

FYI[®] In-Depth

For Your Information[®]

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2016 Planning for Governmental Retirement Plan Operations

The calendar provided in this *FYI In-Depth* will help sponsors of governmental retirement 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 2016.

In this article: [Review of Plan Administration](#) | [Plan Amendments, Filings and Documentation](#) | [Communicating with Your Actuary](#) | [Defined Contribution Plan Design Changes](#) | [In Closing](#) | [Calendar of Significant Retirement Plan Compliance Tasks](#)

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 for 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. 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.

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' 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 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 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.

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. See our [August 26, 2014](#) *For Your Information* for further details.

Review and analyze insurance coverage. 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 can be personally liable for losses incurred by a plan due to their breach; insurance can cover some of those losses.

It is 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 trustees and staff 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 in order collect the insurance.

Comment: Many policies cover the penalties imposed by the IRS under a Voluntary Correction Program, but require timely notification to the insurer.

Plan Amendments, Filings and Documentation

Do your plan's governing documents correctly describe the plan provisions as intended, and are any 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 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.

Cash balance and other hybrid plans. Although governmental plans are exempt from the Code sections that were amended in the Pension Protection Act of 2006 to address age discrimination for private plans, there are comparable changes that were made to ADEA that may need to be considered. For example, a DROP account could be considered a form of cash balance account.

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% 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? In 2015, IRS announced that their program for periodic review of individually designed plan would soon be severely curtailed. But, governmental plans are eligible for one last review as an ongoing plan and should be alert to the upcoming January 31, 2016 deadline for this Cycle E 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. (See our *For Your Information* from [July 21, 2015](#).)

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.

Ensure that all spousal protections extend to same-sex spouses. The Supreme Court's ruling in *Obergefell v. Hodges* requires governmental plans to extend same-sex spouses the same protection under their retirement plans as they extend to opposite-sex spouses. While governmental plans should have already amended plans containing terms that conflict with the Supreme Court's 2013 decision in *US v. Windsor* (see our [April 9, 2014 For Your Information](#)), the *Obergefell* decision affected eligibility and benefit features that are governed by state law rather than the Code — such as beneficiary designations and related provisions, survivor and death benefits, and QDROs. Governmental plans should review forms and procedures to ensure compliance with this decision. See our [June 26, 2015 For Your Information](#) about the *Obergefell* decision.

Communicating with Your Actuary



2016 offers an opportunity to discuss rational funding expectations. The long-time primary guidepost for governmental plan funding policy has disappeared 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 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 a revision of annuitant mortality assumptions is in order now. Plan trustees may wish to address this matter in advance of the next regularly scheduled experience study; at a minimum, it would be advisable to know the likely impact of adoption of a modernized mortality assumption.

Plan 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.

Governmental plans face a fundamentally different set of choices for 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 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., a review 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.

Calendar of Significant Retirement Plan Compliance Tasks¹

Action Item	Due Date
January	
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 Cycle E filers)	January 31, 2016 ²
February	
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
March	
Form 1042-S to participants and IRS; Form 1042 to IRS (report U.S. 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
April	
Required minimum distributions for first time qualifying participants	April 1, 2016
Distribution of all excess 2015 deferrals (e.g., \$18,000 plus \$6,000 catch-up)	April 15, 2016
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
December	
Required minimum distributions	December 31, 2016
Last day to adopt discretionary plan amendments for 2016 (unless legislative session rule applies)	December 31, 2016

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.

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

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