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# 2015 Planning for Governmental Plan Operations

The calendar provided in this *For Your Information* will help sponsors of governmental plans that are not subject to ERISA set up a 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. 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.



## 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 — administrators must be on the alert to some not-so-common tasks. Here are some key areas to watch:

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.

Review procedures for acceptance of rollovers. While relatively uncommon in the public sector, plans that find confirming a participant's incoming rollover from an ERISA plan 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 examples of how this works, see our *For Your Information* of April 7, 2014.

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 governmental 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.*)

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.

## Plan Amendments, Filings, and Documentation

Do your plan documents correctly describe the plan provisions as intended, and are summaries provided to plan participants and administrative procedures in sync with the official documents?

> Key Point. Many governmental employers find that adding specificity to their documents improves the clarity of plan terms and consistency of plan administration. This helps to eliminate the need for case-by-case determinations for unusual situations and helps to mitigate litigation risk.

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 those necessary to address changes in legal requirements. Governmental plans are also allowed an extended period for adoption based on the last day of the next regular legislative session beginning after the amendment's effective date in which the governing body with authority to amend the plan can consider the amendment under the laws and procedures applicable to the governing body's deliberations.

> 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 governmental plan deadline for amending retirement plans with terms that conflict with the *Windsor* decision is by the close of the first regular legislative session of the legislative body with the authority to amend the plan that ends after 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 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. If you submit a request after this date, your application will be moved to the bottom of the pile.

> Key Point. Ordinarily, governmental plans with individually designed plans use Cycle C for their determination letter request. In light of unique issues faced by governmental plans, IRS allowed them to use Cycle E for their first on-cycle filing. In Revenue Procedure 2012-50, IRS repeated this offer for the second cycle filing. Employers opting for this delay must make their application between February 1, 2015 and January 31, 2016. IRS says these plans will need to revert to Cycle C for the third submission period.

Assemble and maintain documentation of transactions with participants. Proper administration of plans currently is key — but don't toss old documents. Be sure to create and maintain records of participant data such as proof of benefit distributions, benefit elections, and beneficiary designations, which may be priceless when participants terminated from service decades ago question whether or not payment had been made. There's a reason ERISA includes document retention obligations for plans — being exempt from those requirements doesn't mean there isn't value in adopting them voluntarily.

## Communicating with Your Actuary

2015 offers an opportunity to discuss rational funding expectations.

The long-time primary guidepost for governmental plan funding policy is fading from the scene. For years, public retirement systems had a major incentive to adopt funding policies that met requirements set forth in GASB Statement 27, which specified the rules for public-sector entities' accounting for pension plans covering their employees. As long as a system's funding policy met those standards and contributions were made at the levels dictated by the policy, no liability ("net pension obligation," or NPO) ever accrued on the sponsoring employer's balance sheet. Under a new standard adopted last year by the GASB, effective for fiscal years beginning after June 15, 2014, no requirements for funding policy are prescribed, and sponsors' balance-sheet accruals for pension benefits will be based on the extent to which pension assets cover liabilities for benefits as measured under rules set forth in the new standard. Moreover, GASB's new standard requires projections of the extent to which a system's funding policy will result in the accumulation of sufficient assets to pay benefits in future years, so for multiple reasons the new standard provides a strong incentive to revisit funding policies.

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 used by your actuary to estimate plan costs. 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. In any case, if you do not routinely have experience studies performed for your plan, you should make sure that the actuarial assumptions used in its valuations have been reviewed in the past five years. Where assumptions are selected on the basis of experience studies, disclosures required under the new GASB standards include the date of the last study.

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 in the private sector 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") that have attracted a lot of attention among private-sector plan sponsors include lump sum offerings and settling liabilities in pay status through annuity purchases. For private-sector plans, 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.

Governmental plans face a fundamentally different set of choices with respect to de-risking, but by making appropriate choices in plan design, funding policy, and investment policy, a public-sector retirement system can greatly reduce volatility in funding requirements and GASB reporting outcomes.

## Defined Contribution Plan 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 has 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 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. 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.

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## Calendar of Significant Retirement Plan Compliance Tasks[1]

| Action Item | Due Date |
|---|---|
| **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 945 (alternative date if withholding deposits timely made) | February 10, 2015 |
| **March** | |
| Form 1099-R to IRS (if paper) (or file Form 8809 for 30 day extension) | March 2, 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 | April 1, 2015 |
| Distribution of all excess 2014 deferrals (e.g., $17,500 plus $5,500 catch-up) | April 15, 2015 |
| Form 990-T return of unrelated business income for prior year (or Form 8868 to request extension) | April 15, 2015 |
| **December** | |
| Required minimum distributions | December 31, 2015 |
| Last day to adopt discretionary plan amendments for 2015 (unless legislative session rule applies) | 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.*

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