

FYI[®] In-Depth

For Your Information[®]

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2015 Planning for ERISA Multiemployer 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 [Reporting and Disclosure Guide](#) will also help you identify and address other event-based and participant-specific activities. As you make your plans, in addition to the calendar deadlines, we discuss 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 ensuring that 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:

[Get a debriefing on the Multiemployer Pension Reform Act of 2014.](#) The Multiemployer Pension Reform Act of 2014, signed into law in late December 2014, contains many funding and PBGC-related changes that have created concern among stakeholders in multiemployer plans. The ability of trustees and administrators to detect issues and know when to consult with trusted advisors is critical in efforts to assure compliance. Plan trustees and



administrators should educate themselves and communicate with their participant and contributing employer population about the meaning and applicability of the MPRA's provisions. This includes communication about new options the MPRA has made available. For plans in the newly created "critical and declining status" zone that expect to exercise their new ability to suspend accrued benefits, suitable communications should happen early this year. (See our [January 12, 2015](#), *For Your Information*).

[Review and analyze insurance coverage.](#) Plans have two basic options for insurance to protect the plan.

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 monetary level is appropriate for the plan. It is critical to review any limiting language in terms of coverage, as is typically found in the exclusions section, to ensure the scope of coverage meets the ERISA statutory requirements.

Fiduciary liability insurance. A plan can purchase insurance for its fiduciaries or for itself to cover liability or losses occurring by reason of a fiduciary's act or omission. These policies provide insurance coverage for trustees and employees working for the fund. Recently, obtaining fiduciary liability insurance in the appropriate amount has become more and more imperative. Last year, [the DOL](#) closed 3,928 civil investigations with 64.7% of those cases resulting in monetary recoveries for plans or other corrective action. This is in addition to dramatic settlements arising from ERISA class action litigation.

It's important to analyze the policy's major defined terms to understand exactly what risks are being insured. Furthermore, understanding when these policies are triggered is crucial to understanding whether the plan and its fiduciaries will be adequately protected.

[Get set to trigger automatic payments.](#) In addition to the automatic cashout of small payments, another situation may require 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. In this case, 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 automatically begins distributions in that form.

[Remind participants of any opportunity to name beneficiaries.](#) Many a plan administrator has had to sort out competing claims for death benefits because of unclear or missing beneficiary designations. Most plans are required to 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 consider updating 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. 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](#).) Funds covering any undeliverable 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. It may be necessary to make adjustments addressing any income tax that had been withheld.

[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 conditions 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 the plan takes these actions, the IRS will not impose late filing penalties 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 should assess compliance with these requirements, including 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 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 revisions 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 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 multiemployer plans should be alert to the upcoming February 2, 2015 deadline for their five-year-cycle D review. (IRS Announcement 2014-41 granted a two-day extension from Jan. 31 to Feb 2.) If you submit a request after this date, your application will be moved to the bottom of the pile.

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 the plan document language prevails in the case of a conflict. However, the SPD still plays 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 actions. Make sure the SPD, 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 filing a complaint in federal court for review of the administrator's claim denial. Sponsors should confirm that plan documents provide a statute of limitations period and communicate that period in summary plan descriptions as well as benefit claim denial communications.

Create or update your investment policy statement. For plan investments, fiduciaries must ascertain whether the plan has an investment policy statement ("IPS") and guidelines and, if not, fiduciaries should consider adopting one. If an IPS is in place, it should be reviewed in light of current economic conditions. The DOL has encouraged plan fiduciaries to adopt written statements of investment policy and stated that compliance with ERISA's prudence requirement calls for maintaining proper documentation of the activities of the investment manager and of the named fiduciaries of the plan in monitoring the investment manager.

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 to documents even after termination of a plan.

Are You Ready for Actuarial and Financial Disclosure?

Multiemployer pension plans face a number of disclosure requirements aimed at ensuring that participants, beneficiaries, employee representatives, and contributing employers have sufficient information to properly monitor the plan's funding and financial status. Within 30 days of a request from one of these parties, the plan administrator is required to provide:

- Periodic actuarial reports (including any sensitivity testing)
- Quarterly, semi-annual, or annual financial reports
- Applications filed with the secretary of the Treasury for an extension of funding amortization periods

In addition, a plan sponsor or administrator must provide estimated employer withdrawal liability information within 180 days of a written request by a contributing employer.

Ensuring that reports are completed and available for delivery upon request and developing protocol for addressing withdrawal liability requests will help avert DOL penalties of up to \$1,000/day for failing to furnish them.

Communicating with Your Actuary

Under the MPRA, Congress made the expiring Pension Protection Act rules permanent (see our [January 12, 2015 For Your Information](#)). Accordingly, 2015 presents an opportunity for a discussion on rational funding expectations.

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. Meanwhile, consider whether adjustments are needed for financial statements and rational funding purposes (your recommended funding plan). Trustees 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.

Trustees 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.”](#) In 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, which eliminates market uncertainties. 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.

Are You Using Alternative Investments?

Most multiemployer plans use alternative investments, and there is an expectation of increased government attention in this area. The DOL has been scrutinized by its own Office of Inspector General for failing to properly investigate plans that invest in alternative investments. A [report from the Office of Inspector General](#) and that office’s [Report to Congress](#) (page 5) identify significant concerns about the nearly \$3 trillion of alternative investments held in employee benefit plans and the need for the DOL to do more to ensure that plan administrators properly identify and value those hard-to-value investments. Plan administrators and trustees should have a process for periodically reviewing all plan investment options, but alternative investments in the trust should merit particularly close attention.

In Closing

Planning ahead with trusted advisors to identify tasks and set compliance goals is an important first step for assuring smooth operations during 2015. In addition to the key items noted above, trustees 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. Trustees 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.

Calendar of Significant Multiemployer Defined Benefit Plan Compliance Tasks¹

Action Item	Due Date
January	
2013 Form 5500 basic information and Schedule MB posting (assumes 10/15/2014 filing)	January 13, 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 945 (alternative to February 2, 2015, <i>if withholding deposits timely made</i>)	February 10, 2015
March	
Notice of intent to request prior year amortization extension	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 amortization extension	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
Zone certification for 2015 year from enrolled actuary to IRS and trustees	March 31, 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
Form 990-T return of unrelated business income for prior year (or Form 8868 to request extension)	April 15, 2015
Notice of Endangered or Critical Status/Notice of Election to be in Critical Status/ Notice of Projection to be in Critical Status in a Future Plan Year (assuming actuarial certification signed on 3/31) ²	April 30, 2015
Annual Funding Notice	April 30, 2015

Action Item	Due Date
July	
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
August	
Summary plan report to employee organizations and contributing employers, if not on Form 5500 extension	August 30, 2015
September	
Minimum funding contribution (balance due for 2014 year)	September 15, 2015
October	
Forms 5500, 8955-SSA, and SSA information (to participants), if on Form 5558 extension	October 15, 2015
PBGC premium due	October 15, 2015
November	
Notice of insolvency benefit level, if applicable for 2015 (if insolvency determination by September 3, 2014)	November 2, 2015
Summary plan report to employee organizations and contributing employers, if on Form 5558 extension	November 14, 2015
Funding improvement plan or rehabilitation plan adoption	November 26, 2015
December	
Notice of funding waiver request	December 17, 2015
Funding improvement plan or rehabilitation schedule	December 26, 2015
Minimum funding waiver request	December 31, 2015
Required minimum distributions	December 31, 2015

Action Item	Due Date
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
Request for approval of retroactive amendment reducing accrued benefits (to 2013 plan year)	December 31, 2015

1 Assumes calendar plan 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 Due 30 days after the date the actuary signs the certification. March 31 is the last permissible date for the actuary to do so.

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