

## Plan Administrators' 2017 Year-End Checklist

Plan administrators should review the following actions to be taken before the end of 2017 and focus on what to expect for 2018. The following checklist addresses plan amendments, notices and other considerations for qualified plans (pages 1 through 3), welfare plans (pages 4 and 5) and stock-based and performance-based plans (page 6). A chart showing benefit and contribution limits for 2018 is on page 7.

### Amendments and Considerations for All Qualified Plans

- [ ] **Discretionary Plan Amendments:** Plan amendments reflecting discretionary changes to a calendar year plan that were effective in 2017 must be **adopted by December 31, 2017**. For example, an amendment increasing benefits is a discretionary change. For defined benefit plans, advance participant notice may be required if an amendment significantly reduces the rate of future benefit accruals (e.g., a pension plan freeze).
- [ ] **Fee Disclosure – Action Required Annually:** Department of Labor (DOL) regulations require plan service providers to disclose their fees to plan administrators. Plan fiduciaries should analyze the reasonableness of the fees being charged for plan services and assess potential conflicts of interest. Plan administrators also need to make sure that participants receive the appropriate disclosures on quarterly statements (e.g., a description of fees, expenses, and corresponding services).
- [ ] **Required Minimum Distributions (RMDs) for Missing Participants:** In general, distribution of a participant's accrued benefit under a qualified plan must commence after the attainment of age 70½. However, in certain cases, plans have been unable to commence or make a distribution to a terminated participant because the plan has been unable to locate the participant. The IRS issued a memo in October, directing plan auditors **not** to challenge a qualified plan for failing to satisfy the RMD standards if the plan has taken certain steps to locate the participant, including (i) searching plan and publicly-available records for the participant's contact information; (ii) using a commercial locator service, credit reporting agency or proprietary internet search tool to locate the participant or beneficiary; and (iii) attempting to contact the participant or beneficiary via United States Postal Service certified mail to the last known mailing address and any other appropriate means of contact, such as by email or telephone. More information can be found at <https://www.irs.gov/pub/foia/ig/spder/tege-04-1017-0033.pdf>.

### Considerations for Defined Contribution Plans

- [ ] **Safe Harbor Plans:** Safe harbor 401(k) amendments must be adopted before the beginning of the plan year. An employer that wishes to add or amend a safe harbor matching or nonelective contribution in a 401(k) plan for 2018 should adopt an amendment **by December 31, 2017**.
- [ ] **Forfeitures:** Employers should review whether forfeitures held in their defined contribution plans should be allocated to participants or used to pay expenses or reduce employer contributions within the plan year that forfeitures occurred. For a calendar year plan, forfeitures must be allocated or used **by December 31, 2017**.

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- [ ] **Hurricane and Wildfire Disaster Relief:** The IRS issued separate announcements this fall outlining streamlined loan procedures and liberalized hardship distribution rules for 401(k) plans, 403(b) tax deferred annuities, and governmental 457(b) arrangements so that victims of Hurricane Harvey, Irma and Maria and the California wildfires can access their retirement funds to assist with expenses incurred as a result of the storms. To qualify for this relief, **loans or hardship withdrawals must be made by January 31, 2018, for victims of Hurricane Harvey or Irma, or by March 15, 2018, for victims of Hurricane Maria or the California Wildfires.**

The IRS is relaxing procedural and administrative rules to enable plan participants to access their money more quickly with a minimum of red tape. The relief also permits a person who lives outside the disaster area to take out a plan loan or hardship distribution and use it to assist a son, daughter, parent, grandparent or other dependent who lived or worked in the disaster area. More information about other tax relief related to the hurricanes can be found on the IRS [disaster relief](#) page.

If a retirement plan does not currently permit loans or hardship distributions, the plan sponsor can begin processing loans or hardship distributions now under the new rules, as long as the plan is amended to provide for the loans or hardship distributions **no later than the end of the first plan year beginning after December 31, 2017 (i.e., by December 31, 2018, for a calendar year plan).**

## **Amendments and Considerations for Defined Benefit Plans**

- [ ] **Mortality Tables:** The IRS released final regulations in October, updating the mortality tables to be used for defined benefit pension plan funding, as well as the valuation of lump sum and other accelerated distribution options. The new mortality tables reflect lower mortality rates than the existing table, which is expected to increase funding liabilities for many plans. The IRS also released Notice 2017-60, which contains rules for plan sponsors to delay the use of the new tables for one year under certain conditions, and Revenue Procedure 2017-55, which includes procedures for plan sponsors to request approval from the IRS for the use of plan-specific substitute mortality tables. The regulations apply to plan years beginning **on or after January 1, 2018**. Plan sponsors should review plan document provisions on mortality tables to ensure that the plan accurately reflect administrative practices. If the plan document incorporates the mortality table by reference to Internal Revenue Code section 417(e), this change may not require a plan amendment. However, if the plan document refers to the table name, an amendment may be needed by the last day of the 2018 plan year.
- [ ] **Bifurcated Benefit Distribution Options:** In September 2016, the IRS issued amended regulations to simplify the calculations necessary for defined benefit plans to offer participants the option to bifurcate their benefits so that they could receive a portion of their benefit in an annuity form of distribution, and a portion in a lump-sum cash payment. The IRS issued model plan amendments in August for plan sponsors to add this distribution option. If the **amendment is adopted by December 31, 2017**, the plan sponsor is eligible for limited relief from the anti-cutback rules of Internal Revenue Code section 411(d)(6).
- [ ] **Defined Benefit Plan PBGC Premium Increase:** The Pension Benefit Guaranty Corporation per-participant flat rate premium for **plan years beginning in 2018** is \$74 for single-employer plans.

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## Notices for Defined Contribution Plans

- [ ] **QDIA Notice – Annual Notice and Action required 30 Days Before Initial Investment:** The DOL Qualified Default Investment Alternative (QDIA) safe harbor regulations shield plan administrators from fiduciary liability with respect to default investments. Plans using QDIAs must provide a notice to participants and beneficiaries that satisfies the regulations. An initial notice is required before the first investment in the QDIA. Plan administrators must also provide an annual notice at least 30 days in advance of each subsequent plan year. For calendar year plans, the annual notice must be provided **by December 1, 2017**.
- [ ] **401(k) Safe Harbor Notice – Action Required 30 Days Before Plan Year:** Plans that intend to make a safe harbor matching or non-elective contributions for 2018 must provide a safe harbor notice to participants within a reasonable period before the beginning of the 2018 plan year. Thirty days' notice is considered reasonable, which is **December 1, 2017**, for a calendar year plan.
- [ ] **QACA Notice - Action Required 30 Days Before Plan Year:** A Qualified Automatic Contribution Arrangement (QACA) is an automatic contribution 401(k) plan that is deemed to pass nondiscrimination testing. The QACA safe harbor requires annual increases to the automatic enrollment amount and safe harbor employer contributions. Plan administrators must issue a QACA notice to participants at least 30 days before the beginning of the 2017 plan year. The notice may be distributed with the QDIA notice **by December 1, 2017**, for a calendar year plan.
- [ ] **EACA Notice - Action Required 30 Days Before Plan Year:** An Eligible Automatic Contribution Arrangement (EACA) is another safe harbor automatic enrollment plan that specifically permits a participant to withdraw automatic contributions made within 90 days after the first automatic contribution. The EACA notice must be distributed at least 30 days before the beginning of the 2018 plan year, or **by December 1, 2017**, for a calendar year plan.
- [ ] **Diversification Notice - Action Required 30 Days Before Direction:** Defined contribution plans that permit participants to elect to invest in publicly-traded employer securities (*i.e.*, a company stock fund) must provide participants with a notice of diversification rights. Plan administrators must distribute the notice at least 30 days before the first date on which a participant may direct the investment of the proceeds of employer securities.

## Notices for Defined Benefit Plans

- [ ] **Benefit Statements – Action Required in 2017:** Defined benefit plans are generally required to furnish participants with a pension benefit statement at least once every three years. An alternative notice method would be to instead send an **annual notice** telling the participant of the availability of the pension benefit statement and how to obtain it.
- [ ] **Annual Funding Notice – Action Required in 2018:** ***Within 120 days after the end of the plan year (April 30 for calendar year plans)*** defined benefit plans must notify the Pension Benefit Guaranty Corporation, participants, beneficiaries, unions, and contributing employers with detailed information about: (1) the funded status of the plan; (2) the plan's investments; (3) the group covered by the plan; and (4) a description of the rules for terminating the plan. Plans with fewer than 100 participants must provide the notice by the due date for filing the plan's IRS Form 5500. Additional notice requirements apply if the plan is subject to benefit restrictions for being underfunded.

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## Considerations for Health and Welfare Benefit Plans

- [ ] **Proposed Tax Legislation:** As of this writing, Congress is considering tax legislation that would impact employer-provided welfare benefits, reimbursements, and awards. Proposed legislation would eliminate the exclusion from income of employer-provided dependent care assistance, adoption assistance, employee achievement awards, and moving expense reimbursements. The legislation would also limit the exclusion for employer-provided housing. The Senate bill would eliminate the Affordable Care Act mandate that compels individuals to purchase health insurance or pay a fine. Whether the tax legislation will pass and what the final version will provide is unknown at this time. Williams Mullen will provide guidance if tax legislation is enacted.
- [ ] **New Disability Claims Regulations:** DOL Regulations revising the ERISA claims procedure regulations for plans that provide disability benefits are scheduled to go into effect on January 1, 2018. In October, however, the DOL proposed delaying the effective date of the regulations to April 1, 2018. The regulations will impact any plan providing benefits contingent on the plan's determination that the claimant is disabled. Such plans may include short-term disability plans, long-term disability plans, nonqualified deferred compensation plans, and qualified retirement plans. Plan sponsors will need to review and update summary plan descriptions and plan documents.
- [ ] **Preventive Services Coverage:** Non-grandfathered group health plans must cover certain preventive services with no cost sharing, including women's preventive health services such as contraceptives. Each year, plan sponsors should confirm that their plans comply with the list of required preventive service, which is available at: <http://www.uspreventiveservicestaskforce.org/Page/Name/uspstf-a-and-b-recommendations/>.
- [ ] **Patient-Centered Outcomes Research Institute (PCORI) Fee:** A fee to fund the PCORI is assessed on health insurers and sponsors of self-insured health plans. Certain plans are exempt from this fee—such as health flexible spending accounts, limited dental and vision plans, employee assistance plans and wellness programs. Retiree-only plans are subject to this fee even though they may be exempt from other ACA requirements. The fee for plan years that end on or after October 1, 2017, and before October 1, 2018, is **\$2.39 per participant**, and must be paid on IRS Form 720 by July 31 of the calendar year following that plan year.
- [ ] **Nondiscrimination Rules Regarding Gender Identity:** Entities that operate a health program or activity that receives federal financial assistance, such as Medicare reimbursements, must comply with the Office of Civil Rights nondiscrimination regulations. Health plans sponsored by such covered entities may not have blanket exclusions on health services related to gender transition, restrict benefits for medically appropriate, gender-specific care, and may not exclude gender transition services as cosmetic or experimental.
- [ ] **Wellness Programs and Disability-Related Inquiries:** Wellness programs must comply with Americans with Disabilities Act and Genetic Information Nondiscrimination Act regulations issued in 2016. If a wellness program asks for medical or disability-related information, a written notice describing the type of information that will be obtained and confidentiality procedures must be provided to employees.
- [ ] **Summary of Benefits and Coverage:** Insurers and group health plans must provide a Summary of Benefits and Coverage (SBC) for each coverage option offered by the insurer or plan. Participants who enroll mid-year must be provided an SBC within 90 days of enrollment. Calendar year plans have already complied, or are in the process of complying

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with this requirement. The SBC should be provided at the beginning of open enrollment each year if renewal is not automatic or least 30 days before the beginning of each plan year if renewal is automatic. Plans also must provide 60 days' advance notice of changes to the content of an SBC.

- [ ] **Reporting Transitional Reinsurance:** Self-insured plans must report their annual enrollment count by November 15 of each year. The report is made on [www.Pay.gov](http://www.Pay.gov).
- [ ] **Reporting Health Plan Coverage on Form W-2:** All employers must report the aggregate cost of the applicable employer-sponsored health insurance coverage on an employee's Form W-2 for 2017.
- [ ] **Reporting Health Plan Coverage to the IRS and Employees:** Internal Revenue Code section 6056 requires Applicable Large Employers to report information about employer-sponsored health coverage to the IRS and to employees. An Applicable Large Employer is an employer that employs at least 50 full-time employees, including full-time equivalent employees. Additionally, sponsors of self-insured health plans that provide minimum essential coverage must file an annual return with the IRS and provide statements to employees. Returns are due to the IRS by **February 28, 2018** (or **April 2, 2018** if filing electronically). Statements to employees are due January 31, 2018.
- [ ] **Annual Notices:** In addition to the notices described above, employers must continue to provide participants with the following annual group health plan notices:
  - Children's Health Insurance Program Reauthorization Act Notice
  - Women's Health and Cancer Rights Act Notice
  - Medicare Part D Notices and Reporting
    - Noncreditable/Creditable Coverage Notice (before October 15)
    - Notice to the Centers for Medicare and Medicaid Services (60 days after the beginning of the plan year)
  - HIPAA Special Enrollment Notice

The following table summarizes the reporting requirements.

Employer	Forms 1095-B and 1094-B	Forms 1095-C and 1094-C
Applicable Large Employer that does not offer health insurance	No	Yes
Applicable Large Employer that offers a fully-insured health plan	Forms are filed by the insurance carrier	Yes
Applicable Large Employer that offers a self-insured health plan	No	Yes
Small Employer that offers a full-insured health plan	Forms are filed by the insurance carrier	No
Small Employer that offers a self-insured health plan	Yes	No

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## Considerations for Stock-Based Plans and Executive Compensation

[ ] **Proposed Tax Legislation:** As of this writing, Congress is considering tax legislation that would significantly affect executive compensation and equity awards offered by private sector employers. The proposals would also reach compensation arrangements for executives of tax-exempt and governmental employers. These changes have not yet been adopted but could have an effective date as early as January 1, 2018. Williams Mullen will publish guidance on affected compensation and next steps, if these proposals become law.

[ ] **162(m) Disclosure and Shareholder Approval:** Public companies must seek and receive shareholder approval of compensation plans to satisfy Internal Revenue Code section 162(m)'s performance-based compensation exception from the \$1 million deduction cap on annual compensation paid to certain executives. To qualify for the exception, the compensation must be subject to certain performance goals. Once the material terms of a performance goal are disclosed and approved by shareholders, no additional disclosure is required, unless the compensation committee changes the material terms of the performance goal.

If the compensation committee has authority to change the targets under a performance goal, the material terms of the performance goals must be disclosed and reapproved no later than the first shareholder meeting that occurs in the **fifth year** following the year in which shareholders previously approved the performance goal. Therefore, if shareholders last approved the material terms of such a performance goal in **2013**, the shareholders must **approve these terms again in 2018**.

The proposed tax legislation discussed above would eliminate the performance-based compensation exception. At this time, however, the exception remains in effect and employers should continue to take steps necessary for compliance.

[ ] **ISO Exercises and ESPP Share Transfer Reporting:** Employers whose employees exercised an incentive stock option (ISO) in 2017 or made an initial transfer of shares in 2017 acquired under an employee stock purchase plan (ESPP) are subject to information reporting. Employers will report information to employees and to the IRS relating to ISO exercises and initial transfers of ESPP shares on IRS Forms 3921 and 3922. The **IRS filing deadline is February 28, 2018** (paper filing), or **April 2, 2018** (electronic filing). Employers must **provide this year's employee statements by January 31, 2018**.



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<b>Contribution and Benefit Limits for 2018</b>		
<b>Description</b>	<b>2017 Limit</b>	<b>2018 Limit</b>
Compensation Cap	\$270,000	\$275,000
Elective Deferral Limit for 401(k) plans, SEPs, 403(b) plans, and 457(b) plans	\$18,000	\$18,500
Catch-Up Contributions for Individuals Age 50 and Older	\$6,000	\$6,000
Defined Benefit Maximum Annual Accrual	\$215,000	\$220,000
Defined Contribution Maximum Annual Addition	\$54,000	\$55,000
Highly Compensated Employee Compensation Limit	\$120,000	\$120,000
Key Employee in Top-Heavy Plans Compensation Limit	\$175,000	\$175,000
ESOP Threshold for determining maximum account balance subject to 5-year distribution period		
Regular Limit	\$1,080,000	\$1,105,000
Lump Sum Distributions (Income Averaging)	\$215,000	\$220,000
SEP Compensation Threshold for Participation	\$600	\$600
SEP Contribution Maximum	\$54,000	\$55,000
SIMPLE IRA Maximum Pre-Tax Contribution	\$12,500	\$12,500
Catch-Up Contributions for SIMPLE IRAs or SIMPLE 401(k) plans	\$3,000	\$3,000
Social Security Taxable Wage Base	\$127,200	\$128,700
IRA Maximum Deduction	\$5,500	\$5,500
IRA Age 50 Catch Up	\$1,000	\$1,000
Health Flexible Spending Account Limit (Cafeteria Plans)	\$2,600	\$2,650
Health Savings Account Maximum Contributions		
Family Coverage	\$6,750	\$6,900
Single Coverage	\$3,400	\$3,450
Out-of-Pocket Maximum for Essential Health Benefits		
Family Coverage	\$14,300	\$14,700
Single Coverage	\$7,150	\$7,350

If you have any questions regarding this checklist, please contact any member of the Employee Benefits & Executive Compensation Section at Williams Mullen.

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