

FYI[®] In-Depth

For Your Information[®]

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2016 Planning for ERISA Multiemployer 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 [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 in 2016.

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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. Our *For Your Information* from [January 12, 2015](#), provides an overview of the new law. Articles on regulatory guidance issued since the law was enacted include our June 29, 2015 *For Your Information*

publications on [IRS suspension procedures](#) and [PBGC partitions](#), our [September 2, 2015 For Your Information](#) on voting procedures, and our [January 4, 2016 For Your Information](#) on PBGC's final rule on partitions.

[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 of approximately \$700 million for plans and plan participants 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.

[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. 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.

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. 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 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. 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.

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. 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.

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 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 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.

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.

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 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 to documents even after termination of the plan.

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

2016 presents an opportunity for continuing 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. Meantime, the question is what adjustments are appropriate for financial statements and a rational funding policy. Trustees 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](#).

Trustees and their actuaries will also want to consider changes in other assumptions that may coincide with mortality improvements. In response to longer life expectancy statistics 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.

Volatility in Markets and Fed Interest Rate Action. The action by the Federal Open Market Committee to raise the short-term federal funds rate by one-quarter percent appears to have had minimal, though favorable, impact on pension discount rates thus far. But combined with recent disappointing investment results, plan sponsors of pension and other post-employment benefit plans will likely see higher unfunded liabilities as of December 31, 2015. As most plan sponsors complete year-end accounting, it may be a good time to revisit forecasts that reflect the changing dynamics that drive pension costs. Given ongoing volatility in the markets, we would also recommend sensitivity analysis be performed as part of a forecasting exercise. Our [January 15, 2016 For Your Information](#) discusses these developments.

Meeting Your Fiduciary Duties Selecting and Monitoring Investments

Most multiemployer plans use alternative investments and there is an expectation of increased government attention in this area. So-called "alternatives" have many appealing qualities for pension plans, but there are downsides as well. The lack of liquidity should not become an issue when the associated pension payments are far in the future — but liquidity is needed when the monies eventually come due. The lack of liquidity can also lead to a lack of transparency (the underlying investments are not necessarily disclosed on a frequent basis) and difficulties in pricing (since they are not traded frequently on the open market to establish a fair value). Some alternatives, like hedge funds, are subject to less scrutiny from regulators, and those pose additional risks in terms of governance. Accordingly, fiduciaries of a pension plan (the board of trustees) should understand all the investments in the plan's portfolio. Alternatives are significantly more complex than traditional investments and, if not fully understood, they can do more harm than good to a plan's portfolio. Trustees should be clear about their objectives in identifying alternatives that fit their needs. Simply pouring funds into alternatives without a strategy can result in bad outcomes.

Separately, DOL has released updated guidance on "social" investments reinstating the so-called "all things being equal" test, under which fiduciaries can consider socially responsible investment goals as a tie-breaker in choosing among investment alternatives that otherwise feature equal risk and return. Fiduciaries interested in pursuing socially responsible investments now have stronger DOL guidance on which to rely — but still cannot accept lower returns or take on greater risk. Plan administrators and trustees should have a process for periodically reviewing all plan investment options. Our [November 12, 2015 For Your Information](#) discusses the new DOL guidance.

In Closing

Planning with trusted advisors to identify tasks and set compliance goals is an important first step for assuring smooth operations during 2016. 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 and should confirm the plan’s compliance with the terms of the document and investment policy statement, if any. 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	
2014 Form 5500 basic information and Schedule MB posting (assumes 10/15/2015 filing)	January 13, 2016
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 to February 1, 2016, <i>if withholding deposits timely made</i>)	February 10, 2016
Form 1099-R to IRS (if paper) (or file Form 8809 for 30 day extension)	February 29, 2016
March	
Notice of intent to request prior year amortization extension	March 1, 2016
Request for prior year minimum funding amortization extension	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
Zone certification for 2016 year from enrolled actuary to IRS and trustees	March 30, 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
Form 990-T return of unrelated business income for prior year (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
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 March 30) ²	April 29, 2016
Annual Funding Notice	April 29, 2016

Action Item	Due Date
July	
Summary of material modifications if amendments adopted in 2015	July 28, 2016
August	
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
Summary plan report to employee organizations and contributing employers, if not on Form 5500 extension	August 30, 2016
September	
Minimum funding contribution (balance due for 2015 year)	September 15, 2016
October	
2015 Forms 5500, 8955-SSA, and SSA information (to participants), if on Form 5558 extension	October 17, 2016
PBGC premium due	October 17, 2016
November	
Notice of insolvency benefit level, if applicable for 2017 (if insolvency determination by September 3, 2016) ³	November 2, 2016
Summary plan report to employee organizations and contributing employers, if on Form 5558 extension	November 14, 2016
Funding improvement plan or rehabilitation plan adoption	November 25, 2016
December	
Notice of funding waiver request for 2015	December 17, 2016
Funding improvement plan or rehabilitation schedule	December 25, 2016
Minimum funding waiver request for 2015	December 31, 2016

Action Item	Due Date
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	December 31, 2016
Request for approval of retroactive amendment reducing accrued benefits (to 2014 plan year)	December 31, 2016

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 30 is the last permissible date for the actuary to do so.*

³ *Now required to be filed electronically. See our [September 28, 2015 For Your Information](#).*

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