FYI® In-Depth
For Your Information®

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2017 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 their completion. Our Reporting and Disclosure Guide will help you identify and address other activities that are event-based and participant specific. As you make your plans, we have a number of key issues for you to consider (along with the calendar deadlines) as we head into 2017.

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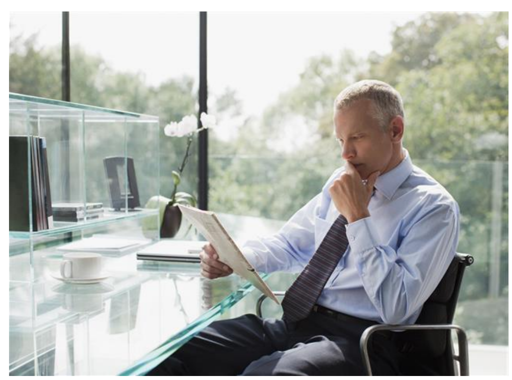
Review of Plan Administration

In addition to verifying 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 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 with funding levels that fall below select thresholds are required to hold the line on offering 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 an employer's (controlled group) top-25 highly compensated employees. The high-25 restrictions in one form or another have been present in IRS regulations since the pre-ERISA era but occasionally fall off the radar. 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 employees' 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 the plan cashout limit 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 the larger number of established IRA providers that now offer such services. Amend your plan 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. The 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 cashouts of small payments, two situations may trigger payments without specific elections by plan participants. Many defined benefit plans specify that vested participants who have terminated employment are required to commence benefit distributions upon attainment of the plan's normal retirement age. Plan administrators need to provide suitable qualified joint and survivor (QJSA) notices prior to that date and then begin payments in accordance with the terms of the plan. In the absence of a QJSA waiver, a plan in this situation would automatically begin distributions in the QJSA form. The second trigger for automatic payments arises in the case of active participants who must commence distributions under 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 commence their payment.

Identify lost participants with vested benefits. Returned plan notices, statements or distribution checks should be researched timely to find lost participants. The sooner the search is started, the more likely it will be that terminated participants whose addresses have changed can be located. Although default rollover IRAs can be set up for participants with benefit values up to the cashout limit, other missing participants must be addressed at some point, and the DOL is now auditing the extent to which plan sponsors fulfill this obligation (see our March 15, 2016 *For Your Information*). At plan termination, PBGC will accept funds to cover missing participants but will require the administrator to make a diligent effort, including the use of a locator service, to find former workers due a pension. Proposed changes to the program (see our October 5, 2016 *For Your Information*) would modify the search requirements to match DOL guidance for DC plans, including a requirement to search other employer plan records.

> Based on the **latest update to the Form 5500 instructions**, the plan must take reasonable steps to locate participants/beneficiaries to avoid reporting a failure to provide a benefit when due.

Remind participants of any opportunity to name beneficiaries. Many plan administrators have 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 a participant's spouse the default beneficiary. If the plan offers a choice, and a participant wants survivor benefits paid 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 beneficiary designations.

Address foreign asset reporting obligations. In an effort to address tax evasion, money laundering and terrorist financing concerns, compliance requirements mandate 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.

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. DOL has stepped up reviews and is keeping score of ever-increasing monetary recoveries resulting from their investigations. This is in addition to dramatic settlements arising from ERISA class action litigation.

It's important to analyze the insurance policy's major defined terms to understand exactly what risks it covers. Furthermore, understanding when these policies are triggered is crucial to knowing whether the plan and its fiduciaries are 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 plan 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.

Service Providers Need to Know

Have you provided your actuary, consultant, TPA, etc. with copies of current signed documents? Have you informed them of any changes in your controlled or affiliated service group? Your service providers need up-to-date information about you and your plans to be able to spot issues and assure quality service. Make sure to keep them in the loop!

Cash balance and other hybrid plans. Under final regulations for these plans, amendments needed to comply with the market-rate-of-return regulation must be adopted by the end of the 2016 plan year, as reported in our November 16, 2015 *For Your Information*. The interest crediting rate under the plan may not be the only issue that requires an amendment. Many plans need to adjust other provisions, such as lookback periods, early and late retirement factors, and plan termination rules.

Partial annuity distributions. Final IRS regulations issued recently change the rules for plans that offer mixed distribution options, such as a partial lump sum and an annuity. Effective for distributions on or after January 1, 2017, some plans may need or want to change either benefit calculations or plan provisions by that date. For details, see our September 14, 2016 *For Your Information.*

Changes in overtime rules. In addition to analyzing the impact of the new DOL overtime rule on direct compensation, have you considered how additional overtime payments will affect plan benefits or nondiscrimination tests? Plan amendments may be needed to assure benefits remain compliant and within budget. Read more about the overtime rule in our May 18, 2016 *FYI Alert.*

If you missed making required amendments, consider IRS' correction program. Until January 1, 2017, the applicable fee for a Voluntary Correction Program (VCP) submission that addresses only a failure to amend a plan in a timely manner is reduced by 50 percent if it is made within one year after the expiration of the amendment deadline. Starting in 2017, IRS will announce the VCP fees and associated rules in its annual Revenue Procedure for written determinations issued each January. We expect that IRS will continue to offer discounted VCP fees when sponsors voluntarily correct plan document failures within a short time after the deadline (such as one year) and prior to audit. Our October 21, 2016 *For Your Information* provides an update on the most recent 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. Our July 8, 2016 *For Your Information* provides further details about the changes to the IRS determination letter program. Individually designed plans of employers with EINs ending in 1 or 6 are eligible for one last review as an ongoing plan and should be alert to the upcoming January 31, 2017 deadline 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 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 decisions. 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; a court may hold a plan administrator who fails to comply personally liable for up to $110 per day per affected person from the date of failure. Along with 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. Provider information is required on benefits settled through annuities; and 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

Adjustments to funding policy in light of the eventual phasing out of funding relief, management of escalating PBGC premiums, preparation for changes to mortality tables used to determine funding requirements, and consideration of alternatives for measuring accounting pension cost should be on your checklist for serious discussions with the plan's actuary.

Prepare for the phasing out of funding relief. Recent legislation has extended funding relief provided through interest rate corridors through 2020. The 10 percent corridors will begin increasing by 5 percent per year in 2021, reaching an ultimate level of 30 percent in 2024. Our November 2, 2015 *FYI Alert* spells out the details. Funding policies and budgeting should be adjusted to reflect the funding relief fading away. For example, while the extension of funding relief has temporarily lowered the plan's minimum required contributions, you may consider contributing more now to prepare for funding interest rates that will eventually align 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.

Address escalating PBGC premiums. Further escalation of both the flat-rate premium paid for all defined benefit plans, as well as the additional variable rate premium paid for underfunded plans, are set to phase in over the next three years. The flat rate premium, now $69 (for 2017) per plan participant, will increase to $80 by 2019, while the variable rate premium will increase from the current (2017) $34 per $1,000 of plan underfunding to at least $42 by 2019. Increasing contributions to address underfunding will help lower or even eliminate the variable rate premium. Other tactics, such as cleaning up data and risk-transfers through annuity purchases or offering lump sum cashouts to former employees with deferred vested benefits, will help lower both premiums. Employers should review forecasts of future premiums and determine what tactics make sense to employ to manage this expense.

Consider mortality and other assumptions. We continue to see the effect of plan participants' improving longevity on the cost of defined benefit plans. Plan liabilities will generally increase over time due to mortality improvements. The most recent updates to standard annuitant tables have already been reflected in plan and employer financial statements, but the Treasury has not yet mandated their use in determining ERISA minimum

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funding requirements. In the meantime, the question is what adjustments are appropriate for a rational funding policy. Plan sponsors may wish to change the funding policy assumption to fully generational tables or embrace alternatives to the Society of Actuaries' RP-2014 base mortality table. In addition, the 2015 Budget Act allows flexibility in setting plan mortality assumptions for minimum funding purposes and determining variable rate PBGC premiums. The change in law allows plans to use assumptions more in line with their own plan populations' mortality experience instead of the standard tables. While the option was to be made available for 2016 valuations, we are still awaiting guidance on how the IRS will implement this change. You should discuss with your actuary whether the mortality assumption for minimum funding and PBGC premium purposes might be customized to reflect your particular plan's expected experience once the guidance is released.

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 their plan's "normal" retirement date. 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. On the other hand, it can also boost liabilities for a plan that provides generous actuarial increases to those electing late retirement.

Assess alternatives in determining accounting benefit costs. In 2015, a new approach emerged in determining annual benefit plan expense for accounting statements. The approach uses individual spot rates from a yield curve, rather than the single equivalent discount rate that has traditionally been used, to calculate Service Cost and Interest Cost. Last year, many plan sponsors were interested in and adopted the approach, but a number felt that it was too new to consider seriously. Now that a year has gone by and the dust has settled, there is greater insight into the application of the method and its pros and cons. While there is currently no clear way to implement this approach in the case of an employer that uses a bond model, those using a yield curve to determine discount rates should re-evaluate the method as part of year-end planning and decide if it should be applied to determine future plan expense. The impact of a change in reported benefit cost can be significant, so discussions among plan sponsors and their actuaries and auditors should take place well in advance of the compressed year-end reporting period.

Monitor requirements for reportable events and ERISA 4010 filings. Employers must report certain events to the PBGC either before or shortly after certain events occur. PBGC recently finalized changes to the rules for filing reports of these events. The new rules added waivers for select events based on the financial health of the plan sponsor and on SEC reports made by public companies, as described in our September 16, 2015 *For Your Information*. The waivers, however, will not always apply, so plan sponsors still need to be aware and monitor plan and corporate events on an ongoing basis to assure that reporting obligations are satisfied. But a determination early in the year that the new low-default-risk safe harbor, the well-funded plan safe harbor, or the small plan waiver is met, can significantly reduce the events that require monitoring.

In addition, the PBGC has recently updated ERISA 4010 reporting rules for underfunded plans as described in our March 25, 2016 *For Your Information*. Section 4010 of ERISA requires the reporting of actuarial and financial information by employers maintaining significantly underfunded single-employer pension plans. The new rules are effective for the 2016 reporting year (i.e., for filings that occur in April 2017 and later). Employers that have not previously filed or have not filed in recent years may now be required to do so because of changes in reporting waivers, including the most common waiver for plan sponsors with less than $15 million in pension underfunding. The waiver may no longer apply because the extent of underfunding will now be measured using lower interest rates, which will make it easier to be categorized as underfunded for this purpose. Plan sponsors should assess how the new regulations might affect their filing requirements and, if needed, be prepared to file on a timely basis.

Set an endgame strategy for closed or frozen plans. Employers managing a closed or frozen pension plan should map out a strategy to eventually terminate their plan. Employers should establish realistic goals and objectives that take into account their ability to fund, risk tolerance and time horizon. The plan's investment strategy should be reviewed and appropriately adjusted to achieve best risk-adjusted returns. Plan data will also need to be cleaned up to terminate a plan. Remediation steps (e.g., identify missing or incomplete data, prepare benefit calculations, ensure adequate documentation of plan provisions, locate missing participants, etc.) can take time, so the cleanup process should begin well in advance of the termination. Risk transfers prior to formal termination (e.g., lump sums, selected retiree annuitization) may also make sense.

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 operation in 2017. 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 and confirm compliance with the terms of the plan 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: 2017 Planning for ERISA Single-Employer Defined Contribution Plan Operations*.

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Calendar of Significant Defined Benefit Plan Compliance Tasks[1]

Action Item	Due Date
January	
Assess revised benefit restrictions and balance adjustments if prior year AFTAP certified after October 1, 2016	January 1, 2017
2015 Form 5500 basic information and Schedule SB posting (assumes October 17, 2016 filing)	January 15, 2017
Quarterly contribution (for 2016 plan year)	January 15, 2017
Notice to interested parties if filing Cycle A determination letter request at end of month, else, no less than 10 days or more than 24 days before submission	January 20, 2017
Form 5300 (for plan sponsors with EINs ending in 1 or 6, or plan sponsors that are controlled or affiliated service group members if the group made a Cycle A election – Cycle A filers)	January 31, 2017
Notice of benefit restrictions, if applicable January 1	January 31, 2017
Form 1099-R to participants (or write letter for 30-day extension)	January 31, 2017
Form 945 to IRS (to report income withheld on distributions)	January 31, 2017
February	
Form 945 (alternative date if withholding deposits timely made)	February 10, 2017
Form 1099-R to IRS (if paper; or file Form 8809 for 30-day extension)	February 28, 2017

[1] 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

Action Item	Due Date
March	
Notice of intent to request prior year funding waiver	March 1, 2017
Request for prior year minimum funding waiver	March 15, 2017
Request for approval of retroactive amendment reducing accrued benefits	March 15, 2017
Report US source income of foreign persons: Form 1042-S to participants and IRS (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); Form 1042 to IRS (or file Form 7004 for 6-month extension)	March 15, 2017
Form 1099-R to IRS (if electronic; or file Form 8809 for 30-day extension)	March 31, 2017
April	
Required minimum distributions for first time qualifying participants, including 5% owners	April 1, 2017
AFTAP certification (to avoid April 1 presumption for benefit restrictions)	April 1, 2017
Benefit restrictions in place if AFTAP is less than 80%	April 1, 2017
Quarterly contribution (Q1 for 2017)	April 15, 2017
PBGC 4010 filing for prior year (generally, if less than 80% funded)	April 15, 2017[2]
Form 990-T unrelated business income tax return (or Form 8868 to request filing extension). This tax is sometimes triggered if the plan earns income from certain plan investments (for example, limited partnership interests).	April 18, 2017
Annual Funding Notice (unless small plan)	April 30, 2017

[2] Unclear whether PBGC will adjust April 15 due date to conform to tax rule

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Action Item	Due Date
May	
Notice of benefit restrictions, if applicable April 1	May 1, 2017
July	
Quarterly contribution (Q2 for 2017)	July 15, 2017
Summary of material modifications if amendments adopted in 2016	July 29, 2017
Form 5330 excise tax on funding deficiency, nondeductible contribution, prohibited transaction, etc. (or file Form 5558 to request 6-month extension)	July 31, 2017
2016 Forms 5500 and 8955-SSA (or Form 5558 to request an extension)	July 31, 2017
Statement of deferred vested benefits (SSA information) to participants (unless on Form 8955-SSA extension)	July 31, 2017
Small plan annual funding notice, if form 5500 extension does not apply	July 31, 2017
September	
Minimum funding contribution (balance due for 2016 year); election to apply or add to prefunding balance	September 15, 2017
Forms 5500, 8955-SSA, SSA information to participants, and small plan annual funding notice, if corporate return extension	September 15, 2017
AFTAP certification (to avoid October 1 presumption for benefit restrictions)	September 30, 2017
Summary annual report for non-PBGC covered plans, if no 5500 extension	September 30, 2017

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Action Item	Due Date
October	
AFTAP-triggered benefit restrictions	October 1, 2017
Quarterly contribution (Q3 for 2017)	October 15, 2017
Retroactive amendment to correct prior year coverage/nondiscrimination failures	October 15, 2017
2016 Forms 5500, 8955-SSA, SSA information to participants, and small plan annual funding notice, if on Form 5558 extension	October 16, 2017
QSLOB Form 5310-A modification or revocation election (if changing QSLOB for the 2016 plan year.)	October 16, 2017
PBGC variable rate premium basis election (5-year limit)	October 16, 2017
PBGC flat and variable rate premium payment	October 16, 2017
Notice of benefit restrictions, if applicable October 1	October 31, 2017
November	
Summary annual report for non-PBGC covered plans, if Form 5500 extension using corporate extension applies	November 15, 2017
December	
Summary annual report for non-PBGC covered plans, if Form 5500 extension using Form 5558 applies	December 15, 2017
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, 2017
Final AFTAP certification if operating with range certification	December 31, 2017
Required minimum distributions	December 31, 2017
Triennial benefit statements/annual alternative notice	December 31, 2017
Last day to adopt discretionary plan amendments for 2017	December 31, 2017
Request change in funding method for 2017	December 31, 2017

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