



CLIENT ACTION Bulletin

Employee Benefits

Year-End Compliance Issues for Single-Employer Retirement Plan Sponsors

SUMMARY

Directly on the heels of filing Form 5500 under the new EFAST2 submission procedures, single-employer retirement plan sponsors must check their year-end “to-do list” for a variety of amendments and notices that are due before the end of the year. All single-employer qualified defined benefit (DB) and defined contribution (DC) plans with calendar-year plan years have to be amended for certain provisions of the “Pension Protection Act” (PPA) and the “Heroes Earnings Assistance and Relief Tax Act” (HEART Act) no later than Dec. 31, 2010. In addition, any discretionary amendments made to the plan during the 2010 plan year must be formally adopted by year end. Several administrative notices also are due before Dec. 31, 2010. Finally, there are year-end issues that should be considered by employers sponsoring nonqualified deferred compensation arrangements.

DISCUSSION

PPA and HEART Act Amendments and Related Issues

PPA Amendments. Last December the IRS extended the deadline – to Dec. 31, 2010, for calendar-year plans – for adopting a limited number of PPA-required plan amendments regarding funding based benefit restrictions for DB plans, investment diversification for DC plans with employer securities, and “cash balance” plan provisions. While many plan sponsors chose to adhere to the original deadline of Dec. 31, 2009, plans that took advantage of the extension must now be amended for the remainder of the PPA provisions. Note, however, that cash balance plan sponsors may rely until Jan. 1, 2012, on the IRS’s Oct. 19, 2010, proposed rule that includes a new definition of “market rate of return” and new interest crediting options for hybrid DB plans. The IRS has not yet formally granted an extended amendment period beyond Dec. 31, 2010, on the companion final hybrid plan rules.

HEART Act Amendments. There are both mandatory and optional amendments relating to benefits for employees who die or become disabled while in military service and for distributions of elective deferrals under certain circumstances while on military leave. The amendments for the HEART Act must be adopted by the last day of the first plan year that begins on or after Jan. 1, 2010 (Dec. 31, 2010, for calendar-year plans). These amendments generally apply to all plans, including DB, DC, 403(b), and 457(b) plans.

Prototype Plans. For employers with a prototype plan, prototype plan sponsors have the authority to amend the plan on the employers’ behalf. However, there are several optional provisions under both the PPA and HEART Act that require employer decisions. If the employer concurs with those default elections, it need only file the amendment with the plan document. If, however, the decisions made operationally differ from the prototype amendment, the employer will have to reflect those elections in the amendment, and adopt and execute the amendment before filing it with the plan document by Dec. 31, 2010, for calendar-year plans.

Volume Submitter Plans. Although some volume submitters amend plans on behalf of a plan sponsor, many do not, requiring these plans to adopt a customized amendment. This is the same procedure as for individually designed plans. Many attorneys and volume submitter sponsors have already provided the amendments to the adopting employers with instructions to adopt the amendments by Dec. 31, 2010, for calendar-year plans.

Individually Designed Plans. Individually designed plans with an Employer Identification Number (EIN) ending in a “5” or a “0” are Cycle E filers (regardless of whether the plan is a calendar-year plan or not) and have until Jan. 31, 2011, to adopt and, if desired, submit for IRS approval the EGTRRA restatements. Plan sponsors in Cycle E also must include the appropriate PPA and HEART Act provisions in their determination letter requests. Thus, Cycle E filers may face having to restate their plans for EGTRRA and amend the plans for PPA by Dec. 31, 2010, even though the determination letter application’s deadline is Jan. 31, 2011.

Discretionary Amendments

Plan sponsors often make operational changes in their plan during the plan year. These types of amendments must be formally adopted by the end of the plan year in which the operational changes are made, requiring calendar-year plan sponsors to do so by Dec. 31, 2010.

Required Amendments Relating to Prior Plan Years

During the year-end plan reviews, sponsors should consider whether amendments that were to be adopted in prior years have been properly adopted and executed. If a failure is discovered, late amenders should consider the IRS's streamlined correction methods through the Employee Plans Compliance Resolution System (EPCRS). In many cases, reduced filing fees apply for both required and discretionary plan amendments. The monetary sanction can be substantial if the IRS discovers late or no adoption during an audit or determination letter request.

Annual Notices and Benefit Statements

There are a variety of notices that may need to be distributed to participants before the end of the year.

- For DC plans, the following must be provided by Dec. 1 for a calendar-year plan, 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, the Summary Annual Report (SAR) must be distributed two months after the Form 5500 filing was due (Dec. 15, 2010, for a calendar-year plan that had a Form 5500 extension until Oct. 15, 2010).
- For PBGC-covered DB plans, an annual funding notice must be distributed no later than 120 days after the end of the plan year (Apr. 30, 2011, for a calendar-year plan).
- For DB plans subject to ERISA and the Internal Revenue Code, the sponsor must post on its intranet site the Part I and Part II of the 2009 Form 5500 and the Schedule SB or MB by Jan. 13, 2011 (if the Form 5500 was filed on the Oct. 15, 2010, extended deadline date for a calendar-year plan).

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

- For participant-directed DC plans, statements must be provided quarterly.
- For non-participant-directed DC plans, statements must be provided annually by the Form 5500 due date.
- For DB plans, statements to active employees who have accrued a benefit are required every three years. Alternatively, sponsors may provide an annual notice explaining how participants may obtain the statements.

Special Tax Treatment for 2010 Roth Conversions

A new law permits 401(k) and 403(b) plans with a qualified designated Roth contribution component to allow participants to convert pre-tax amounts to the Roth after-tax accounts. Plan sponsors that want to implement this new feature by year end to take advantage of the special tax treatment for converted amounts during 2010 will have to await forthcoming IRS guidance.

Correction of Nonqualified Plan Documents

The transition relief for correcting document failures for nonqualified plans through the IRS voluntary correction program ends on Dec. 31, 2010. Plan sponsors should review all nonqualified plan documents that defer compensation (including supplemental executive retirement plans (SERPs)), individual employment contracts, severance plans, incentive plans, stock option plans or stock appreciation rights plans, and bonus arrangements) to ensure the plans were amended to comply with tax code section 409A. Plan sponsors may be able to correct certain document failures without penalty if action is taken before the end of the year.

ACTION

Although the year-end clock is rapidly ticking, there is still time to review and amend plans. All single-employer plan sponsors should check their plan document files and ensure that the PPA amendments 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, please contact your Milliman consultant.

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