



# CLIENT ACTION Bulletin

Employee Benefits

## Year-End Compliance Issues for Single-Employer Retirement Plans

**SUMMARY** By year-end 2011, sponsors of calendar-year single-employer retirement plans must act on necessary and discretionary amendments and perform a range of administrative procedures to ensure compliance with statutory and regulatory requirements. In addition, there are year-end issues that employers sponsoring nonqualified deferred compensation plans (NDCPs) should consider. This *Client Action Bulletin* looks at key areas that such employers and sponsors of defined benefit (DB) or defined contribution (DC) plans should address by Dec. 31, 2011.

### DISCUSSION **PPA and WRERA Amendments and Related Issues**

Nearly all DB and DC plans were affected by the 2006 Pension Protection Act (PPA) and the 2008 Worker, Retiree, and Employer Recovery Act (WRERA), both of which included required and discretionary plan amendments. Plan sponsors should consider:

- *PPA Amendments* -- In November 2010, the IRS extended the deadline – to Dec. 31, 2011 – for adopting PPA-required plan amendments regarding funding-based benefit restrictions for DB plans, investment diversification for DC plans with employer securities, and “certain cash balance” plan provisions. Last month, however, the IRS extended the amendment deadline for the new definition of “market rate of return” and new interest crediting options for cash balance plans to a date to be determined when final regulations are issued. (The IRS may issue further guidance on the funding-based restrictions, including an extended amendment deadline.)
- *WRERA Amendments* -- WRERA set aside for one year the need for DC plans to make required minimum distributions (RMDs) to individuals who attained age 70-1/2. DC plans (including 403(b) and 457(b) plans) that waived the RMD requirement for 2009 must be amended by Dec. 31, 2011.

*Individually designed plans* with an Employer Identification Number (EIN) ending in a “1” or a “6” are Cycle A filers (regardless of whether or not the plan is a calendar-year plan) and have until Jan. 31, 2012, to adopt and, if desired, submit for IRS approval the PPA restatements. Cycle A plans also must include the appropriate PPA and WRERA provisions in their determination letter requests. Thus, Cycle A filers may face having to restate their plans for EGTRRA and amend the plans for PPA and WRERA by Dec. 31, 2011, even though the determination letter application’s deadline is not until Jan. 31, 2012.

**Required amendments relating to prior plan years** should be considered as part of any year-end plan reviews, taking into account whether they have been properly adopted and executed. Similarly, if discretionary, operational changes were made **during the current plan year**, the amendments should be formally adopted by Dec. 31, 2011. However, 401(k) or 403(b) plan sponsors that allowed participants to convert tax-deferred amounts to Roth after-tax accounts within the plans during either 2010 or 2011 must amend the plan for the **in-plan Roth conversions** by Dec. 31, 2011.

**If a plan sponsor discovers it has failed to adopt a plan amendment**, it should consider correcting the mistake through the IRS’s Employee Plans Compliance Resolution System (EPCRS). In many cases, EPCRS’s standard filing fees are reduced for a failure to adopt either required or discretionary amendments. The monetary sanction can be substantial if the IRS discovers a late amendment or a failure to adopt an amendment during an audit or a review of a determination letter request.

### **Annual Notices and Benefit Statements**

There are a variety of notices that plan sponsors may need to distribute 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 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, 2011, if an Oct. 15, 2011 extension applies).
- For DB plans subject to ERISA and the Internal Revenue Code, post on the sponsor's intranet site the Part I and Part II of the 2010 Form 5500 and the Schedule SB or MB by Jan. 13, 2012, if the Oct. 15, 2011 extension applies for Form 5500.
- For DC plans that allow participant-directed investments, by Dec. 31 provide, if not included in a summary plan description (SPD), a statement: relieving the plan sponsor of liability for certain losses resulting from participants' exercise of their rights; and notifying participants about the availability of any investment advice services.

The requirements for participant benefit statements vary depending on the type of plan:

- For participant-directed DC plans, provide statements quarterly.
- For nonparticipant-directed DC plans, provide statements annually by the Form 5500 due date.
- For DB plans, provide 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 RMDs to participants, for both DC and DB plans;
- process corrective distributions to correct a failed 2010 actual deferral percentage/actual contribution percentage (ADP/ACP) test to maintain a 401(k) plan's qualified status;
- elect funding relief for the 2011 plan year (or 30 days after the valuation date, if later), for DB plans; and/or
- certify the 2011 plan year funding percentage ("AFTAP"), if the DB plan used a "range" certification.

### Nonqualified Deferred Compensation Plan (NDCP) Requirements

Plan sponsors have until Dec. 31, 2011, to amend a NDCP to make the time and form of payment identical to another NDCP to which it is linked for purposes of determining benefits or time and form of payment. In addition, if a NDCP contains a discretionary fixed-payment provision, it must be amended to provide an objective, nondiscretionary method of identifying the payments from which the amount of the payment to the participant is determined and/or an objective, nondiscretionary schedule under which the payments will be made to the participant.

### 2009 and 2010 IRS Form 8955-SSA

Plan sponsors of DB and DC plans are required to provide information on separated participants with deferred vested benefits on a new Form 8955-SSA. The extended deadline for the 2009 and 2010 filing is Jan. 17, 2012. The extended deadline also applies to the distribution of the individual statements required to be distributed to terminated participants with deferred vested benefits.

## ACTION

Although the year-end clock is rapidly ticking, there is still time to review and amend NDCPs and retirement plans. All single-employer plan sponsors should check their plan document files and ensure that the PPA and other amendments for prior plan years are adopted and executed. Operational procedures and plan changes also should be assessed for compliance, as well as for properly drafted, adopted, and executed amendments. In addition, the need for participant notices should be assessed and, if necessary, distributed as soon as possible.

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