



update

Public Sector Benefits Compliance News

October 8, 2015

Year-End Compliance Deadlines and Other Reminders for Public Sector Retirement Plans

This *Update* identifies some upcoming compliance deadlines and other reminders for sponsors of public sector defined benefit (DB) and defined contribution (DC) 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, public sector plan sponsors 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 is available to public sector §401(a) DB and DC plans that did not file in Cycle C. 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 This means that for public sector plans, Cycle E is the last certain opportunity to apply for a cycle-based determination letter. When and for what reasons plans, including public sector 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 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 sponsor 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.



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, including DB plan amendments related to employee contribution elections.
- Reminders about year-end compliance matters cover required minimum distributions, documentation for plan loans and hardship distributions, and the expanded public safety employee exception to the early distribution penalty.

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.

Plan Amendments

Sponsors might need or wish to adopt amendments that:

- **Make Discretionary Plan Changes** Under IRS rules, discretionary plan amendments, such as amendments improving or reducing benefits, reflecting state law changes to the plan or other changes that are not required by law, generally must be adopted by the later of the last day of the plan year in which they become effective or the close of the next regular legislative session (of the governing body with authority to amend the plan) beginning after the amendment's effective date.
- **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. Sponsors should discuss with counsel 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.
- **Comply with IRS Ruling on Employee Contribution Elections** Public sector DB plans that were awaiting guidance from the IRS on whether individual employee elections into benefit tiers with varying contribution levels would be permitted now have clarification in the form of a private letter ruling that such individual elections would be considered an impermissible cash or deferred arrangement under Section 401(k) of the Internal Revenue Code (IRC). However, the IRS ruling also clarified that mandatory changes to employee contribution levels imposed by the employer to establish a new benefit tier could be a valid pick up arrangement under IRC §414(h) so that employee contributions would be treated as employer contributions for federal income tax purposes. Public sector plan sponsors may need to reconsider the plan design of new benefit tiers to comply with this ruling and amend their plans accordingly.

Reminders

Public sector plan administrators are reminded about the following compliance issues:

- **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. 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 Plan Hardship Distributions** The IRS has recently reminded sponsors of plans that offer loans and/or hardship distributions (i.e., §401(a) or §403(b) plans) that they are responsible for maintaining records related to all loans and hardship distributions.³ This is the case even for plans that 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 counsel and if applicable, the plan's TPA.

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

- **Expanded Public Safety Employee Exception to Early Distribution Penalty**

Effective for distributions after December 31, 2015, the state public safety employee “age 50 separation from service” exception to the 10 percent early distribution penalty under IRC §72(t)(10) for eligible DB plan distributions is expanded to include eligible distributions from public sector DC plans. Plan administrators of public sector DC plans that cover public safety employees may need to adjust their procedures to properly report such eligible distributions, and with regard to rollover contributions into a plan, administrators generally should consult with counsel about the appropriate accounting for any such contributions that may be eligible for the exception.

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