



CLIENT ACTION Bulletin

Employee Benefits

Year-End Compliance Issues for Single-Employer Retirement Plans

SUMMARY By year-end 2017, 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 (CAB)* 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, 2017.

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 changes during 2017 must formally adopt plan amendments by Dec. 31. For example, if the plan added an in-plan Roth rollover provision for the 2017 plan year, the amendment must be adopted by Dec. 31, 2017.

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 an annual Required Amendment List (RAL). The RAL, published after Oct. 1 each year, specifies all the amendments an individually designed plan sponsor must adopt to retain the plan's qualified status. Generally, the amendments listed must be adopted by the end of the second calendar year following the year the RAL is published. Because the deadline for amendments on the first RAL is Dec. 31, 2018, there are no required plan amendments to adopt in 2017.

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 fee to resolve the failure 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.

Operational errors should also be corrected through EPCRS, which has a reduced compliance fee schedule. Many 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 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, provide by Dec. 29 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 that allow participant-directed investments, provide quarterly benefit statements by Nov. 14. While plan sponsors may include the required annual fee disclosure with this statement, the absolute deadline for such disclosure will depend on the date they supplied the prior year's disclosure (i.e., 14 months from such date).

- 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 DB plans subject to ERISA and the tax code, post on the sponsor's intranet site Parts I and II of the 2016 Form 5500 and the Schedule SB or MB within 90 days after the date the Form 5500 is filed (by Jan. 14, 2018, if Form 5500 was filed on Oct. 16, 2017).
- 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, and attempt to locate any missing participants/beneficiaries by taking the steps outlined in an Oct. 19 IRS [Field Guidance Memorandum](#);
- process corrective distributions to correct a failed 2016 actual deferral percentage/actual contribution percentage (ADP/ACP) test to maintain a 401(k) plan's qualified status;
- for DB plans, consider the effects of the final rule released by the IRS updating the mortality assumptions (e.g., for calculating the funding target and lump sum distributions) and discuss options with the plan's actuary and/or other professional advisers (see [CAB 17-3](#));
- for DC plans with plan documents specifying the policies for forfeiture accounts, apply the forfeitures accordingly by Dec. 31;
- for plans using the annual testing option, coverage requirements must be satisfied at least annually as of Dec. 31;
- for DB plan sponsors, file PBGC Form 10 by Nov. 14, if the Oct. 15 required quarterly contribution was missed by more than 30 days, unless PBGC Form 200 was already filed (Note: this filing may be waived for small plans);
- 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 2017;
- certify the DB plan's 2017 plan-year funding percentage (AFTAP), if the plan used a "range" certification;
- elect by Dec. 31 to reduce a DB plan's carryover and/or prefunding balance as of Jan. 1, 2018 (e.g., to avoid or terminate a benefit restriction); and
- if necessary, revoke by Dec. 31 a prior election to use a DB plan's carryover or prefunding balance to meet minimum funding requirements for 2018.

ACTION Although the year-end countdown rapidly approaches, there is still time to review and amend retirement plans. Operational procedures and plan changes should be assessed for compliance and properly drafted, adopted, and executed amendments. The need for new, revised, and ongoing participant notices must be determined and any appropriate communications should be timely distributed. Plan sponsors should be mindful of pending or recently enacted legislation with compliance-related implications, such as those granting temporary relief to retirement plan sponsors and individuals (including plan participants and certain family members) adversely affected by the recent hurricanes (see [CAB 17-2](#)) or California wildfires. Similarly, the Labor Department may delay the current Jan. 1, 2018 applicability date of its final rule on disability claims procedures, which apply to plan sponsors that review such claims rather than rely on the Social Security Administration's determinations.

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.