

# FYI<sup>®</sup> In-Depth

## For Your Information<sup>®</sup>

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## 2016 Planning for ERISA Single-Employer Defined Benefit Plan Operations

The calendar provided in this *FYI In-Depth* 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 2016.

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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 for 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 payment 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 plans subject to liquidity shortfalls and for the employer's (controlled group) top 25 highly compensated employees. The high-25 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.

**Get set to trigger automatic payments.** Plans can call for the automatic distribution of former employee benefits with values up to the \$5,000 cashout limit without the participant's affirmative consent to a distribution. For values between \$1,000 and \$5,000, absent directions from the participant about how to make the payment, a default IRA rollover is generally required. Some plan sponsors had reduced their default cashout rule to \$1,000 to avoid the obligation of selecting a suitable vendor for the IRA. Some are reconsidering this decision in light of ever increasing PBGC premiums and now that a larger number of established IRA providers are available in the marketplace. Amend as appropriate if a change is warranted, and assure administration is in keeping with the plan document.

**Caution:** If a plan termination is underway, or will be soon, processing default IRA rollovers as a new or existing procedure for "missing" participants may be problematic. PBGC may require the plan to either send funds to them under their missing participants program or buy the missing participant an annuity.

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 QJSA waiver, 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 percent 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.

**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. Although default rollover IRAs can be set up for participants with benefit values not in excess of the cashout limit, other missing participants generally stay on plan records and must be addressed at some point.

**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. These disputes can sometimes result in costly litigation. 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.

**Address foreign asset reporting obligations.** In an effort to address tax evasion, money laundering and terrorist financing concerns, compliance requirements include the reporting of assets held by foreign financial institutions (including retirement plans) and benefit distributions to certain 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.

**Determine effect of SEC Money Market Reforms on the plan.** Starting October 14, 2016, Securities and Exchange Commission regulations will go into effect that will require institutional prime money market funds to

transact at a floating net asset value (NAV). Treasury money market funds and retail money market funds will not be affected by the floating NAV rule. Money market funds will also be permitted to impose liquidity fees and redemption gates when the fund's level of weekly liquid assets drops below certain levels. Plan fiduciaries of plans that invest in money market funds should determine how the regulations will affect the plan's ability to meet distribution obligations and the selection of IRA default rollover accounts. See our [August 26, 2014 For Your Information](#) for further details.

**Review and analyze insurance coverage.** Two basic types of insurance are available 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 level is appropriate for the plan. (In most circumstances, the amount of the required bond is capped at \$500,000 for a plan without an employer securities fund and \$1,000,000 for plans that hold employer securities.)



**Fiduciary liability insurance.** Insurance can be purchased to protect fiduciaries and the plan against liability or losses occurring due to a plan fiduciary's act or omission. Fiduciaries are personally liable for losses incurred by a plan due to their breach; insurance can cover some or all of these losses. Recently, obtaining fiduciary liability insurance in the appropriate amount has become more imperative. In 2015, the [DOL closed 2,441](#) civil investigations with 67.2 percent 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. An annual review of these policies may illuminate the requirement to report certain events to the insurer within a specific time frame to collect on a claim.

**Key Point:** Many policies cover compliance fees and penalties such as those imposed by the IRS under their Voluntary Correction Program, but require timely notification to the insurer.

## 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.

**Cash balance and other hybrid plans.** Under final regulations for these plans, amendments to come in line with the market rate of return regulation need to be adopted. IRS' regulation anticipated plan sponsors would get any necessary revision in place before the January 1, 2016 effective date (for calendar year plans), but told sponsors to wait until final anti-cutback rules were in place if a change in the plan's interest crediting rate is needed. Final regulations should be out shortly. Because time is short, we expect an additional period of time will be allowed for such plans to adopt amendments. 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 nonamendment failures is reduced by 50 percent 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 a current IRS determination letter? In 2015, IRS announced that their program for periodic review of individually designed plan documents would soon be severely curtailed, as reported in our [July 21, 2015 For Your Information](#). But, individually designed plans of employers with EINs ending in 0, 1, 5, and 6 (and some others) are eligible for one last review as an ongoing plan and should be alert to the upcoming January 31, 2016 and 2017 deadlines for this review. Submissions to the IRS for a determination letter must include a restated plan document (working copies are no longer accepted). Be sure to leave time for this step.

**Make sure your summary plan description matches your plan document.** In addition to being a disclosure that is required to be provided under ERISA, the SPD plays 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. Don't forget that an SPD must generally be restated and redistributed every five years.

**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. Arrange for continued access even after termination of the plan.

**Key Point:** PBGC asks plan sponsors to produce evidence about plan termination close-out distributions to address this issue. Annuity provider information is required on benefits settled through annuities; copies of canceled checks or a bank statement listing names and distribution amounts are generally required for benefits distributed in a lump sum.

## Communicating with Your Actuary

Budget and funding policy in light of extended funding relief, changes to mortality table requirements and pending mortality table updates, and alternatives for measuring accounting pension cost should be on your checklist for serious discussions with the plan's actuary.



**Interest rate choices.** The Bipartisan Budget Act of 2015 (2015 Budget Act) further extends the Moving Ahead for Progress in the 21st Century Act (MAP-21) interest rate corridors that had been extended by the Highway and Transportation Funding Act of 2014 (HATFA). Now the 10 percent corridor remains available for funding through 2020, and increases by 5 percent through 2024, with an ultimate 30 percent corridor applying for 2024 and future years. Our [November 2, 2015 FYI Alert](#) spells out the details.

**Evaluate funding trends.** While the extension of funding relief will lower the plan's minimum required contributions in the short term, you may consider contributing more. 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. Each plan sponsor needs to develop a funding policy that will achieve business objectives, such as assuring participants have access to intended benefit distribution options, being able to terminate the plan on schedule, or avoiding a funding spike once the corridor widens. New upticks in variable rate premiums under the 2015 Budget Act, and revised Reportable Event waivers based on not having a variable rate premium obligation (See our [September 16, 2015 For Your Information](#)), should also be considered.

**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 what adjustments are appropriate for financial statements and a rational funding policy. Plan sponsors may wish to change the financial statement and funding policy assumption to fully generational tables or embrace alternatives to the Society of Actuaries' RP-2014 base mortality table. Recent adjustments to improvement scales used with the table should be considered and are reviewed in our [October 8, 2015 FYI Alert](#). In addition, the 2015 Budget Act allows flexibility in setting plan mortality assumptions for minimum funding purposes beginning in 2016. Once there is guidance on how the IRS will implement this change, you should determine if the mortality assumption for minimum funding purposes can reflect your plan's actual experience.

Plan sponsors and their actuaries will also want to consider changes in other assumptions that may coincide with mortality improvements. In response to longer life expectancy and the longer period of time for making retirement savings last, 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.

**Assess alternatives in determining accounting benefit costs.** The SEC has indicated that they will not object to certain alternative approaches to determining service cost and interest cost for financial statement accounting. Also major auditing firms have released guidance regarding their views on the implementation of a change in approach

and the related disclosures included in the financial statements. The impact of a change in reported benefit cost can be significant, so discussions between plan sponsors and their actuaries and auditors should take place well in advance of the compressed year end reporting crunch.

**Map investments to liabilities or “de-risk.”** Whether considering the so-called “endgame” 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 to terminated vested participants or 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 with trusted advisors to identify tasks and set compliance goals for the coming year is an important first step for assuring smooth operations during 2016. In addition to the key items noted above, plan sponsors may want to perform an annual “checkup” (i.e., an review of operational practices and fiduciary responsibilities) to address plan expenses, design considerations and 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 review or contract with an independent party. Regardless of who performs the review, identifying problems and initiating corrections in advance of any audit by a government agency is the preferred course of action.

We have published a companion to this *FYI In-Depth*: [2016 Planning for ERISA Single-Employer Defined Contribution Plan Operations](#).

## Calendar of Significant Defined Benefit Plan Compliance Tasks<sup>1</sup>

Action Item	Due Date
<b>January</b>	
Assess revised benefit restrictions and balance adjustments if prior year AFTAP certified after October 1, 2015	January 1, 2016
2014 Form 5500 basic information and Schedule SB posting (assumes October 15, 2015 filing)	January 13, 2016
Quarterly contribution (for 2015 plan year)	January 15, 2016
Notice to interested parties if filing Cycle E determination letter request at end of month, else, no less than 10 days or more than 24 days before submission.	January 21, 2016
Form 5300 (for plan sponsors with EINs ending in 5 or 0 – Cycle E filers)	January 31, 2016 <sup>2</sup>
Notice of benefit restrictions, if applicable January 1	January 31, 2016
<b>February</b>	
Form 1099-R to participants (or write letter for 30 day extension)	February 1, 2016
Form 945 to IRS (to report income withheld on distributions)	February 1, 2016
Form 945 (alternative date if withholding deposits timely made)	February 10, 2016
Form 1099-R to IRS (if paper) (or file Form 8809 for 30 day extension)	February 29, 2016

<sup>1</sup> 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

<sup>2</sup> Previously, IRS extended this to the next business day, but it is not clear that they will follow suit this time

Action Item	Due Date
<b>March</b>	
Notice of intent to request prior year funding waiver	March 1, 2016
Request for prior year minimum funding waiver	March 15, 2016
Request for approval of retroactive amendment reducing accrued benefits	March 15, 2016
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 15, 2016
Form 1099-R to IRS (if electronic) (or file Form 8809 for 30 day extension)	March 31, 2016
<b>April</b>	
Required minimum distributions for first time qualifying participants, including 5% owners	April 1, 2016
AFTAP certification (to avoid April 1 presumption for benefit restrictions)	April 1, 2016
Benefit restrictions in place if AFTAP is less than 80%	April 1, 2016
Quarterly contribution (Q1 for 2016)	April 15, 2016
PBGC 4010 filing for prior year (generally, if less than 80% funded)	April 15, 2016 <sup>3</sup>
Form 990-T unrelated business income tax return (or Form 8868 to request extension). This tax is sometimes triggered if the plan earns income from certain plan investments (for example, limited partnership interests).	April 18, 2016
Annual Funding Notice (unless small plan)	April 29, 2016
<b>May</b>	
Notice of benefit restrictions, if applicable April 1	May 1, 2016

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<sup>3</sup> Unclear whether PBGC will adjust April 15 due date to conform to tax rule

Action Item	Due Date
<b>July</b>	
Quarterly contribution (Q2 for 2016)	July 15, 2016
Summary of material modifications if amendments adopted in 2015	July 28, 2016
<b>August</b>	
Form 5330 excise tax on funding deficiency, nondeductible contribution, prohibited transaction, etc. (or file Form 5558 to request 6 month extension)	August 1, 2016
2015 Forms 5500 and 8955-SSA (or Form 5558 to request an extension)	August 1, 2016
Statement of deferred vested benefits (SSA information) to participants (unless on Form 8955-SSA extension)	August 1, 2016
Small plan annual funding notice, if form 5500 extension does not apply	August 1, 2016
<b>September</b>	
Minimum funding contribution (balance due for 2015 year); election to apply or add to prefunding balance	September 15, 2016
Forms 5500, 8955-SSA, SSA information to participants, and small plan annual funding notice, if corporate return extension	September 15, 2016
AFTAP certification (to avoid October 1 presumption for benefit restrictions)	September 30, 2016
Summary annual report for non-PBGC covered plans, if no 5500 extension	September 30, 2016

Action Item	Due Date
<b>October</b>	
AFTAP-triggered benefit restrictions	October 1, 2016
Quarterly contribution (Q3 for 2016)	October 15, 2016
Retroactive amendment to correct prior year coverage/nondiscrimination failures	October 15, 2016
2015 Forms 5500, 8955-SSA, SSA information to participants, and small plan annual funding notice, if on Form 5558 extension	October 17, 2016
QSLOB Form 5310A election	October 17, 2016
PBGC variable rate premium basis election (5-year limit)	October 17, 2016
PBGC flat and variable rate premium payment	October 17, 2016
Notice of benefit restrictions, if applicable October 1	October 31, 2016
<b>November</b>	
Summary annual report for non-PBGC covered plans, if Form 5500 extension using corporate extension applies	November 15, 2016
<b>December</b>	
Summary annual report for non-PBGC covered plans, if Form 5500 extension using Form 5558 applies	December 15, 2016
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, 2016
Final AFTAP certification if operating with range certification	December 31, 2016
Required minimum distributions	December 31, 2016
Triennial benefit statements/annual alternative notice	December 31, 2016
Last day to adopt discretionary plan amendments for 2016	December 31, 2016
Request change in funding method for 2016	December 31, 2016

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