FYI® Roundup
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Retirement Plans – 2016 Winter Recap

This *FYI Roundup* recaps recent defined benefit and defined contribution retirement plan developments. Highlights include reports on 2015 and 2016 market turmoil; regulatory changes from IRS, DOL and PBGC; mortality table developments; updates for governmental and church plans; and plan tools for 2016 operations.

General Interest

Our roundup of general interest items includes updates on the impact of financial market turmoil on plans, DOL's modified view of socially responsible investing, IRS updates on same-sex spouses, and the latest news for Form 5500s.

Financial Market Turmoil

Over the last five months, stock market volatility and changes in bond yields have led many defined benefit plan sponsors to take a focused look at their overall pension plan risk profile and asset allocation. Defined contribution plan sponsors are also watching closely to determine effects on their plan lineup. In addition to our August 26, 2015 *FYI Alert* focusing on a suitable response to the volatility that heated up in August, our January 15, 2016 *For Your Information* and December 17, 2015 *FYI Alert* publications zeroed in on the effect of the Federal Open Market Committee's decision to raise the short-term federal funds rate by one-quarter percent on discount rates used for year-end accounting. If not already addressed, now is a good time to revisit forecasts that reflect the changing dynamics that drive pension costs. Given ongoing volatility in the markets, we also recommend performing sensitivity analysis as part of a forecasting exercise.

Our December 24, 2015 *For Your Information* highlighted issues of interest to defined contribution plan sponsors stemming from the Fed's short-term funds rate decision such as the effect of the change on the prime rate that is often used to set plan loan rates and possible implications for money market and stable value funds.

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Socially Responsible Investing

In our November 12, 2015 *For Your Information* we reported on updated DOL guidance 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.

Same-Sex Marriage Ruling for Benefit Plans

The IRS issued guidance responding to the June 2015 decision in *Obergefell v. Hodges*, where the Supreme Court ruled that states must permit same-sex marriage and recognize same-sex marriages performed in other states. Specifically, the IRS confirmed that qualified retirement plans may — but need not — change plan terms or operations as a result of *Obergefell*, and described requirements for discretionary amendments. In our *For Your Information* from December 23, 2015 we remind plan sponsors to review plan terms and operations to evaluate any required, and/or desired, changes.

Form 5500 changes — Oh, Never Mind!

In August, transportation funding legislation from Congress included changes to the filing deadlines for Form 5500, certain employer tax returns (1065 and 1120), Form 990 series forms (for tax-exempt entities), and FinCEN Report 114 (also known as FBAR). It also extended the sunset date for transfers of excess pension assets to retiree health accounts under Section 420 of the Code until December 31, 2025, all as reported in our August 20, 2015 *For Your Information.*

In separate developments for annual Form 5500 filing requirements, IRS had revived certain tax-related questions on the form and had introduced a draft *Form 5500-SUP, Annual Return of Employee Benefit Plan Supplemental Information*, that would be used by plans that did not file electronically. IRS planned to implement the new requirements for the 2015 plan year. Our November 21, 2014 *For Your Information* described the proposed changes.

Both Form 5500 changes drew complaints. Some practitioners were concerned that the extended 5500 deadline would be confusing, and potentially disruptive to long established plan operations. They also claimed that more time was needed to get ready for the new Form 5500 compliance questions on Form 5500-SUP. Our *FYI Alert* from December 8, 2015 reports on legislation signed by President Obama in December that returned the Form 5500 extended deadline to its original position — 9½ months after the end of the plan year. Also in December, advance copies of the 2015 Form 5500 included new IRS compliance questions as expected, but the instructions said completion is optional for 2015 forms.

Defined Contribution Plans

Defined contribution plan sponsors continue to hear reactions to DOL's fiduciary and conflict of interest proposal, with the latest rumor that the final rule has gone to the Office of Management and Budget (OMB) for review. While awaiting word on that front, attention has turned to other avenues for expanding retirement savings and applause over new guidance addressing mid-year changes to safe harbor 401(k) plans.

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Mid-Year Safe Harbor Plan Changes

IRS guidance will now accommodate more mid-year changes in 401(k) safe harbor plans as long as specified notices are provided to participants and election opportunities are offered when making the change. Certain mid-year changes continue to be prohibited — a change to vesting service, certain changes to reduce the group eligible to receive safe harbor contributions, changes in the type of safe harbor, and certain changes to matching contribution rates. Get the details on this guidance in our February 3, 2016 *For Your Information.*

State-Run Retirement Programs

Following the Obama administration's directive, DOL issued guidance on the application of ERISA to state-run retirement savings programs. A proposed safe harbor discussed in our December 4, 2015 *For Your Information* describes state-required automatic IRA programs that could avoid ERISA coverage, and an interpretative bulletin articulates DOL's views on other state programs that would be considered ERISA plans. While this guidance is designed to expand access to retirement savings for employees whose private sector employers do not sponsor a retirement plan, it may also be relevant to employers sponsoring plans that do not permit participation by their entire workforce (for example, age and service restrictions).

Open MEPs

Following on the heels of the efforts by states finding support by the administration as described above, we are now seeing renewed interest in revisiting Open Multiple Employer Plans for unrelated employers in the private sector. As noted in our February 1, 2016 *Legislate*, proposals being advanced by the administration for inclusion in budget legislation would set the stage for eliminating the "commonality" requirement that had chilled the use of this approach.

Defined Benefit Plans

Our roundup of defined benefit items includes updates on several funding issues, hybrid plan market rate of return rules, increased PBGC premiums, disability benefits, PBGC Section 4010 reports, reportable events, and multiemployer topics.

Funding Assumptions — Mortality Tables and Stabilized Interest Rates

Plan sponsors of defined benefit plans should be keenly aware of the impact of mortality improvements on plan liabilities. To measure these impacts, the Society of Actuaries has been active in developing updated tables. In our July 31, 2015 *FYI Alert*, we reported on the IRS release of Notice 2015-53 on the mortality tables to be used for 2016 ERISA plan valuation purposes and minimum present values for distributions with annuity starting dates that occur during stability periods beginning in the 2016 calendar year. The Treasury Department and the IRS are considering comments received about revising the mortality table base, including comments on the Society of Actuaries RP-2014 Mortality Report, and expect to issue proposed regulations revising the base mortality rates and projection factors. However, to give time for notice and comment on the proposed regulations, the new regulations will not apply until 2017.

Later in the year, as reported in our October 8, 2015 *FYI Alert*, the Society of Actuaries released updated projection scales for use with the mortality tables it released in 2014. The revisions reflected actual 2010 and 2011 mortality data instead of previously assumed projections for those years. The revised data will produce lower liability estimates. It's likely that the IRS will use these revised rates in updating the mandated mortality assumptions for ERISA valuations and minimum lump sum values; as well, plan auditors are likely to expect these revisions to be considered in setting assumptions for plan and corporate financial statements.

Mortality tables are also affected by select changes in the Bipartisan Budget Act of 2015, which modifies the rules for setting pension plan mortality assumptions to allow an employer's integration of actual experience with standardized tables, if there is sufficient credible information. See our November 2, 2015 *FYI Alert.*

The Budget Act also provided another extension of stabilized rates. The stabilized corridor will remain at 10% through 2020. It then increases by 5% per year through 2024, at which point it is fixed at 30% for future years. DOL is instructed to modify the Annual Funding Notice requirements accordingly.

Funding Regulations

IRS completed work on minimum funding regulations for ERISA single-employer defined benefit plans that had been proposed in 2008. Highlights of the highly technical instructions for actuaries of interest to plan sponsors include the ability to make a standing election to use available funding balances to pay for quarterly contributions, rules for a mid-year plan termination that can accelerate the due date for the plan's final mandated contribution, a modification adding interest credits on quarterly contributions paid early, and rational rules for applying the liquidity contribution obligation. Our September 10, 2015 *For Your Information* discusses this guidance.

Hybrid Plan Transition to Market Rates of Return

Final IRS regulations were released on permitted amendments to hybrid plans to reduce interest crediting rates to acceptable market rates of returns under the Pension Protection Act of 2006 without violating the qualified plan anti-cutback rule. The regulations permit plan sponsors to amend plans up to the beginning of the 2017 plan year — as late as the beginning of the 2019 plan year for collectively bargained plans. Our November 16, 2015 *For Your Information* covered this development.

IRS Nondiscrimination Proposal Limits QSERPs, Adds Cross-Testing Option and New Closed Plan Relief

Proposed IRS regulations would tighten some of the nondiscrimination options that had allowed for flexible designs for select highly paid employees while providing relaxed nondiscrimination testing options for certain closed defined benefit pension plans. The package does not include any relief for closed defined benefit plans from the minimum participation rule that requires coverage of no fewer than 50 employees (or 40% of employees, if less). A new cross-testing option for combinations of defined benefit and defined contribution plans would allow the combined plan to be tested on a benefits basis as long as testing can be satisfied using a 6% interest rate (rather than the 7½ to 8½% rate allowed under the current rules). Read our February 4, 2016 *For Your Information* for the latest news.

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Disability Benefits

DOL proposed regulations would change the procedures ERISA plans must follow in adjudicating claims for benefits conditioned on a determination of disability, including claims for disability retirement benefits. The proposed rules generally adopt the expanded internal claims and review requirements that apply to non-grandfathered group health plans under ACA guidance, with some limited modifications and additions. For retirement plans, the rules would affect plans that make separate decisions about disability status rather than those that rely on third party decisions such as a Social Security determination. See our December 15, 2015 *For Your Information.*

Voting Rules for Multiemployer Plan Suspensions

IRS temporary and proposed regulations established the process for the administration of the vote required before implementing a multiemployer benefit suspension under the Multiemployer Pension Reform Act of 2014. The process specifies information that must be provided to the IRS, the use of designated service providers to administer the vote, and the permitted forms of communication for delivering the ballot packages (by mail with electronic backup) and collecting the vote (electronically and telephonically). Details are covered in our September 2, 2015 *For Your Information.*

From the PBGC

No sooner had the PBGC announced 2016 ***premium rate*** increases based on the Bipartisan Budget Act of 2013 (see our October 26, 2015 *For Your Information)* than Congress revisited the rates and again voted for increases in single-employer defined benefit plan PBGC premiums as a revenue source. A table in our November 2, 2015 *For Your Information* summarizes the revised rates.

On the regulatory front, PBGC proposed changes to the requirements for filing financial information on plan sponsors and their pension plans under ***ERISA Section 4010***. As reported in our July 27, 2015 *For Your Information*, the proposal would (1) codify provisions included in MAP-21 as amended by HATFA, (2) limit the reporting waiver for employers with aggregate minimum funding shortfalls of $15 million or less to those with fewer than 500 participants, and (3) add waivers for those only required to file due to missed contributions or funding waivers if previously reported to PBGC under its rules for reportable events. The changes in regulations would become effective for information years beginning in 2016 (that is, for reports due in 2017 and later).

PBGC also gave us final regulations updating rules for filing ***reportable event reports*** with the agency. The regulations add new waivers for select events based on the financial health of the plan sponsor and on SEC reports made by public companies. PBGC predicts that the adjustments to the filing requirements will more appropriately target situations presenting a risk to the agency and yet reduce the number of reports that must be filed. Details are in our September 16, 2015 *For Your Information.*

And for multiemployer plans, the PBGC finalized rules on certain ***mandatory electronic filing obligations*** for filings made on or after January 1, 2016 (see our September 28, 2015 *For Your Information).* They also finalized regulations on the ***partition rules*** (see our January 4, 2016 *For Your Information).*

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Special Interest Areas

We have recent reports on developments for governmental and church plans.

Governmental Plans

Rising unfunded liabilities in public pension systems throughout the nation have prompted a wave of reform efforts over the past several years — and, in turn, legal challenges to these reforms. Our August 21, 2015 *For Your Information* discusses some important recent developments from the public pension arena. These include the decisions in the state of Illinois and city of Chicago striking down pension reform legislation; the New Jersey Supreme Court ruling allowing Governor Chris Christie to curtail promised contributions; the Oregon Supreme Court's protection of COLAs for benefits already earned; and the settlement in Rhode Island over challenges to that state's 2011 pension reform law.

In breaking news, IRS has proposed new regulations to address how governmental plans define their plan's normal retirement date. Watch for our *For Your Information* — coming soon.

Church Plans

Our January 12, 2016 *For Your Information* reports on the church plan provisions in the Consolidated Appropriations Act, 2016. The legislation allows church plans to include auto-enrollment features, changes the controlled group rules for churches, releases grandfathered defined benefit 403(b) plans from having to meet the defined contribution 415(c) limits, allows church investments in retirement plan collective trusts, and permits plan mergers and transfers between qualified plans and 403(b) plans sponsored by the same church (or the same convention or association of churches). In general, these provisions are effective immediately.

The *FYI* also discusses new decisions from two circuit courts that fall on opposite sides on the definition of church plan and who can establish a church plan.

Closing Out the Year

Here are some important changes for 2016 and proactive steps for ensuring plan compliance and suitability going forward.

Key Benefit Limits for 2016

With little, if any, upward inflation pressure during 2015, it's no surprise that the benefit limits applicable to retirement and other plans did not change for 2016 from 2015 levels. This is true for various Social Security indices as well. Our *For Your Information* and *FYI Alert* publications on the 2016 limits include:

- December 31, 2015 - Puerto Rico Treasury Announces Key Benefit Plan Limits for 2016
- October 21, 2015 - IRS Announces Key Retirement Plan Limits for 2016
- October 15, 2015 - No Increase in Social Security Benefits or Taxable Wage Base for 2016

Time for a Checkup?

It's an excellent time to perform a year-end review or "checkup" (i.e., an audit of operational practices and fiduciary responsibilities) of qualified retirement plans. A plan checkup should address plan expenses, plan design considerations, participant fees, and plan investments. The checkup should also verify the plan's compliance with the terms of the plan document and investment policy statement, if any. You'll find planning tools and a calendar to

address some critical events to ensure that qualified plans remain compliant in our year-end planning guide for DB plan operations and for DC plan operations. Similar year-end summaries are available for multiemployer plans and governmental plans. In more recent news, reports are surfacing that DOL is looking carefully at plans that fail to make payments to retirement-eligible participants. Make sure suitable procedures are in place for your plan to avoid challenge.

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