

Compensation and Benefits Insights



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Code Section 162(m) Issues For Publicly-Held Employers to Consider for 2018 and Beyond

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As we reported [here](#), on December 22, 2017, President Trump signed into law the Tax Cuts and Jobs Act (the “Act”). One of the provisions of the Act significantly curtailed public company deductions under Code Section 162(m) for compensation paid to certain executives. Public companies should review these changes to determine whether any changes to their executive compensation plans are necessary or desirable for 2018 and beyond.

BACKGROUND

Under prior law, Code Section 162(m) provided that a “publicly-held corporation” generally may not deduct compensation of more than \$1 million that is paid to certain “covered employees” unless the compensation is “qualified performance-based compensation” or certain commissions. Under the Act, Code Section 162(m) has been amended in several respects.

CHANGES MADE BY ACT AND ACTION ITEMS FOR PUBLICLY-HELD EMPLOYERS

First, the exceptions to the \$1 million compensation deduction limit for qualified performance-based compensation and commissions have been eliminated under the Act.

Action Item: Publicly-held employers should consider whether to delete any provisions in their executive compensation plans designed to comply with the exception for qualified performance-based compensation.

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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Second, the definition of “covered employee” has been expanded under the Act to include the company’s principal financial officer (as well as the company’s principal executive officer) and anyone who served in either capacity during the tax year, and provides that once an individual qualifies as a covered employee for a tax year beginning after 2016, the deduction limit continues to apply to that individual as long as the company provides any compensation (including post-employment and post-death payments) to that individual.

Actions Item: Executive compensation plans should be reviewed to confirm whether any amendments are necessary to the definition of “covered employee” under such plans.

Third, the definition of “publicly-held corporation” has been expanded under the Act to include any company issuing securities that are required to file reports under Section 15(d) of the Securities Exchange Act, such as companies who issue publicly-traded debt instruments.

EFFECTIVE DATE

The changes to Code Section 162(m) under the Act apply to tax years beginning after 2017 (and to covered employees in any tax year after 2016, as described above), but the Act includes a transition rule (sometimes referred to as the “grandfathering” rule) under which these changes do not apply to compensation provided under a written binding contract that was in effect on, and not modified in any material respect on or after, November 2, 2017. Please see our [earlier article](#) summarizing the IRS’s guidance on (among other issues) determining whether a contract will be considered materially modified for purposes of the Act.

King & Spalding would be happy to assist you with any questions you have about the effects of the Act’s changes to Code Section 162(m) on your executive compensation plans.

Proxy Advisory Firms Issue 2019 Voting Guidelines

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Proxy advisory firms Institutional Shareholder Services (“ISS”) and Glass, Lewis & Co. (“Glass Lewis”) recently issued updated proxy voting guidelines for the upcoming 2019 proxy season. Notable updates were issued by one or both of ISS and Glass Lewis relating to the following:

- Board Gender Diversity (ISS and Glass Lewis)
- Conflicting and Excluded Proposals (ISS and Glass Lewis)
- Environmental and Social Risk Oversight (ISS and Glass Lewis)
- Virtual-Only Shareholder Meetings (Glass Lewis)
- Executive Compensation (Glass Lewis)
- Shareholder Proposal Guidance (Glass Lewis)

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The full text of the 2019 updated proxy voting guidelines published by ISS and Glass Lewis may be accessed [here](#) and [here](#), respectively.

In addition to these updates, Glass Lewis also [issued](#) updates to its shareholder initiatives, and ISS [issued](#) preliminary FAQs on its 2019 U.S. compensation policies.

BOARD GENDER DIVERSITY

During the 2018 proxy season, board gender diversity continued to be a priority for institutional investors. As we discussed in our [Client Alert](#) recapping the 2018 proxy season, numerous institutional investors, led by State Street Global Investors (“State Street”) and BlackRock, Inc. (“BlackRock”) continue to push for diversity—particularly gender diversity—on public company boards. Earlier this year, BlackRock sent letters to approximately 300 Russell 1000 companies with fewer than two female directors, asking them to disclose their approach to diversity and to establish a time frame in which they will improve their diversity. State Street’s [2017 Annual Stewardship Report](#) noted that State Street has voted against directors at over 500 companies that have no women on their boards, and State Street recently [announced](#) that, beginning in 2020, it will vote against the entire nominating committee of companies that do not have at least one woman on the board. In September 2018, the state of California [enacted](#) a law mandating the addition of women on the boards of public companies headquartered in California, adding another element to the diversity discussion.

Consistent with these initiatives, Glass Lewis and ISS have revised their respective proxy voting guidelines to further emphasize board gender diversity. Glass Lewis’s new policy regarding board gender diversity, which was originally announced in November 2017, will take effect for meetings held in 2019. Under this policy, Glass Lewis will generally recommend voting against the nominating committee chairs of boards with no female members. Glass Lewis will evaluate other factors, including company size, the relevant industry, and the company’s governance profile, to determine whether to extend this recommendation to vote against other nominating committee members. Companies that are not listed on the Russell 3000 index or that disclose a “sufficient rationale” for not having female board representation will be subject to a careful review and may avoid a negative recommendation. Glass Lewis stated that this rationale could include a specific timetable for addressing the lack of board diversity or restrictions on board composition, such as director nomination rights of major shareholders.

ISS announced similar guidelines on board gender diversity that will become effective for shareholder meetings of Russell 3000 or S&P 1500 companies held on or after February 1, 2020. Under these guidelines, ISS will generally recommend voting against or withholding a vote from the chair of the nominating committee (or other directors on a case-by-case basis) of companies lacking female board representation, unless certain mitigating factors are present. ISS stated that mitigating factors could include a firm commitment to appoint at least one female board member in the near term, or the presence of a female board member at the preceding annual meeting. These new guidelines arrive on the heels of ISS’s [announcement](#) that it would include a “Board Diversity” subcategory as a component of its QualityScore in order to examine board gender diversity (including examining the number of women serving in board leadership positions), number of female named executive officers, director age and director tenure.

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CONFLICTING AND EXCLUDED PROPOSALS

The 2018 proxy season saw a number of shareholder proposals requesting the adoption of lower shareholder ownership thresholds in order to call a special meeting. In response, several companies submitted management proposals to ratify existing lower thresholds in their charter or bylaws and received no-action relief from the SEC to exclude the conflicting shareholder proposals. As a result, Glass Lewis codified its policies on conflicting shareholder special meeting proposals as follows:

- Where management and shareholder proposals request different thresholds for the right to call a special meeting, Glass Lewis will generally recommend voting for the lower threshold and recommend voting against the higher threshold.
- Where the company does not have a special meeting right and management and shareholder special meeting proposals conflict, Glass Lewis may recommend voting for the shareholder proposal and abstaining from voting on management's proposal.
- Where the company has excluded a special meeting shareholder proposal in favor of a management proposal ratifying an existing special meeting right, Glass Lewis will generally recommend against the ratification proposal and recommend against members of the nominating and governance committee.

Additionally, Glass Lewis may recommend voting against the members of the governance committee on a case by case basis in the event it believes the exclusion of a shareholder proposal was detrimental to shareholders. This applies even in instances where the exclusion was approved by the SEC.

ISS also adopted a policy that codified its approach to handling management proposals to ratify existing charter or bylaw provisions. ISS will now generally recommend voting against management proposals when boards ask shareholders to ratify existing charter or bylaw provisions, unless these governance provisions align with best practices. Furthermore, in such instances, ISS will generally recommend voting against or withholding votes from directors, members of the governance committee or the full board, subject to the consideration of the following factors:

- The presence of a shareholder proposal addressing the same issue on the same ballot.
- The board's rationale for seeking ratification.
- Disclosure of actions to be taken by the board should the ratification proposal fail.
- Disclosure of shareholder engagement regarding the board's ratification request.
- The level of impairment to shareholders' rights caused by the existing provision.
- The history of management and shareholder proposals on the provision at the company's past meetings.
- Whether the current provision was adopted in response to the shareholder proposal.

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- The company's ownership structure.
- Previous use of ratification proposals to exclude shareholder proposals.

Under ISS's new policies, the board's failure to act on a management proposal to ratify existing charter or bylaw provisions that did not receive majority support may result in a recommendation against individual directors, nominating committee members, or even the entire board.

ENVIRONMENTAL AND SOCIAL RISK OVERSIGHT

Glass Lewis codified its policies on board oversight of environmental and social issues. Glass Lewis will perform a holistic review of a company's governance documents to identify which directors or board committees have been charged with oversight of environmental and social issues and will make note of instances where such responsibility and oversight has not been clearly defined in the governance documents. These policies clarify that Glass Lewis may recommend voting against directors responsible for oversight of environmental and social issues where companies have not properly managed or mitigated environmental or social risks to the actual or threatened detriment of shareholder value. Similarly, if companies lack explicit board oversight of environmental and social issues, Glass Lewis may recommend voting against members of the audit committee. However, such recommendations will only be issued after a careful review of the company's governance policies, the effect of the lack of oversight on shareholder value, and any corrective action or other response from the company.

ISS updated its policies on social and environmental shareholder proposals to explicitly indicate that significant controversies, fines, penalties or litigation associated with the company's environmental or social practices will be considered when evaluating such proposals.

In addition to these policy changes, Glass Lewis and ISS will begin including environmental, social and governance ("ESG") ratings in their reports and voting recommendations. ISS will do so through the [introduction](#) of its "E&S QualityScore" and Glass Lewis will integrate guidance on material ESG topics from the Sustainability Accounting Standards Board ("SASB") into its research reports and its vote management application, Viewpoint. These initiatives, coupled with the introduction of newly codified guidelines on board oversight of ESG matters, as described above, demonstrate that Glass Lewis and ISS do not view ESG issues as a passing trend.

VIRTUAL-ONLY SHAREHOLDER MEETINGS

Glass Lewis's policy regarding virtual-only shareholder meetings, which was originally announced in November 2017, will become effective for meetings held in 2019. Under the new policy, Glass Lewis may recommend voting against governance committee members if the company does not provide adequate disclosures that shareholders will have the same participation rights and opportunities as attendees of in-person meetings.

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EXECUTIVE COMPENSATION

Glass Lewis introduced a number of changes to its executive compensation guidelines. These changes include:

- Considering new excise tax gross-up provisions in executive employment agreements as a factor when making voting recommendations for members of the compensation committee.
- Clarifying the terms of contractual payments and arrangements that may result in a negative voting recommendation on a say-on-pay proposal.
- Considering whether the reduced Compensation Discussion and Analysis disclosures of smaller reporting companies substantially impact shareholders' ability to make an informed assessment of pay practices when making voting recommendations for members of the compensation committee.
- Adding a discussion of grants of front-loaded awards under the premise that there are inherent risks associated with their use.
- Revising the policy on clawback provisions to focus on their specific terms rather than on whether the clawback satisfies minimum legal requirements under Sarbanes-Oxley.

ISS previously [announced](#) that it was considering replacing its GAAP-based secondary Financial Performance Assessment screen for evaluating CEO pay for performance with Economic Value Added ("EVA") metrics. However, ISS chose not to pursue the switch to EVA metrics for the 2019 proxy season, meaning there are no changes to the quantitative screens for the 2019 proxy season. As noted in its 2019 compensation FAQs, ISS will continue to explore the possibility of using EVA measures in the future and will include EVA metrics in its research reports on a phased-in basis over the 2019 proxy season, but will not use EVA metrics as part of its quantitative screen methodology.

ISS also announced the postponement until 2020 of its policy (introduced in its 2018 voting guideline updates) for potential adverse vote recommendations for the board committee responsible for approving or determining non-employee director compensation when there is an established pattern (two or more consecutive years) of excessive pay levels without a compelling rationale or other clearly explained mitigating factors.

SHAREHOLDER PROPOSAL GUIDANCE

In addition to updated guidance on conflicting and excluded shareholder proposals and environmental and social risk oversight (discussed above), Glass Lewis amended certain other policies relating to shareholder proposals.

Diversity Reporting

Glass Lewis amended its policy on shareholder proposals requesting disclosures on a company's diversity initiatives. Glass Lewis will support shareholder proposals requesting disclosure on the diversity of the

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company's workforce, as well as shareholder proposals requesting information on how companies promote diversity internally. Glass Lewis's recommendations will take into account the following:

- The industry in which the company operates and the nature of its operations.
- The company's current level of disclosure on issues related to workforce diversity.
- The level of such disclosure by the company's peers.
- Any lawsuits or accusations of discrimination within the company.

Materiality Considerations

Glass Lewis formalized its consideration of materiality when reviewing and making voting recommendations on shareholder proposals and will place significant emphasis on the financial implications of a company adopting, or not adopting, any proposed shareholder resolution. In addition, to assist in determining financial materiality, Glass Lewis will consider the standards developed by the SASB.

Recoupment Provisions ("Clawbacks")

Glass Lewis revised its policy concerning proposals requesting that companies adopt enhanced recoupment provisions. In instances where companies have not adopted policies that provide sufficient protections for reputational and financial harm, Glass Lewis may consider supporting well-crafted resolutions seeking to expand a company's recoupment policy.

Shareholder Actions by Written Consent

Glass Lewis also amended its policy on shareholder proposals requesting that companies amend their bylaws to allow shareholder actions by written consent. Where the requirement for shareholders to call a special meeting is 15% or below and the Company has adopted reasonable proxy access provisions, Glass Lewis will generally recommend that shareholders vote against shareholder proposals to allow actions by written consent.

Other Clarifying Amendments

In addition to the changes discussed above, Glass Lewis released several clarifying amendments to existing guidelines, including those related to:

- Auditor ratification.
- Director recommendations on the basis of company performance.
- Director and officer indemnification.
- NOL protective amendments.

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- OTC-listed companies.
- Quorum requirements.

ISS also issued clarifying amendments related to:

- Poor director attendance.
- Director performance evaluations.
- Reverse stock splits.

2019 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 2019. If the due date falls on a Saturday, Sunday, or legal holiday, the due date is usually 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 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 12 if taxes were timely deposited during the prior plan year.	Qualified Retirement Plans*

* Qualified Retirement Plans include all defined benefit and defined contribution plans that are intended to satisfy Internal Revenue Code §401(a).

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Deadline	Item	Action	Affected 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
	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
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 April 1.	Qualified Retirement 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 April 1.	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 2018 (also known as “Applicable Large Employers” or	Applicable Large Employers

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Deadline	Item	Action	Affected Plans
		<p>“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 April 1.</p>	
<p>March 1 (60 days after the beginning of the plan year)</p>	<p>Medicare Part D Creditable Coverage Disclosure</p>	<p>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</p>	<p>Health and Welfare Plans that provide prescription drug coverage to Medicare Part D eligible individuals</p>
<p>March 4</p>	<p>IRS Form 1095-B Individual Statements</p>	<p>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.</p> <p>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</p>	<p>Self-Insured Group Health Plans and Group Health Plan Insurers</p>
	<p>IRS Form 1095-C Individual Statements</p>	<p>Deadline for ALEs 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.</p>	<p>Applicable Large Employers</p>

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Deadline	Item	Action	Affected Plans
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
April 1 (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
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

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Deadline	Item	Action	Affected 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 15 (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
	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	

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Deadline	Item	Action	Affected Plans
		stand-alone document.	
May 15 (the 15th day of the 5th 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 6th 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) ¹	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 7th month following the plan year)	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	Retirement Plans

¹ Note: Disclosure of a modification to a group health plan that is a “material reduction in covered services or benefits under the plan” must be made no later than 60 days after the date of the adoption of the modification. Also, a material modification to a group health plan that is not reflected in the most recently provided “summary of benefits coverage” or “SBC” must be provided in a summary of material modifications at least 60 days before the modification becomes effective.

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Deadline	Item	Action	Affected Plans
		if the plan administrator files a Form 5558.	
July 31	Patient Centered Outcomes Research Institute (PCORI) Fee	Deadline for self-insured health plans to pay a fee for 2018 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 15th day of the 8th 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 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
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
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	Defined Contribution Plans

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Deadline	Item	Action	Affected Plans
year)		the extension period for filing a Form 5500, if applicable.	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)	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 to pay flat-rate or variable PBGC premium for current plan year.	Defined Benefit Plans
November 1 (by the first day of open	Summary of Benefits and Coverage for Health Plans	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	Group Health Plans and Health Insurance Issuers

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Deadline	Item	Action	Affected Plans
enrollment)	that Require Reapplication	written application materials are required for renewal.	
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 15th day of the 11th 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 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
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

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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	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

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Deadline	Item	Action	Affected Plans
becomes eligible to diversify employer stock)			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
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	Deadline for plan administrator to make annual disclosure of certain fees for participant directed individual account plans to be provided to	

Compensation & Benefits Insights

Deadline	Item	Action	Affected Plans
	Participants	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
	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