

# FYI<sup>®</sup> In-Depth

## For Your Information<sup>®</sup>

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## 2016 Planning for ERISA Single-Employer Defined Contribution 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 safe harbor notices, and attending to the myriad annual reporting and disclosure requirements — administrators must be on the alert for 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 sponsor 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 for DOL audits, consistency and attention to timeliness is critical.

**Process automatic 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 addresses.

**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. Guidance from the DOL is available 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. These disputes can sometimes result in costly litigation. 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.

**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 investment lineup and ensure that the plan and its service providers are ready for it.** Starting October 14, 2016, Securities and Exchange Commission regulations 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. If the plan’s money market fund will be subject to floating NAVs, the plan administrator needs to make sure that the recordkeeper is ready to comply. Also, plan administrators should consider whether the plan’s money market funds can impose liquidity fees and gates, and if so, ensure that plan operations and communications can be updated on short notice if the fees and gates ever go into effect. See our [August 26, 2014 For Your Information](#) for further details.

**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.

**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' deferrals 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.

**Review and analyze insurance coverage.** Two basic types of insurance are available to protect the plan.

**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. (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 discretionary amendments by the end of the year 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.

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 amendment period for complying with such changes.

**Get IRS review of your document.** Do you have a current IRS determination letter? In 2015, the 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.

Employers using a pre-approved defined contribution plan document — a master and prototype or a volume submitter plan — will need to update their plans by April 30, 2016. If you have not yet heard from the document 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 addition to being a disclosure required 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.

## Fee Disclosures

ERISA 408(b)(2) covered service provider notices initially went out in 2012. Notices are not required to be sent annually, so it's 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 the current 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.

## Plan Features to Boost Retirement Savings

If you share the concern that your employees may not have sufficient funds to last through retirement, the timing may be right to add provisions such as auto-enrollment or auto-escalation to boost participant savings rates. If you're thinking of amending a 401(k) plan to add an automatic enrollment or auto-escalation feature (or of revamping one that is already in place), you will need to act soon. Plans generally need to furnish notices to participants describing the automatic contribution arrangement that will be in effect 30 to 90 days before the start of the plan year.

You may also consider adding annuities to your retirement plans now that the IRS and DOL have made it easier to do so. In 2014, the IRS issued final regulations on qualifying longevity annuity contracts that, 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 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 above referenced testing and reporting requirements, you may want to perform an annual “checkup” (i.e., a review of operational practices and fiduciary responsibilities). The checkup should address plan expenses, design considerations, participant fees 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 Benefit Plan Operations](#).

**Calendar of Significant Defined Contribution Plan Compliance Tasks<sup>1</sup>**

Action Item	Due Date
<b>January</b>	
Notice to interested parties if filing Cycle E determination 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>
<b>February</b>	
Form 1099-R, 1099-DIV to participants (or write letter for 30 day extension)	February 1, 2016
Fourth quarter benefit statements	February 14, 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

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<sup>1</sup> 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.

<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 (money purchase pension plans)	March 1, 2016
ADP/ACP test corrective distributions to avoid excise taxes, unless EACA for full year 2015	March 15, 2016
Request for prior year minimum funding waiver (money purchase pension plans)	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
Form 5330 excise tax on prior year (2014 testing year) excess contributions and excess aggregate contributions	March 31, 2016
<b>April</b>	
Required minimum distributions for first time qualifying participants including 5% owners	April 1, 2016
Distribution of all excess 2015 deferrals (over \$18,000 plus \$6,000 catch-up)	April 15, 2016
File IRS Form 990-T to report any Unrelated Business Income Tax owed by the Trust. This tax is sometimes triggered if the plan earns income from certain plan investments (for example, limited partnership interests).	April 18, 2016
Adopt IRS pre-approved plans (Volume Submitter or Master/Prototype) and file for IRS Determination Letter (if applicable) <sup>3</sup>	April 30, 2016
<b>May</b>	
First quarter benefit statements	May 15, 2016

<sup>3</sup> Only employers adopting limited modifications to a Volume Submitter plan can file for an individual determination letter using IRS Form 5307. Employers that significantly modified their prototype or Volume Submitter plan on or after April 30, 2010 so that it is now considered to be an individually designed plan by the IRS (but was not modified to such a degree as to immediately lose eligibility for the 6-year remedial amendment cycle applicable to pre-approved plans) should file using Form 5300 rather than Form 5307.

Action Item	Due Date
<b>June</b>	
EACA corrective distributions (to avoid 10% excise tax on ADP/ACP refunds)	June 30, 2016
<b>July</b>	
Summary of material modifications if amendments adopted in 2015	July 28, 2016
<b>August</b>	
2015 Form 5500 and 8955-SSA (or file Form 5558 to request an extension)	August 1, 2016
Form 5330 excise tax on funding deficiency, nondeductible contribution, prohibited transaction, etc. (or file Form 5558 to request 6 month extension)	August 1, 2016
Statement of deferred vested benefits (SSA information) to terminated participants (unless on Form 8955-SSA extension)	August 1, 2016
Annual participant statement (if no right to direct investments and not on extension for Form 5500)	August 1, 2016
Second quarter benefit statements	August 14, 2016
Participant fee disclosures in plans with participant directed investments	August 30, 2016 (up to 14 months from last mailing, if later)
<b>September</b>	
Minimum funding contribution due (money purchase pension plans)	September 15, 2016
2015 Forms 5500 and 8955-SSA, and SSA information to participants, if corporate return extension	September 15, 2016
Annual participant statement (if no right to direct investments and corporate extension for Form 5500)	September 15, 2016
Summary annual report, if no 5500 extension	September 30, 2016

Action Item	Due Date
<b>October</b>	
Earliest day to send out safe harbor notices for 401(k)/401(m) nondiscrimination safe harbor plans (including notice of qualified automatic contribution arrangement) and plans with eligible automatic contribution arrangements.	October 3, 2016
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
2015 Form 5500, 8955-SSA, and SSA information to participants, if on Form 5558 extension	October 17, 2016
QSLOB election on Form 5310A	October 17, 2016
<b>November</b>	
Third quarter benefit statements	November 14, 2016
Summary annual report if Form 5500 extension using corporate extension applies	November 15, 2016
<b>December</b>	
Deadline for participant notices including: auto-enrollment, QDIA, safe harbor	December 2, 2016
Summary annual report if Form 5500 extension using Form 5558 applies	December 15, 2016
Required minimum distributions	December 31, 2016
Corrective distributions for 2015 plan year	December 31, 2016
Last day to adopt discretionary plan amendments for 2016	December 31, 2016

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