

Compensation and Benefits Insights

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Guidance Clarifying Section 409A of the Code Issued By IRS

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As 2016 draws to a close, it may be a good time to review nonqualified deferred compensation plans and arrangements in light of new guidance under Section 409A of the Internal Revenue Code (“[Section 409A](#)”) issued earlier this year by the Internal Revenue Service (“[IRS](#)”). Highlights of the new guidance, which clarify and modify certain provisions of the final regulations under Section 409A, and replace a provision of the proposed Section 409A income inclusion regulations, are summarized below.

Background

Section 409A, which was added to the Internal Revenue Code (the “[Code](#)”) in 2004, governs the taxation of nonqualified deferred compensation. Section 409A generally provides that, if certain requirements are not met, amounts deferred under a nonqualified deferred compensation plan or arrangement are currently includible in a service provider’s gross income, to the extent not subject to a substantial risk of forfeiture and not previously included in gross income.

In 2007, the IRS issued [final regulations](#) under Section 409A (the “[Final Regulations](#)”), which defined certain terms used in Section 409A and in the Final Regulations, set forth the requirements for deferral elections and for the time and form of payments under nonqualified deferred compensation plans, and arrangements, and addressed certain other issues under Section 409A. In 2008, the IRS proposed [additional regulations](#) under Section 409A, which include proposed Treas. Reg. §1.409A-4 (the “[Proposed Income Inclusion Regulations](#)”). The Proposed Income Inclusion Regulations provided guidance on the calculation of amounts includible in income under Section 409A(a)(1), and on the additional taxes imposed on service providers participating in plans that violate Section 409A’s requirements.

Our Practice

We advise public, private, taxable and tax-exempt clients on a wide variety of issues related to the design, preparation, communication, administration, operation, merger, split-up, amendment and termination of all forms of employee benefit plans and executive compensation programs and related funding vehicles. The firm has defended clients in significant high-profile ERISA litigation matters, including 401(k) plan “stock drop” cases and other breach-of-fiduciary-duty class actions.

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Compensation and Benefits Insights

Proposed Regulations

The new [proposed regulations](#) (the “[Proposed Regulations](#)”) were issued by the IRS in mid-June 2016. The Proposed Regulations clarify and modify 18 provisions of the Final Regulations, and withdraw and replace a provision of the Proposed Income Inclusion Regulations. Several of the clarifications to the Final Regulations, as well as the change to the Proposed Income Inclusion Regulations, are discussed below.

INSIGHT. Although the new Proposed Regulations will not apply officially until they are published as final regulations in the Federal Register, the IRS has indicated that taxpayers may rely on the Proposed Regulations now.

Stock Right – Related Clarifications

Several of the Proposed Regulations’ clarifications and modifications relate specifically to the treatment of stock rights under Section 409A. Of particular note are the following clarifications and modifications:

- *FMV of Exempt Stock Rights:* The Final Regulations exempt certain stock options and stock appreciation rights (collectively, “Stock Rights”) that are granted with respect to stock of the service recipient (i.e., the employer) from Section 409A’s requirements. The Final Regulations provide that in order to rely on such exemption, the Stock Right generally must be granted at fair market value, and that if the Stock Right is subject to a mandatory repurchase obligation (such as the right of the service recipient to buy the Stock Right back upon the service provider’s termination for “cause”), the stock price under such obligation must be based on fair market value. In the preamble to the Proposed Regulations, the IRS noted that this requirement had the unintended effect of prohibiting a very customary practice: reducing the amount that a service provider receives in connection with a Stock Right that is repurchased in connection with such service provider’s termination, where that termination is for “cause” or due to his or her violation of a non-compete or nondisclosure agreement. The Proposed Regulations would clarify that such Stock Rights will remain exempt from Section 409A even if the value of the Stock Right and repurchase price may be reduced upon the service provider’s termination for cause or his or her violation of a non-compete or nondisclosure agreement.
- *Pre-Service Grants:* Under the Final Regulations, the exemption for certain Stock Rights only applied where an employee or other service provider was already providing services to the employer at the time such Stock Rights were granted. The Proposed Regulations would clarify that Stock Rights will remain exempt from Section 409A even if such Stock Rights are granted before the employee or other service provider begins providing services, so long as the prospective employer reasonably expects that such person will begin providing services within 12 months thereafter (or, if services do not begin within that 12-month period, such Stock Rights are forfeited).
- *Transaction-Based Compensation Rules:* Under the Final Regulations, transaction-based compensation (e.g., payments related to certain types of changes in control that are made because a service recipient or a third party purchases a stock right held by an employee or other service provider, or that are calculated by reference to the value of the service recipient’s stock) may be paid on the same schedule and under the same terms as apply to payments to shareholders generally in connection with the change in control (but in no event more than five years

Compensation and Benefits Insights

after the change in control occurs), and still comply with Section 409A's requirements. The Proposed Regulations clarify that employers may apply a similarly delayed schedule to cash-outs of Stock Rights that are otherwise exempt from 409A, without causing such Stock Rights to become subject to Section 409A's requirements.

Payment-Related Clarifications

The Proposed Regulations also clarify and modify some of Section 409A's payment-related provisions, including the following:

- *Death as a Permissible Payment Event:* The Final Regulations permit amounts deferred to be paid in connection with certain permissible payment events, which include the participant's death. The Final Regulations required that payments following a participant's death be paid by December 31 of the year in which the payment was otherwise scheduled to occur or, if later, by the 15th day of the third month following the date on which the payment was otherwise scheduled to occur. In the preamble to the Proposed Regulations, the IRS noted that the period set forth in the Final Regulations may not be long enough to resolve certain issues related to the death (such as completing probate). As a result, the Proposed Regulations provide an extended period for such payments, which begins on the participant's date of death and ends on December 31 of the first calendar year following the year in which the participant died.
- *Treatment of Beneficiary:* The Proposed Regulations clarify that the rules in the Final Regulations applicable to amounts payable upon the death of a participant will also apply in the case of the death of such participant's beneficiary. In addition, under the Final Regulations, plans may consider the death, disability or unforeseeable emergency of a participant as an intervening payment event for amounts previously deferred; the Proposed Regulations extend this exception to include beneficiaries.
- *Delay Due to Violation of Laws:* The Proposed Regulations clarify that a payment made after the applicable 2.5-month period that applies to short-term deferrals may still qualify as exempt from Section 409A if the employer reasonably believes that an earlier payment would violate Federal securities or other laws, and makes the payment as soon as reasonably practicable once the employer anticipates (or reasonably should anticipate) that making the payment would not cause such a violation.
- *Acceleration To Comply With Certain Laws:* The Proposed Regulations provide that the accelerated payment of nonqualified deferred compensation subject to Section 409A will not violate Section 409A's requirements if the acceleration is reasonably necessary to comply with a bona fide ethics or conflicts of interest law, or to comply with Federal debt collection laws.

Changes to Proposed Income Inclusion Regulations

The Proposed Income Inclusion Regulations permit the correction, without income inclusion or additional taxes, of certain plan provisions that fail to comply with the requirements of Section 409A, if the correction is made before the year in which the affected amounts would otherwise vest. The Proposed Income Inclusion Regulations also include an anti-abuse rule, which is aimed to prevent the use of this rule to avoid Section 409A's requirements. The Proposed Regulations replace this anti-abuse rule with an expanded version that provides additional specificity. Of particular note, the expanded

Compensation and Benefits Insights

version in the Proposed Regulations gives examples of objectionable patterns and practices that would make the correction relief provided by the Proposed Income Inclusion Regulations unavailable. The expanded version in the Proposed Regulations also makes it clear that parties cannot use the corrective relief provided by the Proposed Income Inclusion Regulations as the basis for changing payout terms that were not themselves the source of noncompliance, and requires taxpayers to follow existing correction guidance issued by the IRS (such as [IRS Notice 2008-113](#) and [IRS Notice 2010-6](#)), if available.

Wrap-Up

The Proposed Regulations contain other important clarifications and modifications, in addition to those described above, that may affect an employer's nonqualified deferred compensation plans and arrangements. As 2016 draws to a close, employers and other plan sponsors may want to review the terms of those plans and arrangements in light of the Proposed Regulations, particularly with respect to amounts that might vest in 2017, to confirm that amounts paid under those plans and arrangements are either exempt from, or comply with, Section 409A and the guidance issued thereunder, including the Proposed Regulations. Please feel free to contact any member of King & Spalding's Employee Benefits & Executive Compensation practice for assistance in your review.

The "Employee Matters" Section Matters: *Hunter v. Berkshire Hathaway, Inc.* Illustrates the Potential Implications of Merger Agreements on ERISA Plans

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The Fifth Circuit Court of Appeals recently held in [Hunter v. Berkshire Hathaway, Inc.](#) that ERISA¹ retirement plan participants pleaded sufficient facts to assert a plausible claim against Berkshire Hathaway, Inc. ("Berkshire") for breaching contractual obligations created in the "Employee Matters" section of a merger agreement between Berkshire and the participants' employer. This case highlights the importance of carefully drafting merger agreement terms affecting ERISA plans to avoid creating inadvertent contractual obligations under the plans.

Background

Under the facts of this case, Berkshire bought Acme Building Brands, Inc. ("Acme"), which provided a company-sponsored pension and 401(k) plan covering the participants. In connection with the purchase, the parties executed a merger agreement with an "Employee Matters" covenant under which Berkshire agreed that it and Acme could amend, modify or terminate any Acme plan, but that (notwithstanding such amendment and termination rights) Berkshire could not cause Acme to (i) reduce any benefit accruals under the pension plan or (ii) reduce Acme's contribution pursuant to the 401(k) plan.

The participants contended that in 2013 Acme was forced by Berkshire to adopt a "soft freeze" of the Acme pension plan, so that new Acme employees were prevented from participating in the plan after the freeze. In addition, the participants contended that in 2014 Berkshire caused Acme to amend the plans to (i) implement a "hard freeze" of the Acme pension

¹ The Employee Retirement Income Security Act of 1974, as amended.

Compensation and Benefits Insights

plan, so that future benefit accruals were eliminated under the plan after the freeze, and (ii) agree that the Acme contribution under the 401(k) plan could be changed any time after 2014.

District Court Opinion

Consequently, certain Acme retirement plan participants sued Acme and Berkshire in the District Court for the Northern District of Texas, seeking declaratory and injunctive relief, damages, attorney's fees, and costs. Specifically, the participants sought declaratory relief under ERISA § 502(a)(3), alleging (1) that the terms of the plans were amended by the merger agreement to restrict changes to the plans, and (2) that the amendment to the plans in 2014 violated the plans, as amended by the merger agreement. The participants also alleged that Acme breached its fiduciary duties under ERISA, and that Berkshire knowingly participated in Acme's breaches of fiduciary duties. Further, the participants asserted an alternative breach-of-contract claim against Berkshire, contending that Berkshire breached the merger agreement as a result of the 2014 amendment. In lieu of answering the complaint, Berkshire and Acme moved to dismiss all claims. The district court granted the motion and dismissed all claims with prejudice, and the participants appealed to the Fifth Circuit.

Fifth Circuit Opinion

The Fifth Circuit addressed, and rejected, the participants' claim that Acme's actions were contrary to the plans' terms, as amended by the merger agreement. The Fifth Circuit reasoned that the "Employee Matters" covenant in the merger agreement expressly allowed Acme to amend the plans, although it did restrict Berkshire from causing Acme to reduce benefit accruals or employer contributions.

In addition, the Fifth Circuit rejected the participants' claims for breaches of fiduciary duties against Acme since Acme acted akin to a settlor of a trust, rather than in a fiduciary capacity, when it implemented the amendment in 2014.

However, the Fifth Circuit held that the participants pleaded sufficient facts to assert a plausible claim that Berkshire caused Acme to amend the plans in violation of the plans' terms, as modified by the merger agreement. The Fifth Circuit explained that the merger agreement imposed a contractual limitation on Berkshire in that Berkshire could not cause Acme to reduce enumerated benefits, but that the merger agreement did not restrict Acme itself from reducing future plan accruals or employer contributions if Acme acted independently.

Insight

This decision highlights the importance of carefully drafting merger agreement terms affecting ERISA plans to avoid creating inadvertent contractual obligations under the plans.

King & Spalding would be happy to assist you with any questions you have about this case.

Compensation and Benefits Insights

2017 Filing and Notice Deadlines for Qualified Retirement and Health and Welfare Plans

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Employers and plan sponsors must comply with numerous filing and notice deadlines for their retirement and health and welfare plans. Failure to comply with these deadlines can result in costly penalties. To avoid such penalties, employers should remain informed with respect to the filing and notice deadlines associated with their plans.

The filing and notice deadline table below provides key filing and notice deadlines common to calendar year plans for 2017. If the due date falls on a Saturday, Sunday, or legal holiday, the due date is generally delayed until the next business day. Please note that the deadlines will generally be different if your plan year is not the calendar year. Please also note that the table is not a complete list of all applicable filing and notice deadlines (including any available exceptions and/or extensions), just the most common ones. King & Spalding is happy to assist you with any questions you may have regarding compliance with the filing and notice requirements for your employee benefit plans.

Deadline	Item	Action	Affected Plans
January 17	Transitional Reinsurance Fees	Deadline for self-insured group health plans to pay the entire transitional reinsurance fee for 2016 or to pay the first installment of such fees. The deadline for determining how many “covered lives” apply for purposes of this fee, and to submit the annual enrollment count, was November 15, 2016. If the entity chooses to pay the entire fee, it must pay \$27.00 for each covered life no later than this date. If the entity chooses to pay in two separate installments, it must pay \$21.60. for each covered life by this date and pay the remaining \$5.40 for each covered life by November 15, 2017.	Self-insured Group Health Plans (including retiree plans)
January 31	IRS Form 945	Deadline for employer to file IRS Form 945 to report income tax withheld from qualified plan distributions made during the prior plan year. However, the deadline may be extended to February 10 if taxes were timely deposited during the prior plan year.	Qualified Retirement Plans
	IRS Form 1099-R	Deadline for employer to distribute IRS Form 1099-R to participants and beneficiaries who received a distribution (including a direct rollover) during the prior plan year. This includes a direct rollover from a Qualified Retirement Plan.	Qualified Retirement Plans

Compensation and Benefits Insights

Deadline	Item	Action	Affected Plans
	IRS Form W-2	Deadline for employers to distribute Form W-2, which must reflect aggregate value of employer-provided employee benefits (e.g., cost of coverage, imputed income for group-term life insurance, employer Health Savings Account contributions, etc.).	Health and Welfare Plans
	Cycle A Determination Letter Applications	Deadline for employers having Taxpayer Identification Numbers ending in 1 or 6 and controlled/affiliated service group members that maintain more than 1 plan who previously elected Cycle A to apply for an IRS determination letter with respect to their Qualified Retirement Plans. Note that this is the last remedial cycle for applying for a determination letter for existing qualified retirement plans since the IRS has eliminated the determination letter program except in certain limited cases.	Qualified Retirement Plans
February 14 (within 45 days after the close of the fourth quarter of previous plan year)	Quarterly Fee Disclosure	Deadline for plan administrator to disclose fees and administrative expenses deducted from participant accounts during the fourth quarter of the previous plan year. Note that the quarterly fee disclosure may be included in the quarterly benefit statement or as a stand-alone document.	Defined Contribution Plans that allow participants to direct investments
	Benefit Statements for Participant-Directed Plans	Deadline for plan administrator to send fourth quarter benefit statement for previous plan year to participants in participant-directed defined contribution plans.	
February 28 (if filing paper forms)	IRS Form 1099-R	Deadline for employer to file IRS Form 1099-R. If the form is filed electronically, the deadline can be extended until March 31.	Qualified Retirement Plans

Compensation and Benefits Insights

Deadline	Item	Action	Affected Plans
	IRS Form 1094-B Transmittal Forms	Deadline for providers of minimum essential coverage to transmit forms to IRS reporting the months during the year that individuals enrolled in the group health plan satisfied the individual mandate by enrolling in minimum essential coverage. If the form is filed electronically, the deadline can be extended until March 31.	Self-Insured Group Health Plans and Group Health Plan Insurers
	IRS Form 1094-C Transmittal Forms	Deadline for plan sponsors that employed an average of at least 50 full-time employees in 2016 (also known as “Applicable Large Employers” or “ALEs”) to transmit forms to IRS reporting whether the ALEs offered an opportunity to enroll in (and whether employees did enroll in) minimum essential coverage under the ALE’s sponsored plan. If the form is filed electronically, the deadline can be extended until March 31.	Applicable Large Employers
March 1 (60 days after the beginning of the plan year)	Medicare Part D Creditable Coverage Disclosure	Deadline for employers that provide prescription drug coverage to Medicare Part D eligible individuals to disclose to the Centers for Medicaid and Medicare Services (CMS) whether the coverage is “creditable prescription drug coverage” by completing the Online Disclosure to CMS Form at https://www.cms.gov/Medicare/Prescription-Drug-Coverage/CreditableCoverage/CCDisclosureForm.html	Health and Welfare Plans that provide prescription drug coverage to Medicare Part D eligible individuals
March 2	IRS Form 1095-B Individual Statements	Deadline for providers of minimum essential coverage to distribute forms used to report to responsible individuals the months during the year that the individuals satisfied the individual mandate by enrolling in minimum essential coverage. This deadline was extended from its original deadline of January 31. Note that self-insured ALEs can report this information on Form 1095-C. Fully insured plan sponsors that are not ALEs are not required to distribute Form 1095-B, which are distributed by the group health plan insurers.	Self-Insured Group Health Plans and Group Health Plan Insurers

Compensation and Benefits Insights

Deadline	Item	Action	Affected Plans
	IRS Form 1095-C Individual Statements	Deadline for ALEs to report to provide a written statement to employees indicating whether the ALEs offered an opportunity to enroll in (and whether the employee did enroll in) minimum essential coverage under the ALE's sponsored plan. This deadline was extended from its original deadline of January 31.	Applicable Large Employers
March 15	Plan Contribution Deadline	Deadline for corporate employer contributions to be made to plan trusts in order for such amounts to be deductible on corporate tax returns (assuming the employer is operating on a calendar-year fiscal year). Note that this deadline may be extended if an extension is obtained for the corporate tax return.	Qualified Retirement Plans
March 15 (2 ½ months after the plan year)	Excess Contributions	Deadline for plan administrator to distribute any excess contributions and earnings from the prior year to avoid 10% excise tax on employer (other than eligible automatic contribution arrangements (EACAs)).	401(k) Plans Other Than EACAs
March 31 (last day of 3rd month following the end of the prior plan year)	Certification of Adjusted Funding Target Attainment Percentage (AFTAP)	Deadline for actuary to certify AFTAP to avoid presumption that AFTAP is 10 points less than prior year AFTAP.	Defined Benefit Plans
March 31 (if filing electronically)	IRS Form 1094-B Transmittal Forms	Deadline for providers of minimum essential coverage to transmit forms to IRS reporting the months during the year that individuals enrolled in the group health plan satisfied the individual mandate by enrolling in minimum essential coverage.	Self-Insured Group Health Plans and Group Health Plan Insurers
	IRS Form 1094-C Transmittal Forms	Deadline for ALEs to transmit forms to IRS reporting whether the ALEs offered an opportunity to enroll in (and whether employees did enroll in) minimum essential coverage under the ALE's sponsored plan.	Applicable Large Employers

Compensation and Benefits Insights

Deadline	Item	Action	Affected Plans
April 1	Age 70 ½ Distribution Requirements	Deadline for plan administrator to distribute prior year's required minimum distribution for any terminated employee who reached age 70 ½ or older during the prior year.	Qualified Retirement Plans
April 15	Excess Deferrals	Deadline for plan to distribute prior year's deferrals in excess of Internal Revenue Code (IRC) §402(g) annual dollar limit and related earnings.	401(k) Plans
April 16 (105 days after the end of the plan year)	PBGC 4010 Filing	Deadline for contributing sponsors (and each controlled group member) to file PBGC Form 4010 if: 1) Any single-employer plan in the contributing sponsor's controlled group had a prior year AFTAP of less than 80%; 2) Any single-employer plan in the contributing sponsor's controlled group fails to make a required installment or other required payments to a plan, and as a result, a lien is imposed pursuant to ERISA section 303(k)(1) or IRC section 430(k)(1); or 3) The IRS has granted funding waivers of more than \$1 million to any single-employer plan in the contributing sponsor's controlled group and any portion of such waiver is still outstanding.	Defined Benefit Plans
April 30 (no later than 120 days after the end of the plan year)	Annual Funding Notice	Deadline for the plan administrator to provide a plan funding notice to the PBGC, to each plan participant and beneficiary and to each employer that has an obligation to contribute under the plan.	Defined Benefit Plans
May 14 (within 45 days after the close of the first quarter of plan year)	Benefit Statements for Participant-Directed Plans	Deadline for plan administrator to send benefit statement for the first quarter of the plan year to participants in participant-directed defined contribution plans.	Defined Contribution Plans that allow participants to direct investments

Compensation and Benefits Insights

Deadline	Item	Action	Affected Plans
	Quarterly Fee Disclosure	Deadline for plan administrator to disclose fees and administrative expenses deducted from participant accounts during the first quarter of the plan year. Note that the quarterly fee disclosure may be included in the quarterly benefit statement or as a stand-alone document.	
May 15 (the 15 th day of the 5 th month after the end of the plan year)	IRS Forms 990 and 990-EZ	Deadline for tax-exempt trusts associated with qualified retirement plans and voluntary employee beneficiary associations (VEBAs) to file Forms 990 or 990-EZ with the IRS for prior year. A 3-month extension may be obtained by filing a Form 8868, which must be filed by this date.	Qualified Retirement Plans Voluntary Employee Beneficiary Associations
June 30 (last day of 6 th month following the plan year)	Excess Contributions	Deadline for plan administrator to distribute EACA excess contributions and earnings from the prior year to avoid 10% excise tax.	401(k) Plans with EACA
July 29 (no later than 210 days after the end of the plan year in which the change was effective)	Summary of Material Modifications	Deadline for plan administrator to distribute summary of material modifications reflecting any changes to the summary plan description (SPD) arising from any plan amendments adopted during prior year (unless a revised SPD is distributed that contains the modification).	Retirement Plans Health & Welfare Plans
July 31 (the last day of the 7 th month following the plan year)	DOL Form 5500	Deadline for plan administrator to file Form 5500 (Annual Return/Report of Employee Benefit Plan) for prior year. This deadline is extended 2 ½ months if the plan administrator files Form 5558.	Retirement Plans Health and Welfare Plans
	IRS Form 8955-SSA	Deadline for plan administrator to file Form 8955-SSA (Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits). This deadline is extended by 2 ½ months if the plan administrator files a Form 5558.	Retirement Plans

Compensation and Benefits Insights

Deadline	Item	Action	Affected Plans
July 31	Patient Centered Outcomes Research Institute (PCORI) Fee	Deadline for self-insured health plans to pay a fee for 2016 plan year using IRS Form 720. Note that the fee is not tax deductible. Insurers are responsible for paying the fee on behalf of insured plans.	Self-Insured Group Health Plans (including retiree plans)
August 14 (within 45 days after the close of the second quarter of plan year)	Benefit Statements for Participant-Directed Plans	Deadline for plan administrator to send benefit statement for the second quarter of the plan year to participants in participant-directed defined contribution plans.	Defined Contribution Plans with participant-directed investments
	Quarterly Fee Disclosure	Deadline for plan administrator to disclose fees and administrative expenses deducted from participant accounts during the second quarter of the plan year. Note that the quarterly fee disclosure may be included in the quarterly benefit statement or as a stand-alone document.	
August 15 (the 15 th day of the 8 th month after the end of the plan year)	IRS Forms 990 and 990-EZ	Deadline for tax-exempt trusts associated with qualified retirement plans and voluntary employee beneficiary associations (VEBAs) to file Forms 990 or 990-EZ with the IRS for prior year if the trustee obtained a 3-month extension by filing a Form 8868.	Qualified Retirement Plans Voluntary Employee Beneficiary Associations
August 30	Comparative Chart of Investment Alternatives	Deadline for plan administrator to furnish the 2017 comparative chart of investment alternatives.	Defined Contribution Plans with participant-directed investments
September 15 (8 ½ months after the end of the plan year)	Minimum Contribution Deadline	Deadline for plan administrator to contribute balance of minimum contributions necessary to avoid a funding deficiency.	Defined Benefit Plans

Compensation and Benefits Insights

Deadline	Item	Action	Affected Plans
September 30 (within 9 months of the end of the plan year)	Summary Annual Report (SAR)	Deadline for plan administrator to distribute Summary Annual Report for prior year to participants and beneficiaries. This deadline may be extended until 2 months following the close of the extension period for filing a Form 5500, if applicable.	Defined Contribution Plans Health and Welfare Plans (unfunded welfare plans are exempt)
September 30 (last day of the 9th month following the end of the prior plan year)	Certification of Adjusted Funding Target Attainment Percentage (AFTAP)	Deadline for actuary to certify AFTAP to avoid presumption that AFTAP is less than 60%.	Defined Benefit Plans
October 15	Medicare Part D Creditable Coverage Notice to Individuals	Deadline for employers that provide prescription drug coverage to Medicare Part D eligible individuals to provide a written disclosure notice to Medicare eligible individuals and their dependents covered under the plan indicating whether their prescription drug coverage is creditable coverage.	Health and Welfare Plans that provide prescription drug coverage to Medicare Part D eligible individuals
October 15 (2 ½ months after extension granted)	DOL Form 5500	Deadline for plan administrator to file Form 5500 for prior year if deadline was extended by filing a Form 5558.	Retirement Plans Health and Welfare Plans
	IRS Form 8955- SSA	Deadline for plan administrator to File Form 8955- SSA if deadline was extended by filing a Form 5558.	Retirement Plans
October 15 (9 ½ months after the previous plan year)	PBGC Premium Filing	Deadline for plan administrator of large plans (500 or more participants) to pay flat-rate or variable PBGC premium for current plan year.	Defined Benefit Plans with 500 or more participants
November 1 (by the first day of open enrollment)	Summary of Benefits and Coverage for Health Plans that Require Reapplication	Deadline for group health plan administrator (for self-insured plans) or group health plan administrator or insurer (for fully insured plans) to provide a Summary of Benefits Coverage (SBC) if written application materials are required for renewal.	Group Health Plans and Health Insurance Issuers

Compensation and Benefits Insights

Deadline	Item	Action	Affected Plans
November 14 (within 45 days after the close of the third quarter)	Benefit Statements for Participant-Directed Plans	Deadline for plan administrator to send benefit statement for the third quarter of the plan year to participants in participant-directed defined contribution plans.	Defined Contribution Plans with participant-directed investments
	Quarterly Fee Disclosure	Deadline for plan administrator to disclose fees and administrative expenses deducted from participant accounts during the third quarter of the plan year. Note that the quarterly fee disclosure may be included in the quarterly benefit statement or as a stand-alone document.	
November 15 (the 15 th day of the 11 th month after the end of the plan year)	IRS Forms 990 and 990-EZ	Deadline for tax-exempt trusts associated with qualified retirement plans and voluntary employee beneficiary associations (VEBAs) to file Forms 990 or 990-EZ with the IRS for prior year if the trustee obtained a second 3-month extension by filing a Form 8868.	Qualified Retirement Plans Voluntary Employee Beneficiary Associations
November 15	Transitional Reinsurance Report and Second Installment Fee (if applicable)	Deadline for sponsors of self-insured health plans (including retiree plans) to report the number of “covered lives” under the plan. If the entity chose to pay the 2016 fee in installments, it must pay the remaining \$5.40 for each covered life by this date.	Self-insured Group Health Plans (including retiree plans)
December 1 (at least 30 but no more than 90 days before the beginning of the plan year)	Safe Harbor Notice	Deadline for plan administrator to distribute a notice of intent to use a safe harbor formula to participants and beneficiaries. This notice must be provided within a reasonable period of time before the beginning of the plan year. The regulations provide a safe harbor of not less than 30 days but not more than 90 days before the beginning of the plan year.	401(k) and 401(m) Plans
	Contingent Safe Harbor Notice	Deadline for plan administrator to distribute a notice to participants and beneficiaries specifying that the plan may be amended during the following plan year to include a 3% employer non-elective safe harbor contribution.	401(k) and 401(m) Plans

Compensation and Benefits Insights

Deadline	Item	Action	Affected Plans
	Auto-Enrollment Notice	Deadline for plan administrator to provide annual auto-enrollment notice for plans with qualified automatic contribution arrangements (QACA) or eligible automatic contribution arrangements (EACA). This notice must be provided sufficiently early so that the employee has a reasonable period of time after receipt to make QACA or EACA elections. The preamble to the regulations notes that this timing requirement is deemed to be satisfied if the notice is given at least 30 days but not more than 90 days before the beginning of each plan year.	401(k) Plans with QACA or EACA
December 1 (at least 30 days before the end of the plan year)	Qualified Default Investment Alternative (QDIA) Annual Notice	Deadline for plan administrator to provide annual QDIA notice to participants or beneficiaries.	Defined Contribution Plans with participant-directed investments
	Safe Harbor Follow-Up Notice	Deadline for plan administrator to distribute a notice to participants and beneficiaries informing them that the 3% employer non-elective safe harbor contribution will be made for the current plan year. This notice may be combined with the Contingent Safe Harbor Notice for the following plan year.	401(k) and 401(m) Plans
December 1 (at least 30 days prior to the first day of the new plan or policy year)	Summary of Benefits and Coverage for Health Plans that Automatically Renew Coverage	Deadline for group health plan administrator (for self-insured plans) or group health plan administrator or insurer (for fully insured plans) to provide a Summary of Benefits Coverage (SBC) if coverage automatically renews each year.	Group Health Plans and Health Insurance Issuers
December 1 (no later than 30 days before participant becomes eligible to diversify employer stock)	Diversification Notice	Deadline for plan administrator to provide diversification notice to participants who will first be eligible to divest employer securities on January 1.	Defined Contribution Plans with participant-directed investments in employer stock
December 15 (2 months after the extension for filing Form 5500)	Summary Annual Report (SAR)	Deadline for plan administrator to distribute SAR for prior year to participants and beneficiaries, if the IRS granted a 2-month extension for Form 5500 on or before the original Form 5500 deadline.	Defined Contribution Plans

Compensation and Benefits Insights

Deadline	Item	Action	Affected Plans
December 31 (last day of plan year following plan year for which contributions were made)	Correction of Excess Contributions & Excess Aggregate Contributions	Deadline for plan administrator to make corrective employer contributions or distribute excess contributions (ADP test failure) and excess aggregate contributions (ACP test failure) for the prior year.	401(k) and 401(m) Plans
December 31 (last day of plan year)	Discretionary Amendments	Deadline for plan sponsor to adopt discretionary plan amendments for calendar-year plans.	Qualified Retirement Plans
	Adjusted Funding Target Attainment Percentage (AFTAP) Certification	Deadline for actuary to certify a specific AFTAP if a range certification was previously issued.	Defined Benefit Plans
December 31 (at least annually)	ERISA §404(c) Disclosures	Deadline for plan administrator to distribute notices to participants and beneficiaries if the employer wants to limit fiduciary liability for participant-directed investment decisions.	Defined Contribution Plans with participant-directed investments
	Annual Fee Disclosure to Participants	Deadline for plan administrator to make annual disclosure of certain fees for participant directed individual account plans to be provided to participants and beneficiaries.	
	Pension Benefit Statements	Deadline for plan administrator of a defined benefit plan using alternative notice for pension benefit statements to notify participants of availability of a pension benefit statement and instructions on how to obtain it.	Defined Benefit Plans
December 31 (at least annually as a part of any yearly informational packet)	WHCRA Notice	Deadline for group health plans to distribute Women's Health and Cancer Rights Act (WHCRA) notice for new plan year to all participants and beneficiaries advising them of available mastectomy benefits under WHCRA and any deductibles and co-insurance limits applicable to such benefits.	Health and Welfare Plans

Compensation and Benefits Insights

Deadline	Item	Action	Affected Plans
	Children's Health Insurance Program Reauthorization Act (CHIPRA) Notice	Deadline for employer to notify employees of potential opportunities for premium assistance from the state in which the employee resides.	Group Health Plans in states that provide premium assistance under Medicaid or CHIP
	Wellness Program Notice	Although no specific deadline is provided, the notice must be provided before employees provide any health information for the program and with enough time to decide whether to participate in the program.	Group Health Plans offering wellness programs
December 31	Required Minimum Distributions	Deadline for plan administrator to distribute current year's required minimum distributions under IRC §401(a)(9).	Qualified Retirement Plans