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Milliman

CLIENT ACTION Bulletin
Employee Benefits

Year-End Compliance Issues for Single-Employer Retirement Plans

SUMMARY

By year-end 2018, sponsors of calendar-year single-employer retirement plans must adopt necessary and discretionary plan amendments to ensure compliance with the statutory and regulatory requirements of ERISA and the tax code. This *Client Action Bulletin* looks at key areas – including administrative compliance issues – that sponsors of such defined benefit (DB) or defined contribution (DC) plans should address by Dec. 31, 2018.

DISCUSSION

Plan Amendments

Employers should review their retirement plan documents before the end of the year to ensure that discretionary or operational features comply with the tax code. Sponsors that made discretionary changes during 2018 must formally adopt plan amendments by Dec. 31. In addition, required or discretionary amendments relating to prior plan years should be considered as part of any year-end plan review, taking into account whether they have been properly adopted and executed. Starting in 2016, the IRS began publishing a Required Amendments List (RAL) after Oct. 1 of each year. The RAL is the annual list of all the amendments necessary for individually designed plans to retain their tax-qualified status. Generally, plan sponsors must adopt any item placed on the RAL by the end of the second calendar year following the year the RAL is published. Thus, the deadline for amendments on the first (2016) RAL is Dec. 31, 2018. (Note that under this RAL, the only required amendment pertains soley to collectively bargained DB plans.)

Correcting Failures to Amend a Plan

If a plan sponsor discovers it has failed to adopt either a required or discretionary plan amendment, it should consider correcting the mistake through the IRS's Employee Plans Compliance Resolution System (EPCRS), which, in many cases, lowers the standard filing fees for such failures. For example, for a failure to timely adopt an interim amendment, the EPCRS fees to resolve the failure are between $1,500 and $3,500 based on the amount of plan assets. Monetary sanctions can be substantial if a late amendment or a failure to adopt an amendment is discovered during an IRS audit. Operational errors should also be corrected through EPCRS. However, many operational errors may be self-corrected without contacting the IRS or paying a fee.

Annual Notices and Benefit Statements

As in past years, plan sponsors may need to distribute certain notices to participants:

- For DB plans subject to ERISA and the tax code, post on the sponsor's existing intranet site Parts I and II of the 2017 Form 5500 and the Schedule SB or MB within 90 days after the date the Form 5500 is filed (by Jan. 14, 2019, if Form 5500 was filed on Oct. 15, 2018).
- For DB plans, provide benefit statements every three years or provide an annual notice explaining how participants may obtain statements.
- For DC plans and non-PBGC-covered DB plans (e.g., "professional service employers" with fewer than 26 employees, electing church groups, etc.), distribute the Summary Annual Report (SAR) two months after the Form 5500 filing was due (e.g., Dec. 15, if an Oct. 15 extension applied because the Form 5500 due date was extended by a timely filed form 5558);
- For DC plans that allow participant-directed investments, provide by Dec. 31 a statement – if not included in a summary plan description (SPD) – that the plan fiduciaries are relieved of liability for certain losses resulting from participants' exercise of their rights, and about the availability of any investment advice services the plan sponsor offers.

- For DC plans, provide by Dec. 1, if applicable: a 401(k) safe harbor notice; an automatic enrollment notice; and/or a qualified default investment alternative notice.

Other Operational Action Items

By Dec. 31, 2018, plan sponsors also should:

- make recurring age 70-1/2 required minimum distributions (RMDs), for both DC and DB plans;
- deposit any corrective distributions needed to correct a failed 2017 actual deferral percentage/actual contribution percentage (ADP/ACP) test to maintain a 401(k) plan's qualified status;
- for DC plans under which the plan document provides for use of a forfeiture account, use the forfeitures;
- for top-heavy DB and DC plans, make the required top-heavy contributions;
- if desired, make a voluntary funding election to avoid ERISA 4010 filing or at-risk status (i.e., DB plan elections to reduce a credit balance or revoke a credit balance election) and/or request a change in the funding method for 2018;
- certify the DB plan's 2018 plan-year funding percentage (AFTAP), if the plan used a "range" certification (Note: A failure to meet this deadline will result in the AFTAP for the plan year being deemed under 60% retroactively to Oct. 1, 2018);
- make an election to reduce the DB plan's carryover and/or prefunding balance as of Jan. 1, 2019 (e.g., to avoid or terminate a benefit restriction) by providing an irrevocable written notification to the plan's enrolled actuary and plan administrator; and
- if necessary, revoke a prior election to use a carryover or prefunding balance to meet minimum funding requirements for 2019 by providing an irrevocable written notification to the DB plan's enrolled actuary and plan administrator (Note: This election is only allowed to the extent that the amount of the prior election exceeded the minimum required contribution).

ACTION

Although the year-end countdown rapidly approaches, there is still time to review and amend retirement plans. Operational procedures and plan changes also should be assessed for compliance and properly drafted, adopted, and executed amendments. In addition, the need for participant notices must be determined and, if necessary, any required notices should be distributed as soon as possible. Plan sponsors also should be mindful of pending legislation or recently enacted laws that have compliance-related implications. Plan sponsors should review their plans and Summary Plan Descriptions to be sure they are in compliance.

For additional information about year-end compliance reviews, plan amendments for calendar-year retirement plans, or pre-approved plan availability, please contact your Milliman consultant.