



update

Compliance News for Plan Sponsors

October 15, 2015

Year-End Update on Compliance Issues for Retirement Plans

This *Update* identifies some upcoming compliance deadlines and other reminders for employers that sponsor defined benefit (DB) and defined contribution (DC) plans, including multiple-employer plans.

Cycle E Determination Letter Submissions

The Internal Revenue Service (IRS) has changed its procedures for processing determination letter requests under Cycle E in a number of ways, including the imposition of strictly limited response times.¹ As a result, employers should consider submitting their Form 5300 determination letter packages well before the Cycle E submission deadline of January 31, 2016 in order to avoid the possibility of forfeiting their user fee and/or losing the opportunity to make a Cycle E filing. Cycle E covers single-employer plans of sponsors whose employer identification number (EIN) has a final digit of 5 or 0 (multiple-employer plans were required to file in Cycle B). This is the last certain opportunity for Cycle E plans to apply for a cycle-based determination letter. In Announcement 2015-19, the IRS indicated that it is eliminating the cycle-based determination letter program for individually designed plans effective in January 2017.² When and for what reasons individually designed plans might be able to apply for determination letters in the future is still under consideration by the IRS.

The new procedures incorporate a preliminary review to ensure the submission package is complete and then a technical review for substantive changes. If the preliminary review indicates that documentation is missing, the IRS will allow 30 calendar days for the application to be completed. Applications not completed within that time will be closed as “deficient” and the user fee forfeited. If the submission is closed as deficient after January 31, 2016, the employer will not be able to submit a new application.

If the technical review results in a request for additional information, there will be an initial 21-day correction period with the number and length of extensions severely limited. If the submission is not corrected within the available time period, the submission will be closed as deficient and the user fee forfeited.

¹ The full list of Cycle E procedural changes are noted on the IRS webpage, [“Changes to the EP Determination Process Begin in 2015.”](#)

² [Announcement 2015-19](#) is available on the IRS website.



Retirement Compliance News Highlights:

- New rules are in effect for processing Cycle E determination letter submissions.
- Certain plan amendments might be necessary for both DB and DC plans.
- Reminders about year-end compliance matters cover new rules for DB annual funding notices, required minimum distributions, documentation for plan loans and hardship distributions, and annual notices for §401(k) plans.

Plan Amendments

Employers might need or wish to adopt amendments that:

- **Make Discretionary Plan Changes** Under IRS rules, discretionary plan amendments, such as amendments to reflect benefit improvements, plan mergers or other changes that are not required by law, generally must be adopted by the last day of the plan year in which they become effective. Calendar-year plans for which discretionary amendments were made with 2015 effective dates must have those amendments committed to writing and adopted (signed and dated) by December 31, 2015.
- **Are Required by a Recent Determination Letter** IRS determination letters require that a restatement or any amendments submitted for review in proposed form be adopted no later than 91 days after the date on which the determination letter was issued. The same 91-day adoption deadline applies to any amendments required by the IRS reviewer as a condition for receiving the determination letter. Plans that have recently received a favorable determination letter should ensure that any proposed documents were adopted by the deadline.
- **Reflect the Decision in the Obergefell Same-Gender Marriage Case** On June 26, 2015, the U.S. Supreme Court decided *Obergefell v. Hodges*, holding that it was a violation of the Constitution to treat same-gender marriages differently than opposite-gender marriages. The IRS has not yet issued any guidance relating to the opinion. Employers should discuss with their attorneys about whether plan language (e.g., the definition of “spouse”) needs to be amended in light of *Obergefell* — and, if so, by when the amendment should be made.
- **Implement DB Cash Balance Plan Regulations** While it appears very likely that the IRS will extend the deadline for amending cash balance and other hybrid plans to reflect the 2014 final and proposed “market-rate-of-return” regulations, the IRS has not yet done so. Without an extension, these regulations apply for plan years beginning on or after January 1, 2016, and amendments are required by the last day of the 2015 plan year. Employers with cash balance or other hybrid plans should consult with their attorneys about what steps, if any, should be taken at this time.

Reminders

Plan administrators are reminded about the following compliance issues:

- **New Model DB Plan Annual Funding Notice** Final regulations on Annual Funding Notices under Section 101(f) of the Employee Retirement Income Security Act (ERISA) were released earlier this year. The regulations, which include a new model notice, apply to Annual Funding Notices for plan years beginning on or after January 1, 2015, but can be applied earlier.
- **Required Minimum Distributions (RMDs)** For participants who attain age 70½ in 2015, payment of the required minimum distribution must begin on or before April 1, 2016 — unless the DC or DB plan provides that distributions will be delayed until April 1 of the calendar year following the year of the participant’s termination of employment, if later and if not a 5 percent owner. If they have not done so already, plan administrators should begin now to identify and verify contact information for any terminated vested participants who must receive their first RMD in 2016 in order to avoid the potential imposition of excise taxes on late distributions.
- **Documentation for Plan Loans and/or §401(k) Plan Hardship Distributions** The IRS has recently reminded sponsors of plans that offer loans and/or hardship distributions (i.e., §401(k) plans) that they are responsible for maintaining records related to all loans and hardship distributions.³ This is the case even for plans that

³ See the IRS webpage, [“It’s Up to Plan Sponsors to Track Loans, Hardship Distributions.”](#)

use third-party administrators (TPAs) to administer these programs, and it is not sufficient for participants receiving such loans or distributions to keep their own records. Failure to produce the records if requested by an IRS agent during an audit is considered to be a qualification failure. In light of this position, plan administrators of plans that provide loans and/or hardship distributions should discuss whether any procedural change, plan amendment, or corrective action is necessary with the fund counsel and if applicable, the plan's TPA.

- **401(k) Plan Annual Notices** Section 401(k) plans that incorporate any type of safe harbor formula for nondiscrimination testing (ADP/ACP testing), any type of automatic enrollment feature, and/or use a qualified default investment alternative (QDIA) as the default investment option for otherwise “undirected” participant deferrals, generally must provide both initial notices to individuals as they become eligible for the plan and also annual notices to all participants reminding them of these features. There are detailed rules about the content and timing of each notice and which notices can be combined with other notices. Generally, the annual notices must be provided at least 30 days before the start of each plan year.

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