BENEFITS ADVANTAGE

FuturePlan by Ascensus

For employers sponsoring retirement plans | FuturePlan.com | 2020, No. 3

What's Inside

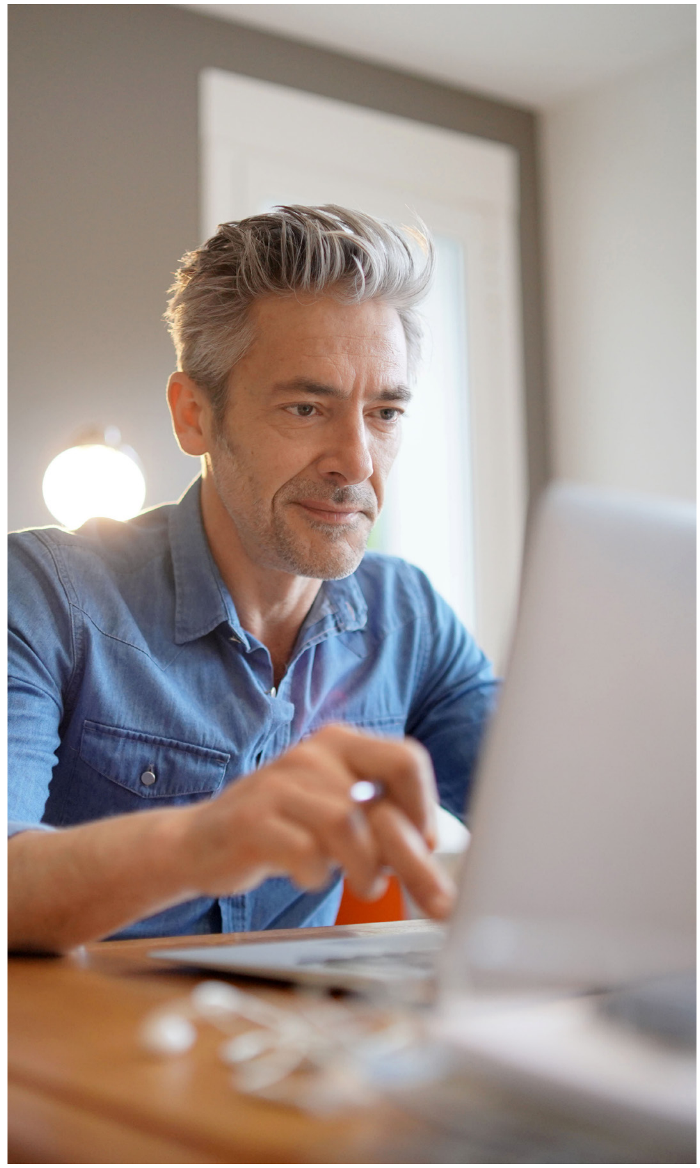
Defined Contribution Restatement Cycle 3 Has Arrived

Qualified retirement plans—including profit sharing, money purchase, and 401(k) plans—receive special tax benefits by meeting requirements set forth by the IRS. These plans operate under a pre-approved plan document that's recertified by the IRS every six years. The IRS requires pre-approved retirement plans to be restated on a uniform six-year cycle. A new six-year cycle, called Cycle 3, has begun.

The six-year restatement cycle helps to keep plans from becoming too burdened with separate interim "good faith" amendments that may have been added to the plan document over many years of operation. In addition to updating your plan document with mandatory legislative updates, restatement provides a great opportunity to also implement discretionary changes. During restatement, our dedicated FuturePlan Consultants can help evaluate potential enhancements and ways to optimize your retirement plan.

Why Cycle 3?

This is the third six-year cycle for which the IRS has issued opinion letters under the pre-approved retirement plan program. The first cycle was the Economic Growth and Tax Relief Reconciliation Act (EGTRRA) restatement in 2010, and the second was the Pension Protection Act (PPA) restatement in 2016.



What Do I Need to Do?

FuturePlan is beginning to work with plan sponsors to navigate the restatement process. We'll be reaching out to you in the coming months and through 2021 to make the process of restating your plan documents as seamless as possible.

Be on the lookout for updates from FuturePlan. We'll be sending you reminders and instructions to keep you current and guide you through the restatement process.

COVID-19 and Paying Fees from Plan Assets: What You Need to Know

Businesses throughout the country have been facing extraordinary challenges during the COVID-19 pandemic. As a result, business owners are looking for ways to lower their expenses. Plan sponsors may use plan assets (both forfeitures and participant accounts) to pay certain expenses; however, they must act in the best interest of participants and should ensure that IRS and Department of Labor rules are followed.

What Types of Fees Are Allowed to Be Paid out of Plan Assets?

Qualified retirement plans can pay a variety of plan expenses from their plan assets, but there are limitations. To determine whether a specific plan expense can be paid out of plan assets, the employer must determine whether that expense is a "settlor expense" or an "administrative expense."

- **Settlor expenses can't be paid out of plan assets.**

  Expenses that a plan sponsor incurs when making a business decision about the plan are normally settlor expenses and typically relate to the choices plan sponsors can make in establishing, designing, or terminating the plan. Examples of settlor expenses include initial plan document drafting fees, discretionary plan amendment fees, IRS correction program fees, and new business installation fees.

- **Administrative expenses can be paid out of plan assets.**

  Expenses that arise from the ongoing operation of a plan are usually considered administrative expenses. Examples of administrative expenses include payments for IRS-required plan amendments, annual recordkeeping, annual compliance, Form 5500 preparation, CPA auditing for large plan filers, and distribution and loan processing fees that are paid by the plan sponsor.

What Are Forfeitures and How Can They Be Used to Offset Costs?

- When a plan participant terminates employment with an account that isn't fully vested, the non-vested amount is moved to a holding account that is referred to as a forfeiture account.

- Forfeiture accounts may be used in multiple ways; the options are identified in the plan document. If your plan document allows, forfeitures can be used for payment of administrative expenses, which are outlined above.

- The plan document will dictate how forfeitures must be used and when they must be used. In general, the IRS won't permit forfeitures to remain unallocated past the end of the plan year in which they arise.

What About Paying Fees Directly from Participant Accounts?

Plan sponsors that choose to pay plan expenses directly out of participant accounts must do this in a uniform and nondiscriminatory manner. The plan expense must be charged against all applicable participants (for example, all former employees) in the same manner and must not favor highly compensated employees.

- One common method for debiting fees from plan assets is to allocate fees based on the participant's account balance in relation to the entire plan balance; or in other words, proportionately or pro rata.

- Fees may be taken from participant accounts on a per-capita basis, or a uniform (flat) amount pulled from each participant's account. The per-capita method is most often used when the fee is a set amount, such as an annual recordkeeping fee. For example, if there were ten

continued on page 3

continued from page 2

participants in the plan and the annual recordkeeping fee was $3,000, each participant would be charged $300. This method could disproportionately impact smaller account balances.

- Plan sponsors may also choose to charge an individual participant a fee for using a feature of the plan. This method is most often used for distribution fees and loan origination fees in which the fee is the result of one participant's request.
- Finally, an employer can establish what is most commonly referred to as an "ERISA budget account" to be used as a separate account within the plan to pay fees. The ERISA budget account method places 12b-1 fees and sub-transfer agent fees generated from investments into a separate account within the plan to be used to pay administrative fees.

Reach out to your Plan Consultant with questions about paying fees from plan assets. ■

Is Your Plan Ready for the New Auditing Standards?

Last year, the American Institute of Certified Public Accountants (AICPA) issued formal guidance for those who audit financial statements that are included with Form 5500, Annual Return/Report of Employee Benefit Plan, filings. The AICPA published this new Standard, SAS 136, to improve the quality of employee benefit plan audits. As amended, this guidance applies to audits for reporting periods ending on or after December 15, 2021. However, the new requirements may be applied early for reporting periods ending on or after December 15, 2020.

When is an ERISA Plan Audit Required?

Before detailing the AICPA guidance, a quick review of the plan audit requirements may help. Plan sponsors whose plans aren't subject to the Employee Retirement Income Security Act (ERISA) don't need to provide audit results to the Department of Labor (DOL). This group includes most church plans and owner-only plans. In addition, smaller plans that meet certain waiver requirements aren't subject to the Form 5500 audit requirements. But, an employee benefit plan *is* subject to an independent audit if the plan

- had 100 or more eligible participants as of the first day of the plan year and didn't file as a small plan filer for Form 5500 reporting in the prior year, or
- filed as a small plan filer for Form 5500 reporting in prior years, but now has 121 or more eligible participants as of the first day of the current plan year.

An "eligible participant" is an employee who is eligible to participate in the plan (even if not deferring) or has terminated employment but still has a plan balance.

What's "New" About the New Auditing Standard?

SAS 136 clarifies and formalizes current best practices that auditors working with employee benefit plans should already be familiar with. It also provides detailed requirements unique to employee benefit plans, which will help auditors meet their obligations. Some of the most significant provisions found in SAS 136 are described below.

- SAS 136 replaces a modified opinion (typically a disclaimer) used with ERISA Section 103(a)(3)(C) audits, previously known as a "limited scope audit," with a two-pronged opinion. The opinion should indicate whether the
  - information in the financial statements not covered by certification is presented fairly, and
  - investment information contained in the financial statements reconciles with, or is derived from, the information contained in the certification.
- As the plan sponsor, you must provide the auditor with an acknowledgement that you're responsible for
  - determining whether a 103(a)(3)(C) audit is permissible and whether the certification meets ERISA requirements,
  - maintaining and providing a current plan document,
  - preparing and fairly presenting financial statements, and
  - providing a substantially completed (draft) Form 5500.
- The auditor must read your current plan document and consider relevant plan provisions when designing and performing audit procedures.
- The auditor must identify which investment information is certified.

continued on page 4

continued from page 3

- SAS 136 requires the auditor to follow detailed requirements for providing written communication to you about the results of the audit.
- SAS 136 reformats and changes certain content requirements within the auditor's report.

Is It Possible to Avoid an Audit?

There are certain steps you can take now that may help avoid an audit. For example, where the plan audit is predicated on participant count, you can help keep the number of participants down on your Form 5500 by having procedures that ensure

- participants are notified of their distribution options timely,
- cash-out provisions of the plan are followed regularly, and
- appropriate attempts are made to locate missing participants.

These practices may be helpful in avoiding an audit requirement as your plan teeters around the audit threshold. In addition, a review of these procedures for compliance by the auditor is likely in the event that an audit is performed. Another approach to possibly avoiding an audit is to maintain more than one plan, as the audit requirement is based on the number of participants in that plan.

You should also discuss the effect of the new requirements with your CPA. The new SAS 136 primarily affects audit practices; however, you should anticipate more involvement under this newly formalized standard if you haven't taken an active role in past plan audits.

For more information, the DOL has also made available a helpful resource, *Selecting an Auditor for Your Employee Benefit Plan*. ■

Updates for Defined Benefit Plans

More IRS Guidance on Funding Single Employer DB Plans and Distribution Notices

The IRS released two Notices in August providing additional guidance relative to certain provisions under the Coronavirus Aid, Relief, and Economic Security (CARES) and Setting Every Community Up for Retirement Enhancement (SECURE) Acts.

Notice 2020-61 provides guidance on rules related to funding of single employer defined benefit pension plans and related benefit limitations. The CARES Act extended the deadline for minimum required contributions otherwise due during calendar year 2020 to January 1, 2021. Notice 2020-61 provides details and a lengthy Q&A.

Notice 2020-62 modifies safe harbor explanations (previously issued in Notice 2018-74) that may be used to satisfy distribution notice requirements under Internal Revenue Code Section 402(f). These changes are necessary relative to recent distribution provisions established under the SECURE Act pertaining to qualified birth or adoption distributions and age 72 required beginning date for required minimum distributions.

FAQs: PBGC COVID-19-Related Compliance for Defined Benefit Plans

The Pension Benefit Guaranty Corporation (PBGC), the agency that provides benefit insurance for many single-employer defined benefit pension plans, has issued frequently-asked-question (FAQ) compliance guidance for these plans as their sponsoring employers deal with the coronavirus (COVID-19) pandemic. Included in these FAQs are the following:

- Extended deadline to make required plan contributions
- PBGC processing of distress termination applications
- PBGC collection of termination liabilities
- Early Warning Program inquiries during the pandemic
- Reporting of minimum required contribution failures

Please contact your Plan Consultant with questions about your defined benefit plan. ■

Compliance Reminders 4Q2020

The following list highlights important, but not all, compliance dates for retirement plan administrators. Please contact your Consultant with questions about compliance dates for your plan.

October 2020

1 – Imposition of **defined benefit pension plan benefit restrictions** if the Adjusted Funding Target Attainment Percentage (**AFTAP**) hasn't been certified for the current calendar plan year. This assumes that the plan administrator hasn't elected to use the *prior* plan year's AFTAP percentage.

15 – **Retirement plan employer contributions** are due in order to be deducted on employer tax returns due to be filed October 15, 2020.

15 – **Form 5500 Series/8955-SSA** – Forms that are *on* extension are due for the plan year ended December 31, 2019.

15 – Deadline for a **corrective (11-g) amendment** to the plan document to cure certain coverage, participation, and non-discrimination requirements on behalf of the *prior* 2019 calendar year end.

15 – Pension Benefit Guaranty Corporation (PBGC) Comprehensive Premium Filing due date for the 2020 calendar plan year.

November 2020

2 – **Form 5500 Series/8955-SSA** – Forms are due for the March 31, 2020 plan year that are *not* on extension.

16 – **Retirement plan employer contributions** are due in order to be deducted on employer tax returns due to be filed November 16, 2020.

16 – **Form 5500 Series/8955-SSA** – Forms that are *on* extension are due for the plan year ending January 31, 2020.

30 – **Form 5500 Series/8955-SSA** – Forms are due for the April 30, 2020 plan year that are *not* on extension.

December 2020

1 – **Safe harbor notices for calendar 2021** Section 401(k)/403(b) safe harbor plans using the employer match design are required to be distributed to plan participants in order to satisfy the timing requirement in federal regulations.

15 – **September plan year 401(k) plans** must process **corrective distributions** for failed nondiscrimination tests to avoid a 10% excise tax.

15 – **Retirement plan employer contributions** are due to be deducted on employer tax returns due to be filed December 15, 2020.

15 – **Form 5500 Series/8955-SSA** – Forms that are *on* extension are due for the plan year ending February 29, 2020.

31 – Deadline for the pension plan's enrolled actuary to prepare the funding adequacy related **AFTAP calculation for a March 2019 year end** to avoid certain plan level restrictions. This assumes that the plan administrator hasn't elected to use the *prior* plan year's AFTAP percentage.

31 – **Form 5500 Series/8955-SSA** – Forms are due for the plan year ending May 31, 2020 that are *not* on extension.

31 – Deadline for pension plan's enrolled actuary to calculate a *specific* funding adequacy calculation/**AFTAP**, if a range AFTAP was previously issued. This assumes that the plan administrator hasn't elected to use the *prior* plan year's AFTAP percentage.

31 – Recommended deadline to **draft and execute discretionary amendments** to the controlling retirement plan document on behalf of the 2020 calendar plan year.

31 – **Minimum funding requirements** for defined benefit, money purchase, and target benefit plan years ended January 31, 2020 through April 2020 must be met by December 31, 2020 in order to avoid excise taxes. An electronic transfer must be completed or a check mailed by this date.

31 – Deadline to make corrective distributions relating to 2019 calendar year failed ADP/ACP tests. Please note, a 10% excise tax may apply to such corrective distributions.

31 – Deadline for correcting a prior year (2019) calendar year end ADP/ACP test failure with an Employer Qualified Non-Elective Contribution (QNEC).

The Coronavirus Aid, Relief, and Economic Security (CARES) Act

We're sharing this reminder of the relief available through the CARES Act that was passed on March 27, 2020 and general information on how it can impact plan sponsors and plan participants. The CARES Act offers plan sponsors an opportunity to make temporary enhancements to their retirement plans by allowing "qualified individuals"* increased access to their retirement plan assets. This is only available for a limited time, ending December 31, 2020.

If a plan sponsor elects to do so, the plan can permit "qualified Individuals"* to take coronavirus-related distributions (CRDs) and coronavirus loans.

In addition, the CARES Act waives 2020 Required Minimum Distributions (RMDs) for plan participants, IRA owners, and beneficiaries.

If a plan sponsor agrees to offer these limited-time enhancements, they must elect to do so by completing a CARES Act Election form.

Our Consultants are available to walk you through this process and provide you with the necessary paperwork and forms.

We discuss below the enhancements being offered as a result of the CARES Act:

1. **Required Minimum Distributions (RMDs)**
   RMDs that are normally required to be taken in 2020 are waived. This waiver also applies to individuals who turned 70½ in 2019, but who didn't take their first RMD before January 1, 2020.

2. **New Coronavirus–Related Distributions (CRDs)**
   The CARES Act created this new distribution option for plan sponsors and participants. Individuals may withdraw up to $100,000 in aggregate from eligible retirement plans without paying the 10% early distribution penalty tax.

   A CRD is defined as a distribution made on or after January 1, 2020 and before December 31, 2020 to a "qualified individual."* Participants must certify that they meet the CRD requirements. Eligible retirement plans include, for example, 401(k), 403(b), 457(b), or an IRA.

3. **Increased Maximum Plan Loan Amount**
   The retirement plan loan maximum for a "qualified individual,"* is increased to the lesser of $100,000 or 100% of the participant's vested balance. This increased amount applies to loans made during the 180-day period beginning on March 27, 2020.

4. **Delayed Plan Loan Repayment Date**
   Loan repayment dates that occur between March 27, 2020 and December 31, 2020 can be delayed for one year.

5. **For Defined Benefit Plans**
   Single employer defined benefit pension plan minimum required contributions due during 2020 can be delayed to January 1, 2021 (adjusted for interim earnings). This provision will also provide an option to use an alternative funding target percentage.

Plan sponsors who offer the CRD feature may rely on participants' self-certification that they meet the above requirements.

Please note, your plan doesn't have to be amended to reflect these new provisions until the last day of the 2022 plan year.

For more information on these and other regulatory changes, please visit our website.

*Qualified Individual is defined as:

- an individual (or the spouse or dependent of the individual) who is diagnosed with the COVID-19 disease or the SARS-CoV-2 virus in an approved test; or
- an individual who experiences adverse financial consequences as a result of being quarantined; being furloughed or laid off or having work hours, or compensation, reduced due to such virus or disease; being unable to work due to lack of child care due to such virus or disease; closing or reduced hours of a business owned or operated by the individual due to such virus or disease; or other factors as determined by the Treasury Secretary.

We're Becoming FuturePlan by Ascensus

In 2016, Ascensus began expanding its TPA line of business by acquiring quality-focused local TPA firms from coast to coast. As a result of this expansion, we now have more than 1,300 associates serving more than 55,000 plans under the name FuturePlan.

Because we've been mindfully merging new firms into our company to help ensure ongoing quality and smooth service for clients and advisors, the FuturePlan name is being rolled out gradually. You'll continue to see our new name appear more frequently and in more places—in some cases alongside the name of the TPA firm that's been servicing your retirement plan.

Our Legacy of Leadership

Each of these leading TPA firms became part of FuturePlan by Ascensus so that we can deliver unmatched levels of service, innovation, and expertise to an ever-growing client base. By joining forces, we've become the nation's largest retirement TPA while preserving the strength and warmth of our local relationships.

Sales

futureplan.com

sales@futureplan.com

866-929-2525

FuturePlan by Ascensus provides plan design, administration, and compliance services and is not a broker-dealer or an investment advisor.