

Retirement Plans – 2017 Winter Recap

This *FYI Roundup* recaps recent defined benefit and defined contribution retirement plan developments since our August review. Highlights include updates on DOL’s fiduciary rule, mortality table developments, lump sum distribution guidance, state-run retirement programs, and a reminder of our annual planning tools.

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General Interest

Our roundup of general interest items highlights DOL’s fiduciary rule, state-run retirement programs, and proposed missing participant options.

DOL’s Fiduciary Guidance

As this issue of *FYI Roundup* hits the wires, reports are in that President Trump is ordering a hold and re-evaluation of the fiduciary rule. For history buffs in the crowd, last fall DOL issued Fiduciary FAQs for Advisers that focused on the duties and responsibilities of investment advisers who provide services to plans and participants. In January, during its last days under the Obama administration, DOL released additional sets of FAQs aimed at service providers and consumers, respectively. The parting FAQs refine some details on how the agency had intended the new protections to play out. Refer to our [November 8, 2016](#) and [January 20, 2017](#) *For Your Information* articles for the details.

On another front, in response to concerns that prior guidance has unduly discouraged fiduciaries from exercising shareholder rights, the DOL issued guidance clarifying fiduciary duties on **proxy voting and investment policy statements**. The guidance also reiterates DOL’s acceptance of applying environmental, social and governance policies to investment strategies. Plan fiduciaries wishing to increase shareholder engagement have room under this guidance to do so. Read up on this news in our [January 11, 2017](#) *For Your Information*.

State-Run Retirement Programs

Paltry retirement savings by many American workers spurred the Obama administration to encourage states to pick up the slack. DOL



finalized guidance that, generally tracking their 2015 proposed rule, created a new safe harbor for state-required automatic IRA programs to fly under ERISA’s radar. Read our [August 29, 2016 For Your Information](#) on the final rule and then peruse our [January 5, 2017 For Your Information](#) on the amendment to expand the state-based retirement safe harbor rule to political subdivisions – cities and counties – under specified conditions.

While primarily relevant to private-sector employers that do not sponsor a retirement savings plan for their employees, the guidance may also affect sponsors of plans with eligibility provisions that limit participation to less than 100 percent of their employee population.

PBGC Proposes to Change, Expand Missing Participant Program for Terminated Plans

Proposed regulations would open PBGC’s existing missing participant program in 2018 to terminated defined contribution plans, PBGC-insured multiemployer plans, and certain small professional service defined benefit plans. PBGC also proposed changes to its existing program aimed at aligning search requirements with DOL guidance and simplifying the rules for determining transfer amounts. The guidance would give sponsors considering plan terminations in the coming years new options for dealing with missing participants – but does not address the missing participant problem in the case of distributions from ongoing plans. Read more in our [October 5, 2016 For Your Information](#).

Processes and Procedures

IRS and DOL both issued guidance on operation issues since our last roundup. The DOL finalized regulations that will 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 final rules, which generally follow the proposed regulations, add a requirement that notices of an adverse benefit determination on review set out



plan-mandated deadlines for bringing lawsuits under ERISA. DOL believes that this would apply for other benefits – not just disability benefits. In addition, the final guidance addresses a requirement to provide communications in a **non-English language** to claimants whose address is in a United States county that has been identified by the Census Bureau as having 10 percent or more of its population literate only in the same non-English language. See our [January 11, 2017 For Your Information](#) for details on these revised requirements.

The IRS provided new rules for **“self-service” 60-day rollover waivers** for retirement plan distributions. If an indirect rollover does not occur within the required 60-day timeframe, IRS will now allow affected individuals to self-certify that they meet a “hardship waiver” exception to the 60-day rule in a broad array of circumstances. Plan administrators and IRA trustees can then rely on the self-certification in deciding whether to accept a rollover contribution after the 60-day period ends, as we discuss in our [August 31, 2016 For Your Information](#).

The IRS also issued a new revenue procedure governing employee plan corrections that takes into account the newly effective changes to the IRS determination letter program. It also offers a “facts and circumstances” test for determining Audit CAP sanctions that will replace the current negotiated percentage of the maximum payment amount approach. Additionally, the VCP user fee has been relocated; beginning in 2017, user fees will be published in the annual Employee Plans revenue procedure (currently 2017-4). See our [October 21, 2016 For Your Information](#).

Changes Proposed to Master Trust Accounting Standards

Under changes in accounting disclosures proposed by FASB, plans investing in master trusts would need to report more information in their statement of net assets available for plan benefits and in their statement of changes in net assets available for plan benefits. Our [August 16, 2016 For Your Information](#) covers this development.

Disaster Relief

For extraordinary events, announcements of relief from the agencies provide more than the plain vanilla extensions for filing forms and meeting reporting obligations. The additional relief generally mimics the extra relief announced in 2012 for Hurricane Sandy victims to include relaxed standards for processing hardship withdrawals and plan loans and allows more time to adopt plan amendments, if appropriate. It does not open the door to loans or withdrawals from amounts that are inaccessible for hardship withdrawal, such as QNEC and QMAC accounts and income accumulated on elective deferrals. It also does not provide relief from the 10 percent penalty on premature distributions prior to age 59½.

Since our August *FYI Roundup*, the agencies have provided this extra help for victims of the **Louisiana floods** that began on August 11, 2016 (see our [September 2, 2016 For Your Information](#)) and for victims of **Hurricane Matthew** on or after October 3, 2016 (for Florida) and October 4, 2016 (for all other locations) and before March 15, 2017 (details in our [November 2, 2016 For Your Information](#)). A DOL news release made allowances for delays in providing blackout notices as well as processing participant contributions, loan repayments, health plan benefit claims and COBRA elections. See our [September 15, 2016 For Your Information](#) for more information on the agency guidance and for a list of additional actions employers can consider to help employees when disaster strikes.

Defined Contribution Plans

In addition to the impact of many of the changes described above, two recent IRS developments for defined contribution plans address plan design issues – the use of forfeitures and 403(b) document updates.

IRS OKs Use of Forfeitures as QNEC/QMAC/Safe Harbor Contributions

Proposed IRS changes to 401(k) regulations will allow employers to use forfeitures as qualified nonelective and qualified matching contributions to help pass nondiscrimination tests and as safe harbor contributions. The change is proposed to be effective after it is finalized, but can be relied on now – great news for employers who have long operated using this logical approach. Our [January 18, 2017 For Your Information](#) covers this welcomed turn of events.

Window for Fixing Current 403(b) Document to Close in 2020

IRS will allow 403(b) plan sponsors until March 31, 2020 to correct document defects and/or adopt a pre-approved plan restatement, assuming an initial plan document was adopted timely under its 2007 regulations and subsequent guidance. Our [January 27, 2017 For Your Information](#) covers the announcement; more news is expected soon on pre-approvals of vendor documents.



Defined Benefit Plans

Mortality tables, economic tailwinds, PBGC premium updates and guidance aimed at plan design issues were all in the mix for defined benefit plans since our last *FYI Roundup*.

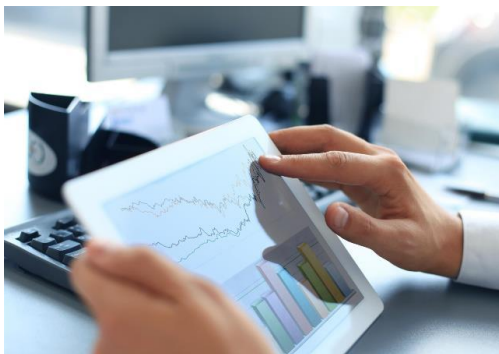
Implications of Recent Market Conditions for Pension Plan Sponsors

Events leading up to and in the aftermath of President-elect Trump's victory have created tailwinds for pension plans: increased yields on both Treasury and corporate debt and rising prices across global equity markets. Additionally, as expected, the Federal Open Market Committee voted at its December 14, 2016 meeting to increase the key federal funds rate by one-quarter percent – and they signaled that further increases should be expected. These events generally have served to reduce pension plan liabilities and improve funded status. Sponsors should assess the impact of these events on their plans, and consider whether pension funding, investment strategies and risk management should be re-evaluated. Read more on factors to consider in our [January 6, 2017 For Your Information](#).

Mortality Tables

Ever since the release of updated RP-2014 mortality tables by the Society of Actuaries (SOA), plan sponsors and their actuaries have been on the lookout for word from the IRS about using the tables for funding and for minimum lump sum benefit calculations. While waiting, further revisions have been released by the SOA that reflect actual 2012 and 2013 mortality data and 2014 estimated mortality data instead of previously assumed projections for those years. The revised data will typically produce lower liability estimates. Plan auditors will require that these revisions be considered in setting assumptions for plan and corporate financial statements as noted in our [October 20, 2016 FYI Alert](#).

In September, IRS announced the mortality tables to be used **for 2017 valuation purposes** and **minimum present values** for distributions with annuity starting dates that occur during stability periods beginning in **the 2017** calendar year. These were developed using the base mortality rates, projection factors and weighting factors



specified in the current regulations. The Treasury Department and the IRS advised that they continue to consider comments received about revising the mortality table base, including those on the SOA 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, they said new rules will not apply until 2018, as reported in our [September 6, 2016 FYI Alert](#).

To close out 2016, the IRS released proposed regulations on applicable mortality tables to be used by defined benefit plans subject to ERISA to determine **minimum funding requirements** beginning with **2018 plan years**. When finalized, the revised tables will also form the basis for the unisex tables used for minimum lump-sum values and maximum benefits under Code section 415. The proposed rules generally adopt the SOA RP-2014 tables and MP-2016 projection scale. Tables reflecting static projections of longevity improvement would still be permitted, as would combined annuitant/nonannuitant (small plan) versions of the tables. Updated rules for substitute, plan-specific mortality tables are also proposed, which would permit the use of tables reflecting partially credible experience for

plans that are too small to have fully credible experience. How will this impact your defined benefit plan? Find answers in our [January 9, 2017 For Your Information](#).

DB Plan Design Issues

The IRS issued two pieces of guidance that may affect how lump sum and certain other distributions are calculated under defined benefit plans. First were final regulations on applying the ERISA **minimum present value requirements** to participant distributions involving combinations of annuities and accelerated distributions (such as lump sum cashouts). The regulations generally support the approaches most plans had been using in the absence of official guidance. The regulations are available retroactively and offer limited anti-cutback relief for plans that are timely amended to support their desired calculation approach for future distributions. Our [September 14, 2016 For Your Information](#) covers this final rule. Our [December 1, 2016 For Your Information](#) explains the second piece of guidance – proposed changes that would update the rules for calculating the minimum value for certain defined benefit plan distributions – primarily lump sums from plans that are not eligible for the cash balance (hybrid plan) exception. The changes incorporate PPA segment rates and the PPA mortality tables, establish a standard for reflecting preretirement mortality, and provide an example of how the rules apply in calculating Social Security level income options.

Closed DB plans were the beneficiaries of a temporary IRS extension of the nondiscrimination relief through 2017. IRS extended the temporary relief from select nondiscrimination requirements that had been announced in Notice 2014-5. If the conditions in that Notice are satisfied, defined benefit plan sponsors may continue to rely on its relief for plan years beginning before 2018 – at which point IRS anticipates the changes to the nondiscrimination regulations will be finalized. See our [September 19, 2016 FYI Alert](#).

Meanwhile, **for Pension Equity Plans (PEPs)**, IRS has provided much needed clarity on whether the market rate of return rules described in current regulations apply to these plans. Plans that explicitly credit interest each year after principal credits stop are subject to the rules, while plans that instead convert to a benefit at normal retirement age using a deferred annuity factor (thereby implicitly crediting interest) are not. IRS is considering whether to issue additional regulations that would apply the rules to implicit interest PEPs and seeks comments on the how the rule would apply and the type of anticutback relief needed. We cover this development in our [November 9, 2016 For Your Information](#).

Comment. IRS did not change the date amendments are needed for compliance with the many features in their final hybrid regulations. Sponsors of calendar year plans, including both implicit and explicit PEP plans, generally needed to have amendments in place by January 1, 2017. Plans with off-calendar fiscal years would have more time; and VCP corrections are a possibility for those plans that miss their deadlines.

PBGC Premiums

Our [October 20, 2016 For Your Information](#) reports on the scheduled increases in the 2017 premium rates for single-employer and multiemployer plans announced by the PBGC. The rates for single-employer plans reflect the premium hikes in the Bipartisan Budget Act of 2015 (see our [November 2, 2015 FYI Alert](#)); the rates for multiemployer plans reflect the increase under the Multiemployer Pension Reform Act of 2014 (see our [January 12, 2015 For Your Information](#)).

But if that's confusing, be aware that some **penalty relief** is available! As proposed in April, PBGC has cut their penalties for late payment of annual premiums in half and sliced them even further for plan sponsors who have a history of timely payment. The rule applies to both single-employer and multiemployer plans as we note in our [September 22, 2016 For Your Information](#).

Special Interest – Supreme Court to Address Church Plan Definition

In recent years, participants and beneficiaries in retirement plans maintained by certain church-affiliated, tax-exempt entities (such as hospitals) have sued to enforce their ERISA rights, asserting that ERISA's church plan exemption does not apply. The three federal appeals courts that have considered ERISA's church plan exemption disregarded long-standing IRS private letter rulings and found that these pension plans do not qualify as church plans because they were not initially established by a church. On December 2, 2016, the Supreme Court agreed to consider these three cases and will determine whether the exemption applies only if that condition is satisfied. We brought you this news in our [December 9, 2016 For Your Information](#).

Closing Out the Year

Here are some important changes for 2017 and proactive steps for ensuring plan compliance going forward.

Key Benefit Limits for 2017

Continued minimal upward inflation pressure during 2016 resulted in minimal increases in various benefit plan limits. This is true for various Social Security indices as well. Our *For Your Information* and *FYI Alert* publications on the 2017 limits include:

- Oct 18, 2016 – [Social Security Benefits and Taxable Wage Base to Increase for 2017](#)
- Oct 27, 2016 - [IRS Announces Key Retirement Plan Limits for 2017](#)
- December 19, 2016 - [Puerto Rico Treasury Announces Key Benefit Plan Limits for 2017](#)

Time for a Checkup?

As a year-end or a new year fresh start, it's an excellent time to perform a 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 guides:

- [FYI In-Depth: 2017 Planning for ERISA Single-Employer Defined Benefit Plan Operations](#)
- [FYI In-Depth: 2017 Planning for ERISA Single-Employer Defined Contribution Plan Operations](#)
- [FYI In-Depth: 2017 Planning for ERISA Multiemployer Defined Benefit Plan Operations](#)
- [FYI In-Depth: 2017 Planning for Governmental Retirement Plan Operations](#)

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