

CLIENT ACTION Bulletin

Employee Benefits

Year-End Compliance Issues for Single-Employer Retirement Plans

SUMMARY By year-end 2015, sponsors of calendar-year single-employer retirement plans must act on necessary and discretionary amendments and perform a range of administrative procedures to ensure compliance with statutory and regulatory requirements. This *Client Action Bulletin* looks at key areas that such employers and sponsors of defined benefit (DB) or defined contribution (DC) plans should address by Dec. 31, 2015.

DISCUSSION **Plan Amendments and Related Issues**

Plan sponsors reviewing plan documents and amendments before the end of the year should consider:

- Discretionary Plan Amendments – If discretionary, operational, or plan design changes were made by a calendar-year plan for 2015, amendments must be formally adopted by Dec. 31, 2015. For example, if it added an in-plan Roth rollover provision as an optional discretionary feature effective for the 2015 plan year, the amendment must be adopted by Dec. 31, 2015.
- DC Plan Restatements for 2016 – For DC plan sponsors with pre-approved prototype or volume submitter documents, plan documents must be restated next year before the Apr. 30, 2016, deadline. The same deadline applies for a submission to the IRS for a favorable determination letter for pre-approved plans that have modifications.
- Safe Harbor 401(k) Plans – Until the IRS issues guidance, safe harbor 401(k) plans should avoid mid-year amendments. Thus, plans should ensure that any plan changes, including adding or removing a safe harbor arrangement, are effective as of the beginning of the plan year.
- Cash balance and other hybrid plans – Plan sponsors must comply with the 2015 final rule beginning in 2016. Unless the IRS extends the deadline, amendments to reflect the final rule will generally be required prior to the beginning of the 2016 plan year.

Individually designed plans with an Employer Identification Number (EIN) ending in a “5” or a “0” are Cycle E filers (regardless of whether or not the plan is a calendar-year plan) and have until Jan. 31, 2016, to adopt and, if desired, submit for IRS approval the Pension Protection Act (PPA) restatements. Cycle E filers also include governmental plans that elected to file in Cycle E.

Earlier this year the IRS announced that effective Jan. 1, 2017, the agency will no longer issue determination letters for individually designed plans. To continue to receive determination letters, individually designed plan sponsors may wish to adopt a pre-approved plan. Cycle E filers can accomplish this by signing Form 8905 prior to Jan. 31, 2016. DC plan sponsors have until Apr. 30, 2016, to adopt the pre-approved plan; DB plan sponsors have several years before adoption is required. Most individually designed plans are permitted to adopt pre-approved plans, including certain employee stock ownership plans (ESOPs) and cash balance plans.

Required 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. If a plan sponsor discovers it has failed to adopt a plan amendment, it should consider correcting the mistake through the IRS’s Employee Plans Compliance Resolution System (EPCRS). In many cases, EPCRS’s standard filing fees are reduced for a failure to adopt either required or discretionary amendments. For example, if a plan sponsor failed to timely adopt an interim amendment, the compliance fee to resolve the failure through EPCRS is \$375 if no other failures are involved. Monetary sanctions can be substantial if a late amendment or a failure to adopt an amendment is discovered during an IRS audit or a review of a determination letter request.

Operational errors should also be corrected through EPCRS, which offers new methods for correcting automatic enrollment errors and overpayment failures. Many errors may be self-corrected without contacting the IRS or paying a fee.

Annual Notices and Benefit Statements

As in past years, there are a variety of notices that plan sponsors may need to distribute to participants:

- 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.
- For DC plans that allow participant-directed investments, by Dec. 31 provide, if not included in a summary plan description (SPD), a statement: relieving the plan sponsor of liability for certain losses resulting from participants' exercise of their rights; and notifying participants about the availability of any investment advice services.
- For DC plans and non-PBGC-covered DB plans, distribute the Summary Annual Report (SAR) two months after the Form 5500 filing was due (e.g., Dec. 15, if an Oct. 15 extension applies).
- For participant-directed DC plans, provide quarterly benefit statements with the required fee disclosures. Plan sponsors also should determine when to make the annual fee disclosure in 2016, as a new final rule permits the notice to be given within 14 months of the prior year's disclosure. For nonparticipant-directed DC plans, provide benefit statements annually by the Form 5500 due date.
- For DB plans subject to ERISA and the tax code, post on the sponsor's intranet site Parts I and II of the 2014 Form 5500 and the Schedule SB or MB within 90 days after the date the Form 5500 is filed (by Jan. 13, 2016, if Form 5500 was filed on Oct. 15, 2015).
- For DB plans, provide benefit statements every three years or provide an annual notice explaining how participants may obtain statements.

Other Operational Action Items

Plan sponsors also should:

- make recurring age 70-1/2 required minimum distributions (RMDs), for both DC and DB plans;
- process corrective distributions to correct a failed 2014 actual deferral percentage/actual contribution percentage (ADP/ACP) test to maintain a 401(k) plan's qualified status;
- for plans utilizing money market funds, contact your investment advisor to assess how the new Securities and Exchange Commission's money market fund rules will impact the plan beginning October 2016 and whether alternative capital preservation vehicles should be considered;
- verify that a plan's loan or hardship distribution processes maintain appropriate and necessary documentation of records;
- in light of the U.S. Supreme Court ruling this year relating to monitoring plan investments and fees, review your fiduciary governance and internal controls;
- review plan documents and administrative processes, contracts, and communications relating to same-sex marriages, due to another Supreme Court decision;
- for DB plans, consider the effects of the Society of Actuaries' 2015 mortality scale improvement report; and
- certify the 2015 plan year funding percentage (AFTAP), if the DB plan used a "range" certification.

ACTION Although the year-end clock is rapidly ticking, there is still time to review and amend retirement plans. Operational procedures and plan changes also should be assessed for compliance, as well as for properly drafted, adopted, and executed amendments. In addition, the need for participant notices should be determined and, if necessary, distributed as soon as possible.

Plan sponsors also should be mindful of pending legislation or recently enacted laws that have compliance-related implications. For example, the recent highway funding law changed certain corporate and plan filing deadlines that will be effective in 2016. In addition, a separate trade law increased the penalties for failures to timely file corporate tax forms or to provide certain statements to employees. Reviewing administrative systems and planning ahead now for the upcoming revised dates may help to ease the transition to the new deadlines.

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.