

# DB digest

Best Practices for Pension Administration

## UPCOMING KEY DATES\*

### 7/29/13

Provide a Summary of Material Modifications (SMM) to participants if the plan adopted amendments for the plan year ending 12/31/12, unless the information was included in an updated and timely distributed Summary Plan Description.

### 7/31/13

File 2012 Form 5500 using DOL EFAST2 or file IRS Form 5558 for each single-employer plan to extend Form 5500 filing due date by 2-1/2 months to 10/15/13. A signature is not required to file Form 5558. (A posting of the 2012 Form 5500 basic plan information and 2012 Schedule SB on the plan sponsor's existing intranet site is required within 90 days of filing Form 5500.)

### 7/31/13

File IRS Form 8955-SSA (Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits) or file IRS Form 5558 to extend the filing deadline for Form 8955-SSA.

### 9/13/13

Due date to make a final contribution to satisfy the 2012 minimum funding requirement or to make any contribution to be included on 2012 Form 5500 Schedule SB. (Note: A failure to satisfy the minimum funding requirement may trigger a requirement to notify participants, beneficiaries, and alternative payees.)

### 9/30/13

Deadline for completion of the actuarial valuation and certification of the final 2013 AFTAP, unless the 2013 AFTAP was "range" certified. (If the AFTAP is not certified by this date, the AFTAP is deemed to be less than 60% for the remainder of the plan year.)

## Notices and disclosures: sending the right message

John Rupp

Every April 30, defined benefit (DB) plan administrators work frantically to lick stamps, fill envelopes, and drop large stacks of mail into bins to meet the postmark deadline for the Annual Funding Notice, but the Annual Funding Notice is just one of many notices and disclosures required by the government. Over the course of a year, plan administrators may send out thousands of Special Tax Notices, Qualified Joint and Survivor Annuity notices, and either benefit statements or a notice detailing the participant's ability to model electronically. Under federal regulations, DB plans face both annual and monthly deadlines for required notices and disclosures, and possible stiff penalties if they fail to meet those deadlines.

Both the Internal Revenue Service (IRS) and Department of Labor (DOL) require DB plans to submit different notices and disclosures to their respective agencies as well as to plan participants. For most DB administrators, the rules describing which notices are required and the obligations for fulfillment lie within the Employee Retirement Income Security Act (ERISA). ERISA names such notices and disclosures as:

- Annual Funding Notice
- Benefit Statement
- Suspension of Benefits notice (SOB notice)

- 204(h) notice
- Summary Plan Description (SPD)
- Summary of Material Modifications (SMM)

Not all of the above notices and documents are required for every DB plan. While some, such as the Annual Funding Notice and the SPD, are required no matter the circumstances, some may be required because of optional plan language, such as the SOB notice, while others may be required on a one-time basis due to a plan change, such as the 204(h) notice. In addition, the passage of the Pension Protection Act in 2006 requires plans to send either benefit statements every three years or a notice detailing the ability to model electronically.

### What penalties can result from failure to provide required notices and disclosures?

Failures to provide required documents can be rather expensive. ERISA imposes possible civil penalties that would be awarded to participants if action is brought against the plan sponsor. For instance, if a participant was not given an SPD within 90 days after becoming eligible under the plan, a plan could be required to pay the participant \$110 for every day past the deadline until the participant receives the SPD. If multiple participants are involved, the financial penalties can add up quickly.

Basic failures can end up costing a plan sponsor a large amount of money!

These penalties may pale in comparison, however, if the plan administrator or plan sponsor willfully ignores disclosure laws. ERISA establishes high criminal penalties of up to \$100,000 (\$500,000 for corporations) and/or 10 years of imprisonment.

Certain notices such as the SOB and 204(h) notices are not subject to the civil and criminal ERISA penalties but may be subject to IRS monetary sanctions. If the failure is caught during regular review by the administrator, plan sponsors may be able to self-correct the issue without any financial penalties. In certain circumstances, however, failures require a Voluntary Correct Program (VCP) filing that can cost an initial fee of up to \$25,000, with additional financial costs to correct any mistakes made.

In addition, if the issues are caught during an IRS or DOL audit, failure to provide required documents to participants may result in additional sanctions and, in extreme circumstances, plan disqualification with all of its costly consequences (e.g., causing taxation issues to both plan sponsors and participants).

Without careful review from year to year, companies could find themselves facing significant financial issues above the required pension funding contributions and unhappy participants who may seek redress.

While many notices and disclosures are triggered by federal legislation, some are due to demographic and technological changes.

## Demographics

The tepid growth in the economy continues to cause demographic shifts for many companies' workforces. In earlier years, employers with favorable early retirement factors and subsidies may have seen most of their employees retire before their Normal Retirement Date (NRD). Now, some retirees try to supplement lost investment income by returning to work but desire to still receive payments from the plan. Depending upon plan guidelines, the participant may need to receive an SOB notice during the month in which their payments are suspended. An SOB notice is required if participants are rehired and under the terms of the plan their payment must be suspended during their period of employment.

Other employees may be delaying retirement to postpone drawing from their other investment sources until market conditions improve. Employees may postpone retiring until age 68 or 69. For DB plans, an SOB notice is required if the plan doesn't provide actuarial increases to active participants who postpone retirement.

If the plan fails to provide the SOB notice to a participant, the plan may be required to award the better of the participant's current accrued benefit or the NRD benefit actuarially increased to their current age. For participants who work many years beyond NRD, the actuarial increase could represent a decent cost to the plan.

While some companies may not have seen huge changes, one Milliman client has seen a recent need to enforce its SOB notices. When it outsourced its DB administration a few years ago, we reviewed its plan

document and informed it that SOB notices would need to be sent out in the event of participants working past their NRD. Initial review of participant data revealed that there were no active employees nearing their NRD; but careful review of employee data during the valuation process two years later revealed a significant population that continued to work past their expected retirement date. As the active employees neared their NRD, Milliman worked closely with the client to create a notice template to satisfy the ERISA provisions and avoid a costly actuarial increase. Today, the plan sends out several of the notices a year. Without proper review of its plan document, data, and notice templates, the plan could have failed to meet the SOB notice requirements.

## Technology

While electronic communication options proliferate, many participants still covered by DB plans prefer letters, forms, and checks to be sent via mail. Despite the costs associated with physical mail, plan sponsors must still adhere to certain written requests under ERISA. If a participant submits a written request, they may receive copies of:

- Form 5500 filings
- Plan documents
- Additional SPDs
- Applications for determination letters

Once a plan sponsor receives a written request, it must respond within 30 days of receipt with the information requested (unless the requested information contains personal information of other participants, in which case, they are not obligated to provide that portion). Without constant

supervision of incoming emails, letters, and faxes, a plan can quickly find itself out of compliance with ERISA. As discussed above, the penalties can be rather severe. If a plan receives a request on the first of April, but fails to catch the letter until May 31, it may have to pay a participant \$3,410 (\$110 per day) for a simple delay of one month! ERISA allows for plans to waive the 30 day window if the failure was "outside of the reasonable control of the administrator," but proper review and monitoring of upcoming deadlines can prevent such issues from occurring.

## How can these issues be prevented?

Constant supervision of incoming requests and careful review of participant data can prevent many of these issues from occurring. Monthly communication between compliance entities, plan sponsors, actuaries, and administrators can often ensure that upcoming plan changes, deadlines, and large participant requests receive the proper attention and notice planning. Milliman also publishes a calendar that details many of the important deadlines such as the Annual Funding Notice and Form 5500.

## How can Milliman help?

Milliman consultants can:

- Help you review your plan document, population, and overall structure to determine which notices are required and possible deadlines associated with filings
- Assist with VCP, Form 5500, Audit CAP, or other additional filings associated with failures
- Provide templates for documents such as the 204(h) notice or benefit statement for the first time to ensure that all required documentation appears for participants
- Establish and review monthly reports to make sure administrators know when to send out required notices

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John Rupp is a systems analyst with the Dallas office of Milliman. Contact him at [john.rupp@milliman.com](mailto:john.rupp@milliman.com).