

CLIENT ACTION Bulletin

Employee Benefits

Year-End Compliance Issues for Single-Employer Retirement Plans

SUMMARY By year-end 2014, 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, 2014.

DISCUSSION Plan Amendments and Related Issues

As always, reviewing plan documents and amendments before the end of the year is important. Plan sponsors should consider:

- *Discretionary Plan Amendments* – If discretionary, operational or plan design changes were made in the current plan year, amendments must be formally adopted by Dec. 31, 2014 for calendar-year plans. For example, if a calendar-year plan added an in-plan Roth rollover provision as an optional discretionary feature effective for the 2014 plan year, the amendment must be adopted by Dec. 31, 2014.
- *Amendments for the Recognition of Same-Sex Marriages* – In response to the U.S. Supreme Court's ruling that one section of the Defense of Marriage Act (DOMA) is unconstitutional, the IRS and DOL released guidance that, for ERISA-covered employee benefit plans, treats same-sex couples who were legally married in jurisdictions that recognize their marriages no differently from opposite-sex married couples. If a qualified plan defines spouse or marriage by reference to DOMA or its provisions, the plan must be amended no later than Dec. 31, 2014. If, however, the plan defines spouse or marriage in general terms (e.g., the plan's definition of spouse or marriage references "a legally married spouse" or "a spouse under Federal law"), an amendment is not required.
- *DC Plan Restatements for 2015* – For DC plan sponsors with pre-approved prototype or volume submitter documents, prepare to restate your plan documents next year before the deadline of Apr. 30, 2016. The same deadline applies for submission to the IRS for a favorable determination letter for pre-approved plans that have modifications.

Cash balance and other hybrid plans have a delayed amendment date. Under a recently issued final rule, the compliance date of most hybrid plan provisions has been delayed to 2016. 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 "4" or a "9" are Cycle D filers (regardless of whether or not the plan is a calendar-year plan) and have until Jan. 31, 2015, to adopt and, if desired, submit for IRS approval the PPA restatements.

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.

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. 13, 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 the annual fee disclosure will be distributed in 2015. 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 2013 Form 5500 and the Schedule SB or MB by Jan. 13, 2015, if an Oct. 15 extension applies.
- 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) to participants, for both DC and DB plans;
- process corrective distributions to correct a failed 2013 actual deferral percentage/actual contribution percentage (ADP/ACP) test to maintain a 401(k) plan's qualified status;
- decide whether or not to opt out of the interest rate stabilization (provided by IRS's guidance on the Highway and Transportation Funding Act's DB plan provisions) for 2013 by Dec. 31, 2014 or, if later, the Form 5500 filing deadline;
- certify the 2014 plan year funding percentage (AFTAP), if the DB plan used a "range" certification; and
- ensure timely filing of PBGC premiums for DB plans, as the due dates for many plans have changed, such as the accelerated due date for small plans (fewer than 100 participants).

ACTION Although the year-end clock is rapidly ticking, there is still time to review and amend retirement plans. All single-employer retirement plan sponsors should check their ERISA plan document files and ensure that the definition of spouse and marriage comply with federal law. 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.

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