

FYI[®] In-Depth

For Your Information[®]

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2015 Planning for ERISA Single-Employer Defined Contribution 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 safe harbor notices, and attending to the myriad annual reporting and disclosure requirements — administrators must be on the alert to some important tasks. Here are some crucial areas to watch:

Make timely 401(k) deposits. Failure to deposit employee contributions and loan repayments timely is a prohibited transaction that will subject the plan to excise taxes, interest charges, and additional reporting.

Deposits are timely if they are submitted as soon as contributions can reasonably be segregated from the employer's assets. Once a plan sponsor demonstrates that contributions can be deposited within a certain number of days after payroll — say four business days — the DOL may view that as the standard for that plan. If deposited in a future cycle after eight days, for example, the deposit may be deemed late. As this continues to be an area of focus by the DOL for audit, consistency and attention to timeliness is a critical factor.

Process auto cashouts of small balances. Many plans provide for the automatic cashout of small balances to terminated participants. For plans with such rules, distributions of accounts must be timely cashed out and



terminated participants must be notified. At the very least, an annual “sweep” of small balances should be conducted to keep in line with the plan terms. This process can be effective in keeping small balances out of the plan to avoid continued costly administration and having to track down missing participants in the future. Participants with larger balances are more likely to keep the recordkeeper informed of their location to ensure that they will have access to their balances.

Review procedures for acceptance of rollovers. Plans that find confirming a participant’s incoming rollover is qualified to be an administrative headache (e.g., the need to obtain a copy of a plan’s IRS determination letter or other evidence of qualified status, such as a plan representative certification) may wish to rely on the IRS’ new safe harbor. The rollover check must identify the distributing plan as the source of the funds, and the Form 5500 must be reviewed to confirm that the plan is not coded with a 3C indicating that it is not intended to be qualified under Code section 401. This new safe harbor expands, and does not replace, the previously issued regulatory guidance and is intended to make it easier for participants to roll over distributions to subsequent employers. If appropriate, employers may want to consider adopting this process. For additional information and example of how this works, see our *For Your Information of [April 7, 2014](#)*.

Review plans with after-tax contributions – Roth and non-Roth. Effective January 1, 2015 the IRS no longer requires proration of after-tax amounts when all the funds (pretax and after-tax) are rolled over from a 401(k) plan, but are split across multiple destinations (such as an IRA and a Roth IRA). The guidance treats such rollovers as single distribution. A separate Form 1099-R will still be required for each rollover. Although the IRS has indicated that a new Special Tax Notice will be forthcoming, notices to participants describing available rollover options will need to be updated. (See our *For Your Information of [October 7, 2014](#)*.)

Identify lost participants with account balances. 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 participant’s investment accounts 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. 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*.)

Remind participants of any opportunity to name beneficiaries. Many a plan administrator has faced sorting out competing claims for death benefits because of unclear or missing beneficiary designations. Most plans 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.

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.

Review forfeitures and investment credits. On an annual basis, plans with a vesting schedule may accumulate funds in a forfeiture account. Many plans provide that nonvested balances may be forfeited when the participant takes an actual distribution or after five one-year breaks-in-service. In addition, plans may accumulate credits from revenue sharing that are deposited into "ERISA accounts." The plan must provide for how the forfeitures and revenue sharing will be used — to pay expenses, reduce contributions, or be reallocated. At the end of the plan year, these accounts should be reviewed to confirm that no unused balances are held unallocated in the plan.

Watch out for IRS audit issues. IRS often shares information about the types of mistakes they are picking up in plan audits. For defined contribution plans, they report finding that compensation used for plan allocations or nondiscrimination tests doesn't always match plan document definitions, automatic enrollment is not correctly implemented, and employee deferrals do not correctly reflect participant elections. A self-audit is a good tool for finding and correcting these issues. The IRS and DOL websites contain excellent resources for areas to focus on and acceptable correction methods. If you need additional support in auditing plan operations, it may be wise to engage the services of an expert or outside consultant.

Confirm all payroll processes are clean and audited for year-end testing. Ensure that all relevant data is in order to enable year-end testing to start promptly with the new year. If highly compensated employees must be capped for testing purposes, early identification will prevent participants from exceeding plan limits. If any employer contributions are computed on an annual basis, or if the plan provides for the "true-up" of matching contributions, confirm that these calculations are addressed.

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 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. Some plan sponsors are finding that plan language defining "spouse" needs to be revised because of the Supreme Court *Windsor* opinion. The deadline for amending retirement plans with terms that conflict with the decision is generally December 31, 2014. See our [April 9, 2014 For Your Information](#) about that IRS guidance.

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 amendment period for complying with such changes.

Get IRS review of your document. Do you have a current 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.

Employers using a pre-approved defined contribution plan document — a master and prototype (M&P) or a volume submitter (VS) plan — will need to update their plans by April 30, 2016. If you have not yet heard from the M&P or VS plan sponsor, consider reaching out now. Using the plan's updated plan document makes incurring an operational error less likely. Word-for-word adopters can rely on the IRS opinion letter or advisory letter issued to the plan sponsor and may not submit a request for a determination letter. The IRS will accept applications for determination letters until April 30, 2016 for pre-approved plans in very limited circumstances.

Make sure that 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 that 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 crucial — 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.

Fiduciary Review

ERISA 408(b)(2) covered service provider notices initially went out in 2012. Notices are not required to be sent annually, so it is important that plan sponsors review current arrangements, especially in light of rising plan balances, to validate that fee arrangements are still reasonable. Depending on when plan services were last put out to bid, it may be time to revisit. Whether or not electing to rebid plan services, it is equally important to document why the decision is made to stay with a certain provider as it is to document the need for a change. Courts have held that plan fiduciaries that follow a prudent process designed to ensure that the actions taken were for the exclusive benefit of the plan participants have not breached fiduciary duties even if the outcome could have been better. In addition, plan sponsors may wish to consider fiduciary training for the individuals responsible for making decisions about plan assets.

Design Changes

If you share the concern that your employees may not have sufficient funds to last through retirement, the timing may be right to add new provisions such as auto enrollment or auto escalation to boost participant savings rates. You may also consider adding annuities to your retirement plans now that the IRS and DOL have made it easier to do so. Earlier this year, the IRS issued final regulations on qualifying longevity annuity contracts which, if properly structured, enable a participant to start payments at an advanced age — as late as 85 — and exclude the value of the annuity from required minimum distribution calculations. Our [July 10, 2014 For Your Information](#) explains the option. In addition, the IRS issued guidance providing a special rule that allows qualified defined contribution plans to offer annuity products within a series of target date funds without running afoul of certain nondiscrimination requirements. DOL affirmed that such funds could serve as a Qualified Default Investment Alternative. Details on this are spelled out in our [November 11, 2014 For Your Information](#).

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 above referenced testing and reporting requirements, you may want to perform an annual “checkup” (i.e., an audit of operational practices and fiduciary responsibilities). The checkup should address plan expenses, plan design considerations, participant fees and plan investments and should confirm the plan’s compliance with the terms of the document and investment policy statement, if any. Review compliance test results with an eye toward making necessary plan design changes to improve testing results or eliminate testing altogether. You may elect to conduct your own 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 Benefit Plan Operations](#).

Calendar of Significant Defined Contribution Plan Compliance Tasks¹

Action Item	Due Date
January	
Notice to interested parties if filing Cycle D determination 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, 1099-DIV 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
Fourth quarter benefit statements	February 14, 2015
March	
Notice of intent to request prior year funding waiver (money purchase pension plans)	March 1, 2015
Form 1099-R to IRS (if paper) (or file Form 8809 for 30 day extension)	March 2, 2015
ADP/ACP test corrective distributions to avoid excise taxes, unless EACA for full year 2014	March 15, 2015 ²
Request for prior year minimum funding waiver (money purchase pension plans)	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
Form 5330 excise tax on prior year (2013 testing year) excess contributions and excess aggregate contributions	March 31, 2015

Action Item	Due Date
April	
Required minimum distributions for first time qualifying participants including 5% owners	April 1, 2015
Distribution of all excess 2014 deferrals (over \$17,500 plus \$5,500 catch-up)	April 15, 2015
May	
First quarter benefit statements	May 15, 2015
June	
EACA corrective distributions	June 30, 2015
July	
Summary of material modifications if amendments adopted in 2014	July 29, 2015
Form 5500 and 8955-SSA (or file Form 5558 to request an extension)	July 31, 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
Statement of deferred vested benefits (SSA information) to terminated participants (unless on Form 8955-SSA extension)	July 31, 2015
Annual participant statement (if no right to direct investments and not on extension for Form 5500)	July 31, 2015
August	
Second quarter benefit statements	August 14, 2015
Participant fee disclosures — dependent on prior year mailing and whether or not elected to use up to 18 month reset in 2013 or 2014	August 29, 2015 or by 12 months from last mailing

Action Item	Due Date
September	
Minimum funding contribution due (money purchase pension plans)	September 15, 2015
Forms 5500 and 8955-SSA, and SSA information to participants, if corporate return extension	September 15, 2015
Annual participant statement (if no right to direct investments and corporate extension for Form 5500)	September 15, 2015
Summary annual report, if no 5500 extension	September 30, 2015
October	
Earliest day to send out safe harbor notices	October 2, 2015
Form 5500, 8955-SSA, and SSA information to participants, if on Form 5558 extension	October 15, 2015
Annual participant statement (if no right to direct investments and using Form 5558 extension for Form 5500)	October 15, 2015
Retroactive amendment to correct prior year coverage/nondiscrimination failures	October 15, 2015
QSLOB election on Form 5310A	October 15, 2015
November	
Third quarter benefit statements	November 14, 2015
Summary annual report if Form 5500 extension using corporate extension applies	November 15, 2015
December	
Deadline for participant notices including: auto enrollment, QDIA, safe harbor	December 2, 2015
Summary annual report if Form 5500 extension using Form 5558 applies	December 15, 2015
Required minimum distributions	December 31, 2015
Corrective distributions for 2014 plan year	December 31, 2015
Last day to adopt discretionary plan amendments for 2015	December 31, 2015

¹ Assumes calendar plan and sponsor tax year. 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.

² Weekend rule is not available according to informal IRS guidance. Distribution by Friday, March 13 is recommended.

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