several surveys show that favorable market returns have pushed funding levels to more acceptable levels; each plan sponsor needs to evaluate whether extra contributions are desired to achieve other objectives such as avoiding PBGC variable rate premiums and assuring participants have access to intended benefit distribution options.

Consider mortality and other assumptions. Without a doubt, your plan population is living longer and the cost of defined benefits will generally increase over time. At some point these mortality improvements will be reflected in updated mortality tables for ERISA minimum funding purposes. Meantime, the question is whether adjustments are needed for financial statements and rational funding purposes (your recommended funding plan). Plan sponsors may wish to change the financial statement and actual funding assumption to fully generational tables or to embrace more aggressive progressions in the Society of Actuaries' new base mortality table. Our [October 27, 2014 For Your Information](#) provides a discussion of the new tables.

Plan sponsors and their actuaries will also want to consider changes in other assumptions that may counterbalance mortality improvements. In response to longer life expectancy statistics and the longer period of time for making retirement savings stretch, many employees are planning to continue working beyond the plan's "normal" retirement date instead of choosing retirement in their late 50s or 60s. Aligning plan retirement assumptions with this new paradigm can reduce plan liabilities, particularly for retiree medical plans and pension plans with suspension of benefits provisions and generous early retirement subsidies.

Map investments to liabilities or "de-risk." Whether considering the so-called "end-game" of plan termination or attempting to control volatility, many plan sponsors are embracing the strategy of acquiring assets of durations that will line up with expected plan distribution obligations. Other efforts to control volatility ("de-risking") include lump sum offerings and settling liabilities in pay status through annuity purchases. Distribution strategies can hinge on the plan's funding level and whether or not benefit restrictions currently apply. Our [April 23, 2014 For Your Information](#) discusses the de-risking option.

In Closing

Planning ahead with trusted advisors to identify tasks and set compliance goals for the coming year is an important first step for assuring smooth operations during 2015. In addition to the key items noted above, plan sponsors may want to perform an annual "checkup" (i.e., an audit of operational practices and fiduciary responsibilities) to address plan expenses, design considerations, and investments. Compliance test results should be reviewed with the objective of deciding if plan design changes are needed to improve testing results. Plan sponsors may elect to conduct their own self-audit or contract with an independent party. Regardless of who performs the audit, identifying problems and initiating corrections in advance of any official agency audit is the preferred course of action.

We have published a companion piece to this FYI: [2015 Planning for ERISA Single-Employer Defined Contribution Plan Operations](#).

Calendar of Significant Defined Benefit Plan Compliance Tasks¹

Action Item	Due Date
January	
2013 Form 5500 basic information and Schedule SB posting (assumes 10/15/2014 filing)	January 13, 2015
Quarterly contribution (for 2014 plan year)	January 15, 2015
Notice to interested parties if filing Cycle D determination letter request at end of month, else, no less than 10 days or more than 24 days before submission.	January 21, 2015
February	
Form 1099-R to participants (or write letter for 30 day extension)	February 2, 2015
Form 945 to IRS (to report income withheld on distributions)	February 2, 2015
Form 5300 (for plan sponsors with EINs ending in 4 or 9 – Cycle D filers)	February 2, 2015
Form 945 (alternative date if withholding deposits timely made)	February 10, 2015
PBGC prior year premium filing for small plans (transition rule)	February 17, 2015
March	
Notice of intent to request prior year funding waiver	March 1, 2015
Form 1099-R to IRS (if paper) (or file Form 8809 for 30 day extension)	March 2, 2015
Request for prior year minimum funding waiver	March 15, 2015
Request for approval of retroactive amendment reducing accrued benefits	March 15, 2015
Form 1042-S to participants and IRS; Form 1042 to IRS (report US source income of foreign persons) (or file Form 8809 for 30 day extension for 1042-S filing with IRS; write letter to request 30 day extension for providing 1042-S to participants; file Form 7004 for 6-month extension of Form 1042)	March 16, 2015
Form 1099-R to IRS (if paper and extension applies)	March 30, 2015
Form 1099-R to IRS (if electronic) (or file Form 8809 for 30 day extension)	March 31, 2015
April	
Required minimum distributions for first time qualifying participants, including 5% owners	April 1, 2015

Action Item	Due Date
AFTAP certification (to avoid 4/1 presumption for benefit restrictions)	April 1, 2015
Benefit restrictions in place if AFTAP is less than 80%	April 1, 2015
Quarterly contribution (Q1 for 2015)	April 15, 2015
PBGC 4010 filing for prior year (generally, if less than 80% funded)	April 15, 2015
Form 990-T return of unrelated business income for prior year (or Form 8868 to request extension)	April 15, 2015
Annual Funding Notice (unless small plan)	April 30, 2015
May	
Notice of benefit restrictions, if applicable April 1	May 1, 2015
July	
Quarterly contribution (Q2 for 2015)	July 15, 2015
Summary of material modifications if amendments adopted in 2014	July 29, 2015
Form 5330 excise tax on funding deficiency, nondeductible contribution, prohibited transaction, etc. (or file Form 5558 to request 6 month extension)	July 31, 2015
Forms 5500 and 8955-SSA (or Form 5558 to request an extension)	July 31, 2015
Statement of deferred vested benefits (SSA information) to participants (unless on Form 8955-SSA extension)	July 31, 2015
Small plan annual funding notice, if form 5500 extension does not apply	July 31, 2015
September	
Minimum funding contribution (balance due for 2014 year); election to apply or add to prefunding balance	September 15, 2015
Forms 5500, 8955-SSA, SSA information to participants, and small plan annual funding notice, if extension of corporate income return	September 15, 2015
AFTAP certification (to avoid 10/1 presumption for benefit restrictions)	September 30, 2015
Summary annual report for non-PBGC covered plans, if no 5500 extension	September 30, 2015

Action Item	Due Date
October	
AFTAP-triggered benefit restrictions	October 1, 2015
Quarterly contribution (Q3 for 2015)	October 15, 2015
Forms 5500, 8955-SSA, SSA information to participants, and small plan annual funding notice, if on Form 5558 extension	October 15, 2015
Retroactive amendment to correct prior year coverage/nondiscrimination failures; QSLOB Form 5310A election	October 15, 2015
PBGC variable rate premium basis election (5-year limit)	October 15, 2015
PBGC flat and variable rate premium for all plans	October 15, 2015
Notice of benefit restrictions, if applicable October 1	October 31, 2015
November	
Summary annual report for non-PBGC covered plans, if Form 5500 extension using corporate extension applies	November 15, 2015
December	
Summary annual report for non-PBGC covered plans, if Form 5500 extension using Form 5558 applies	December 15, 2015
Funding elections to avoid 4010 filing or at-risk; balance elections (election to reduce credit balance or revoke credit balance election; change standing elections)	December 31, 2015
Final AFTAP certification if operating with range certification	December 31, 2015
Required minimum distributions	December 31, 2015
Triennial benefit statements/ annual alternative notice	December 31, 2015
Last day to adopt discretionary plan amendments for 2015	December 31, 2015
Request change in funding method	December 31, 2015

¹ Assumes calendar plan and sponsor tax year; beginning of year valuation date. Does not account for short plan years, or new plans. Weekend rule generally applies to filing deadlines and certain other acts under tax rules, but not contributions and other Title I ERISA obligations.

Authors

Marjorie Martin, FSPA, EA, MAAA

Joanne G. Jacobson, JD, LLM

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