

Client Action Bulletin

NOVEMBER 6, 2019 | CAB 19-2

Year-End Compliance Issues for Single-Employer Retirement Plans

SUMMARY

By year-end 2019, 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 defined benefit (DB) and/or defined contribution (DC) plan sponsors should address by Dec. 31, 2019.

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 2019 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 second (2017) RAL is Dec. 31, 2019. (Note that under this RAL, the only required amendments pertain solely to the following plans: cash balance/hybrid DB plans; certain DB plans that are eligible cooperative plans or eligible charity plans described in section 104 of the 2006 Pension Protection Act; and DB plans that offer partial annuity options).

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). Doing so, in many cases, lowers the standard filing fees for correcting such failures. For example, for a failure to timely adopt an interim amendment, the EPCRS fees to resolve the failure fall between a range of \$1,500 to \$3,500, based on the amount of plan assets. Monetary sanctions can be substantially more than this range if the IRS audits the plan and discovers a late amendment or a failure to adopt an amendment. Plan sponsors also may correct operational errors through EPCRS, but many such errors can 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 2018 Form 5500 and the Schedule SB or MB within 90 days after the date the Form 5500 is filed (by Jan. 13, 2020, if Form 5500 was filed on Oct. 15, 2019).
- For DB plans, provide benefit statements every three years or 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.),
 - by Nov. 15 distribute the 2019 Summary Annual Report (SAR) if the Form 5500 deadline was extended because of a corporate tax filing extension.
 - by Dec. 15 distribute to participants the 2019 SAR, if the 2018 Form 5500 due date was extended by a timely filed IRS Form 5558; for corporate employers, distribute the 2019 SAR, if no IRS Form 5558 was filed but an extension request (IRS Form 7004) was timely filed for the employer's income tax

return (IRS Form 1120); for tax-exempt employers, distribute 2019 SAR, if no IRS Form 5558 was filed but an extension request (IRS Form 8868) was timely filed for the employer's information return (IRS Form 990).

- For DC plans that allow participants to direct their investments,
 - provide by Nov. 14 the quarterly benefit/disclosure statement and the statement of plan fees and expenses actually charged to individual plan accounts during the third quarter of 2019.
 - 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 to direct their investments, and about the availability of any investment advice services the plan sponsor offers.
- For DC plans, provide by Dec. 2, 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, 2019, retirement plan sponsors also should:

- make recurring age 70-1/2 required minimum distributions (RMDs), for both DC and DB plans.
- in order to to maintain a 401(k) plan's qualified status in the event of a failed 2018 actual deferral percentage/actual contribution percentage (ADP/ACP) test,
 - pay to all affected participants any ADP/ACP corrective distributions needed to correct the failure; or
 - make a qualified nonelective contribution (QNEC) to all non-highly compensated employees.
- 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 2019.
- certify the DB plan's 2019 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, 2019.)
- 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.
- 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. For example, defined contribution plan sponsors may wish to consider amending their plans to allow for hardship distributions under the IRS's recent final rule. 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 SPDs to be sure they are in compliance.

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

Other Recent Milliman Publications You May Be Interested in:

- ***Health and Group Benefits News and Developments, October 2019***
- ***Monthly Benefit News and Developments, October 2019***
- ***Pension Funding Index, October 2019***
- ***Multiemployer Pension Funding Study, Fall 2019***
- ***What can plan sponsors do with plummeting interest rates?*** This article presents perspectives on the challenges of the current interest rate environment.
- ***Market commentary, 3rd Quarter 2019*** Markets were mixed for the quarter as investors digested potential risks and opportunities in the market.
- ***Designing benefits packages that attract and retain employees*** In today's tight labor market, companies need to look beyond salary in order to attract and retain employees.
- ***How employers can address plan selection bias with risk adjustment*** Employers should adjust health plan options for morbidity in order to reduce the selection bias.
- ***Navigating two decades of funded status*** This paper examines the sources of funded status volatility seen over the past two decades and discusses how plan sponsors of defined benefit pension plans have adapted.
- ***Millennials and retirement: What do employers need to know?*** Employers may benefit from learning more about Millennials' changing relationship with retirement planning.



Milliman Client Action Bulletin contains general information that is not intended to constitute the rendering of legal, tax, investment, or accounting advice. Application to specific circumstances should rely on further professional guidance.

milliman.com

**For more information, please contact
your Milliman consultant.**