

FYI[®] In-Depth

For Your Information[®]

Volume 40 | Issue 143 | November 13, 2017

2018 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 2018.

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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 your 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% corridors will begin increasing by 5% per year in 2021, reaching an ultimate level of 30% 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 rates and thus higher liabilities and contribution requirements. Employers should keep in mind that the ultimate cost of a plan is the amount paid out in benefits, and reduced funding today will translate to higher funding requirements tomorrow. Each plan sponsor should develop a funding policy that will achieve business objectives – like avoiding a funding spike once the corridor widens, or being able to terminate the plan within a desired timeframe, and enhancing participant benefit security – such as assuring participants have access to intended benefit distribution options.

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 \$74 (for 2018) per plan participant, will increase to \$80 by 2019, while the variable rate premium will increase from the current (2018) \$38 per \$1,000 of plan underfunding to at least \$42 by 2019. In addition, the per-participant cap on variable rate premiums will increase from \$517 to \$523. Increasing contributions to address underfunding can 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, can also help lower both premiums. Employers should review forecasts of future premiums and determine which tactics 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. While recent studies indicate the rate at which mortality is improving has slowed, plan liabilities will generally continue to increase over time due to increasing longevity. The most recent updates by the Society of Actuaries (SOA) to standard annuitant tables have already been reflected in plan and employer financial statements, and now, as explained in our [October 10, 2017 For Your Information](#), the Treasury has mandated their use in determining ERISA minimum funding requirements and PBGC premiums beginning with 2018 or 2019 valuations (depending on use of a transition option). The 2015 Bipartisan Budget Act allows greater flexibility in setting plan mortality assumptions for these purposes. The change in law allows plans to adjust the standard mortality assumptions so that they are more in line with their own plan populations' past and expected mortality experience. Plan sponsors may wish to change the funding assumption to fully generational tables or explore adjustments to the Society of Actuaries' RP-2014 base mortality table to better reflect plan experience. Recent IRS guidance has at last indicated how this can be done, beginning as early as the 2018 plan year. 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. In addition to evaluating the assumptions for funding requirements, plan sponsors should also consider what assumptions are most appropriate for a rational funding policy. For this purpose, assumptions based on alternatives to the SOA standard table may lead to better budgeting forecasts.

Plan sponsors and their actuaries may 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 for generous actuarial increases to those electing late retirement.

Assess alternatives in determining accounting for benefit costs. In 2015, an alternative 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. In recent years, many plan sponsors were interested in and adopted the approach, but a number felt that it was too new to consider seriously. The method is now well established as a viable alternative for determining a plan's annual expense, and 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, the majority of plans that use 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, as the ability to justify a change to the method may become more difficult after the end of 2017. The impact of a change in reported benefit cost can be significant, so plan sponsors should discuss this with their actuaries and auditors 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 they occur. However, PBGC rules include 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 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 were 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, or manage the plan in a low risk state. 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, but they need to be reviewed in the context of the overall exit strategy. For example, a strategy that annuitizes retirees ahead of plan termination and leaves a plan with only deferred vested participants could lead to higher costs down the road, because the stand-alone deferred vested population may not be as attractive to insurers as a plan that has a mix of immediate and deferred participants.

Consider discretionary funding. As noted in several of the sections above, there can be compelling reasons for employers to fund beyond required minimums, including more predictable budgeting, reduced PBGC premiums, allowing for risk transfer opportunities, and taking significant steps towards reducing plan risk to attain the ultimate end game strategy for the plan. Fortunately, for many plan sponsors, the cost of borrowing is currently at historical lows, which can allow organizations to either issue debt or access other borrowing sources at low rates to pay down higher cost pension deficits. Arguably, borrowing to fund is balance sheet neutral for most companies, with the new debt simply replacing the unfunded pension liability. Additionally, with tax proposals that would lower the corporate tax rate significantly beginning to gain traction in Congress, there could be additional benefits to making

discretionary contributions before the tax rates change to take advantage of a higher deduction. We have seen many examples in 2017 of companies issuing debt to fund pension deficits, and we expect the trend will continue going forward. While every company's situation is unique, it's worth running the numbers to determine if discretionary funding is a viable option for your company.

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 plan participant elections. Many defined benefit plans specify that terminated vested participants must begin receiving benefits when they reach 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% 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 has been auditing the extent to which plan sponsors fulfill this obligation (see our [March 15, 2016 For Your Information](#)). More recently, audits have intensified with DOL alleging fiduciary breaches and assessing prohibited transaction penalties over missed payments. 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.

The IRS recently released a [memo to its employee plan examiners](#) on the steps plan sponsors must take before challenging the plan as failing to make required minimum distributions to missing participants. Specifically, the memo requires a plan sponsor to: (1) search plan and related plan information as well as public records for alternative contact information, (2) use a commercial locator service, credit reporting agency, or internet search tool, and (3) send a letter by certified mail or make phone calls.

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 and let them know if they must use specific plan forms to make their designation.

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; our [April 4, 2017 For Your Information](#) provides an update on filing timing.

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. So, obtaining fiduciary liability insurance

in the appropriate amount has become imperative. DOL has stepped up reviews and is keeping score of ever-increasing monetary recoveries resulting from their investigations – [2,002 investigations in 2016](#) with 67.7% resulting in corrective action. 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 (VCP), 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 (SPDs) and administrative procedures in sync with the official documents? Now that IRS has limited its determination letter program, an annual self-check should be considered.

Evaluate the need for plan amendments – and deadlines. IRS procedures call for executing discretionary amendments by the end of the plan year in which the amendment is operationally put into effect and provide extended amendment periods (generally to the end of the second calendar year following the year a topic is included on IRS' Required Amendments (RA) list for individually designed plans) 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. We anticipate that the cash balance and partial annuity distribution changes described below will be on this year's RA list to the extent a change is mandatory.

Cash balance and other hybrid plans. Under final regulations for these plans, amendments needed to comply with the market-rate-of-return regulation were generally required 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 required an amendment. Many plans need to adjust other provisions for 2017, such as lookback periods, early and late retirement factors, and plan termination rules.

Partial annuity distributions. Final IRS regulations 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 as of that date. For details, see our [September 14, 2016 For Your Information](#); for IRS' model amendment, see our [August 25, 2017 For Your Information](#). Then stay tuned for more guidance on distribution rules – IRS issued proposed regulations that may affect how your plan calculates lump sums and Social Security level income options. When finalized, additional plan amendments may be needed. Our [December 1, 2016 For Your Information](#) explains those changes.

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!

Disability claims procedure. Retirement plans that call for independent decisions on disability status rather than referencing another source, such as the employer’s long-term disability plan or a Social Security determination, need to watch for changes in DOL requirements addressing claims procedures. Final rules from 2016 set to go into effect in 2018 are proposed to be delayed as noted in our [October 11, 2017 For Your Information](#). It remains to be seen whether the current administration will roll these back.

If you missed making required amendments, consider IRS’ Voluntary Correction Program (VCP). IRS announces the VCP fees and associated rules each January in its Revenue Procedure for written determinations. Discounted VCP fees are currently available when sponsors voluntarily correct plan document failures within one year after the applicable deadline.

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 SPDs 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 recordkeeping 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.

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 2018. 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 planner: [FYI In-Depth: 2018 Planning for ERISA Single-Employer Defined Contribution Plan Operations](#).

Calendar of Significant Defined Benefit Plan Compliance Tasks¹

Action Item	Due Date
January	
Assess revised benefit restrictions and balance adjustments if prior year AFTAP certified after October 1, 2017	January 1, 2018
2016 Form 5500 basic information and Schedule SB intranet posting (assumes October 16, 2015 filing)	January 15, 2018
Quarterly contribution (for 2017 plan year)	January 15, 2018
Notice of benefit restrictions, if applicable January 1	January 31, 2018
Form 1099-R to participants (or write letter for 30-day extension)	January 31, 2018
Form 945 to IRS (to report income withheld on distributions)	January 31, 2018
February	
Form 945 (alternative date if withholding deposits timely made)	February 12, 2018
Form 1099-R to IRS (if paper; or file Form 8809 for 30-day extension)	February 28, 2018
March	
Notice of intent to request prior year funding waiver	March 1, 2018
Request for prior year minimum funding waiver	March 15, 2018
Request for approval of retroactive amendment reducing accrued benefits	March 15, 2018
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, 2018
Request change in funding method for 2017	March 15, 2018

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. If a deadline is not extended to the next business day, be sure to take appropriate action in advance of the deadline.

Action Item	Due Date
April	
Required minimum distributions for first time qualifying participants, including 5% owners	April 1, 2018
AFTAP certification (to avoid April 1 presumption for benefit restrictions)	April 1, 2018
Benefit restrictions in place if AFTAP is less than 80%	April 1, 2018
Form 1099-R to IRS (if electronic; or file Form 8809 for 30-day extension)	April 2, 2018
Quarterly contribution (Q1 for 2018)	April 15, 2018
PBGC 4010 filing for prior year (generally, if less than 80% funded)	April 15, 2018 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 17, 2018
Annual Funding Notice (unless small plan)	April 30, 2018
May	
Notice of benefit restrictions, if applicable April 1	May 1, 2018
July	
Quarterly contribution (Q2 for 2018)	July 15, 2018
Summary of material modifications if amendments adopted in 2017	July 29, 2018
Form 5330 excise tax on funding deficiency, nondeductible contribution, prohibited transaction, etc. (or file Form 5558 to request 6-month extension)	July 31, 2018
2017 Forms 5500 and 8955-SSA (or Form 5558 to request an extension)	July 31, 2018
Statement of deferred vested benefits (SSA information) to participants (unless on Form 8955-SSA extension)	July 31, 2018
Small plan annual funding notice, if form 5500 extension does not apply	July 31, 2018

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

Action Item	Due Date
September	
Minimum funding contribution (balance due for 2017 year); election to apply or add to prefunding balance	September 15, 2018
AFTAP certification (to avoid October 1 presumption for benefit restrictions)	September 30, 2018
Summary annual report for non-PBGC covered plans, if no 5500 extension	September 30, 2018
October	
AFTAP-triggered benefit restrictions	October 1, 2018
Quarterly contribution (Q3 for 2018)	October 15, 2018
Retroactive amendment to correct prior year coverage/nondiscrimination failures	October 15, 2018
2017 Forms 5500, 8955-SSA, SSA information to participants, and small plan annual funding notice, if on Form 5558 extension or corporate extension	October 15, 2018
QSLOB Form 5310-A modification or revocation election (if changing QSLOB for the 2017 plan year.)	October 15, 2018
PBGC variable rate premium basis election (5-year limit)	October 15, 2018
PBGC flat and variable rate premium payment	October 15, 2018
Notice of benefit restrictions, if applicable October 1	October 31, 2018
November	
Summary annual report for non-PBGC covered plans, if Form 5500 extension using corporate extension applies	November 15, 2018
December	
Summary annual report for non-PBGC covered plans, if Form 5500 extension using Form 5558 or corporate extension	December 15, 2018
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, 2018
Final AFTAP certification if operating with range certification	December 31, 2018
Required minimum distributions	December 31, 2018
Triennial benefit statements/annual alternative notice	December 31, 2018
Last day to adopt discretionary plan amendments for 2018	December 31, 2018

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Produced by the Knowledge Resource Center of Conduent Human Resource Services

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