

BENEFIT BYLINES

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PPA Restatement Countdown

Time is winding down for sponsors of 401(k) and profit sharing plans to complete the latest mandatory plan document restatement.

Background

In order to maintain their tax-qualified status, employers who sponsor retirement plans are required to totally amend and restate the plan documents and Summary Plan Descriptions (SPDs) under which they are maintained from time to time. Most of ABP's defined contribution plan clients maintain their plans using IRS pre-approved prototype or volume submitter plan documents. We are now well into the period during which these clients must restate plan documents to comply with the technical and administrative requirements of the Pension Protection Act of 2006 (PPA). In 2014, ABP sent individual communications to all affected clients, alerting them to this government-mandated requirement. **While the outside deadline for executing restated documents is April 30, 2016, there are legal and practical reasons for most plan sponsors to complete the process much earlier, in many cases on or before December 31, 2015.**

Voluntary Changes

In earlier correspondence and prior issues of *Benefit ByLines*, ABP has encouraged clients to contact us to discuss the feasibility of various voluntary changes so that they can be incorporated into the plan document during the mandatory restatement process. (Continued on page 2)

Effective Communications Can Avoid Problems and Create Opportunities

Life is full of surprises. Some are good and some are not so good. When it comes to employer-sponsored retirement plans, it is usually best to minimize surprises as much as possible. An employer's retirement plan service team (third party administrator (TPA), accountant, attorney and financial advisor) should strive to avoid surprising their client. Similarly, employers who sponsor retirement plans should strive to keep the service team informed about major developments that might impact or be impacted by the retirement plan.

The timing of when decisions must be made which impact retirement plan design or funding is highly dependent on the type of plan that has been adopted, as well as the specific plan provisions. As a general rule, employers who maintain profit sharing and 401(k) plans retain greater flexibility in determining employer funding levels than those who sponsor traditional defined benefit plans or cash balance arrangements. However, if a 401(k) plan includes safe harbor provisions, it typically is not possible or practical to avoid current year funding obligations after the year has begun. The timing by which decisions regarding plan design changes and plan terminations must be made varies based on the type of plan and the particular provisions in each plan. (Continued on Page 2)

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Among other items, this might include adding a 401(k) elective deferral provision to a basic profit sharing plan, modifying the employer contribution allocation formula to put employees in separate classes to provide increased flexibility, adding safe harbor provisions as a work-around for complying with 401(k) discrimination testing problems, and inserting direct rollover provisions to facilitate distributions to terminated participants. We have also interacted with some clients to evaluate the addition of auto enrollment provisions as a way to increase plan participation and improve participant outcomes. In many instances, these and other voluntary changes can be incorporated into the current restatement at little or no additional cost.

Please Act Now

A substantial number of our clients have responded to the initiatives and engaged in plan design discussions with members of the ABP staff. Many have already received and executed their documents, thereby bringing their plans into compliance with PPA. Still other clients are in the queue to receive their PPA documents this fall.

If your firm has not yet responded, please do so as soon as possible. A timely response will allow sufficient time for thoughtful analysis and discussion of plan design options. And, as previously noted, some clients will actually need to execute their new documents prior to the end of this year to achieve desired results.

As a further incentive to act quickly, ABP is offering a discount in document preparation fees for those clients who respond and submit payment at this time. From a selfish point of view, we need to spread out the workload to assure that deadlines are met and to maintain the sanity of our staff.

If you are not sure about the status of your plan or if you have any other questions, please contact your dedicated ABP administrator or the manager of ABP's compliance department, Marie Dawson at Marie.Dawson@pfsretire.com. ■

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The rules under which tax-qualified plans are maintained can be pretty complex and sometimes do not appear to be logical. As a result, financial and personnel events and decisions that might appear to have little or no relationship to the retirement plan can be potentially significant, in either a positive or negative way.

For example, a business that experiences adverse financial conditions may want to reduce or eliminate contributions to its qualified plan. It is usually possible to minimize employer funding obligations after the year has started, but totally eliminating the employer obligation may not be possible mid-year, particularly with some design structures. An employer who initiates an early dialogue with its retirement plan service team places itself in the best position to assure that all available options get put on the table in sufficient time to be implemented.

At the other end of the spectrum, if the employer experiences a financial windfall or expects to do so, there may be opportunities to use the retirement plan to both save taxes and share the wealth among executives and employees. However, this opportunity may be lost if discussions with the plan's TPA and other advisors do not occur in a timely manner.

Significant Events

Below is a list of some events that might warrant setting up a conference call or meeting with ABP and possibly other members of the employer's retirement plan service team:

- Potential merger, acquisition, shut down or sale of business
- Hiring of highly-compensated employees and other key personnel
- Retirement or termination of an owner or other key employee

- Internal changes in ownership
- Hiring of family members by the business
- Contemplated significant staff increases or reductions
- Significant change in business financial outlook (good or bad)
- Threats of litigation by disgruntled employees or former employees
- Desire to provide a one-time reward to an employee for outstanding achievement
- Inquiries or correspondence from the IRS, DOL or PBGC

Summary

As the saying goes, “better safe than sorry.” Having an early, confidential discussion with ABP and other members of the employer’s retirement plan service team when issues or events first surface, requires only a small investment of time. That discussion may not result in any changes regarding the retirement plan; however, it might prevent or minimize a problem or create an opportunity. ■

Form 5500 – Extended Extension

Employers who are required to file Form 5500 returns for their employee benefit plans will have additional time to do so, commencing with returns due for 2016 and future plan years.

The provisions discussed below were included in the Highway Funding Bill that was signed into law by President Obama on July 31, 2015, together with various changes affecting the due dates for tax returns filed by corporations, partnerships, and tax-exempt organizations. (Please see separate article about these changes in this issue of *Benefit Bylines*).

Background

Most employers who sponsor 401(k) plans and other types of retirement plans for their workers are required to file an information return (Form 5500) with the Employee Benefit Security Administration (EBSA), a division of the DOL, each year. Similarly, employers who sponsor group life, medical, disability and other types of health and welfare plans that cover 100 or more participants on the first day of the plan year are required to file a Form 5500 return.

The statutory filing deadline for Form 5500 is the last day of the seventh month following the end of the plan year. For a calendar year plan, it would be the following July 31st. Employers who are not able to submit their return within the 7 month period have historically been able to obtain an automatic extension of the filing deadline for up to an additional 2 ½ months (October 15th with respect to calendar year plans). To obtain the automatic extension, the sponsor must submit an extension request to the IRS using Form 5558, prior to the statutory due date of the return (by not later than July 31st for calendar year returns).

Most retirement plan sponsors must also provide a summary of the financial data appearing on each year’s Form 5500 to plan participants in what is called a Summary Annual Report (SAR). The deadline for distributing the SAR is two months after the deadline for the Form 5500. For calendar year plans, the current SAR deadline is September 30th, if an extension has not been requested, or December 15th if an extension request was timely filed.

Extended Extension

Commencing with 2016 plan years, the automatic extension has been increased from 2 ½ months to 3 ½ months. For example, benefit plan sponsors with calendar year plans will have until November 15, 2017 (rather than October 15, 2017), to submit the 2016 Form 5500. (The regular statutory deadline remains unchanged.) (*Continued on Page 4*)

Summary Annual Report (SAR) Deadline

The deadline for distributing SARs to participants remains 2 months after the deadline for submitting the related Form 5500 return, including any extension. However, the availability of a 3½ month rather than 2½ month extension effectively adds 30 days to the deadline for issuing the SAR. Therefore, effective for 2016 plan years, an employer with a calendar year benefit plan who files a timely extension request will have until November 15, 2017 to submit the 5500 return and until January 15, 2018, to distribute the related SAR to participants. Note: Some benefits professionals believe that extending the SAR deadline for calendar year returns into the next calendar year may have been an unintended consequence of the legislation. This may be clarified in subsequent guidance from the DOL.

Observation

It has been ABP's experience that the availability of a 2½ month extension has provided adequate time for all parties to gather the plan data (such as Schedule A for insured pension and welfare plans), for ABP to prepare the Form 5500 return and for the return to be filed electronically with the EBSA. However, the availability of a 3 ½ month extension provides an additional 30 day cushion in the event that unexpected delays occur during any part of the Form 5500 data gathering and preparation process. ■

Legislation Changes Tax Return Filing Deadlines

On July 31, 2015, President Obama signed into law what is commonly referred to as the Highway Funding Bill. This law provides temporary funding for transportation infrastructure. As is often the case, seemingly unrelated provisions were included as part of this legislation. Among these provisions are changes in the filing deadlines for tax and information returns filed by corporations, partnerships, and tax-exempt organizations. These changes are identified in the chart on page 5.

As you review the chart, here are a few points that may be of particular interest to some readers:

1. None of the new deadlines apply to returns for taxable years beginning prior to 2016. Accordingly, the current deadlines for returns and extensions apply to any 2014 and 2015 returns that are still required to be filed.
2. The regular due date applicable to C Corporations that file a Form 1120 has been increased by a month, whereas the regular filing deadline for Partnerships who file a Form 1065 has been decreased by a month. However, when changes to the rules for extensions are factored in, the extended deadlines for filing C Corporation and Partnership returns generally become the same.
3. As an exception to the above rules, those C Corporations that have tax years ending June 30 will not be able to take advantage of the later due date for filing their 1120 returns until tax years after 12/31/2025.
4. The regular and extended filing deadlines for S Corporations remain unchanged. Given that most S Corporations are calendar year filers, this means that the regular filing deadline continues to be 3/15 and the extended filing deadline is still 9/15.

Pension point: S Corporations that want to delay the funding of their retirement plan beyond 3/15 should put their 1120S returns on extension until 9/15 -- even if they are otherwise prepared to file the return earlier. The timely filing of an extension request preserves the right to make retirement plan contributions for the prior calendar year after 3/15 but prior to 9/15, while still being able to deduct those contributions on the prior year tax return.

Form	Entity	Due Date for Taxable Years that Begin		Extensions Available for Taxable Years that Begin	
		On or before 12/31/2015	After 12/31/2015	On or before 12/31/2015	After 12/31/2015
990	Tax-exempt Organizations	15 th day of the 5 th month after tax year end (5/15 for Calendar Year entities)	No Change	3 months automatic, another 3 with approval on request	6 months automatic
	• Trust			6 months automatic	6 months automatic
	• Corporations				
1120	C Corporations	15 th day of third month after tax year end (3/15 for Calendar Year entities)	15 th day of fourth month after tax year end (4/15 for Calendar Year entities) See Exception (a)	6 months (9/15 for Calendar Year entities)	6 months See Exceptions (a) and (b)
1120S	S Corporations	15 th day of third month after tax year end (3/15 for Calendar Year entities)	No change (3/15 for Calendar Year entities)	6 months (9/15 for Calendar Year entities)	No change (9/15 for Calendar Year entities)
1065	Partnerships	15 th day of fourth month after tax year end (4/15 for Calendar Year entities)	15 th day of third month after tax year end (3/15 for Calendar Year entities)	5 months (9/15 for Calendar Year entities)	6 months (9/15 for Calendar Year entities)
5500	Employee Benefit Plan	Last day of 7 th month after plan year end (7/31 for Calendar Year plans)	No change (7/31 for Calendar Year plans)	2.5 months (10/15 for Calendar Year plans)	3.5 months (11/15 for Calendar Year plans)

Exceptions

- (a) C-Corps with tax years ending on June 30th continue to be subject to the 15th day of the third month filing deadline through 6/30/2026, but are eligible for a 7-month rather than 6-month extension through that time.
- (b) Calendar year C-Corps are eligible for only a 5-month rather than 6-month extension for tax years through December 31, 2025. As a result, the extended filing deadline remains September 15th until the 2026 calendar year when it will change to October 15th.

Other Observations

The recently enacted changes in tax return filing deadlines and extensions are likely to be more beneficial to some taxpayers than others. Reportedly, the American Institute of Certified Public Accountants (AICPA) and state CPA societies have been lobbying for these changes for several years. Proponents view these changes as a way to provide a more logical flow of information and to allow more sufficient time to prepare and file returns.

The new rules are likely to put some additional time pressure on TPAs like ABP at our busiest time of year. Specifically, we will be required to complete retirement plan calculations one month earlier (prior to 3/15 rather than 4/15) for calendar year partnerships and certain other pass through entities who prefer not to put their 1065 returns on extension.

As a final observation, the outside limits on filing dates for most types of entities are pretty much the same for employers and service providers who are accustomed to routinely applying for tax return extensions. ■

ABP's CEFEX Certification Renewal

In 2011, ABP decided to engage in an external review process conducted by The Centre for Fiduciary Excellence (CEFEX) to determine whether our practices in providing services to clients conform to the Standard of Practice for Retirement Plan Service Providers (TPAs) as defined by the American Society of Pension Professionals & Actuaries (ASPPA) and CEFEX. This led to the receipt by ABP of an ASPPA Service Provider Certificate. We have continued this external assessment process for each subsequent year and were most recently certified on July 12, 2015. ABP is proud of the fact that we are one of only three TPA firms in the Philadelphia/Delaware Valley area to have undergone the rigorous external review process required to obtain this certification; we are one of only 42 TPA firms nationwide to have done so. The recognition associated with this achievement

is gratifying. Internally, the biggest benefit ABP has obtained from engaging in the CEFEX assessment and certification process is that it has provided the discipline of an on-going review and critique of virtually all areas of client service and practice management. Having this awareness does not mean that we do everything perfectly; we do not. However, the CEFEX assessment process has enabled us to determine and address areas that require improvement more efficiently than if we had not made this commitment.

From our clients' perspective, we believe the CEFEX certification is of paramount importance to plan fiduciaries. The primary focus of plan fiduciary obligations is following a prudent practice in plan matters. Because ABP is independently certified in using best practices, our CEFEX Certification helps plan sponsors meet these fiduciary obligations in both selecting ABP as a service provider and in performing many administration related matters. ■

Associated Benefit Planners, Ltd.

Associated Benefit Planners, Ltd. (ABP) is an independent consultant and third party administrator (TPA). We specialize in the design and administration of employer-sponsored retirement/savings plans, including 401(k) arrangements. ABP also provides plan document and compliance support for Section 125 Plans and Employee Welfare Plans, operating on a fee-for-service basis.

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