BENEFITS ADVANTAGE

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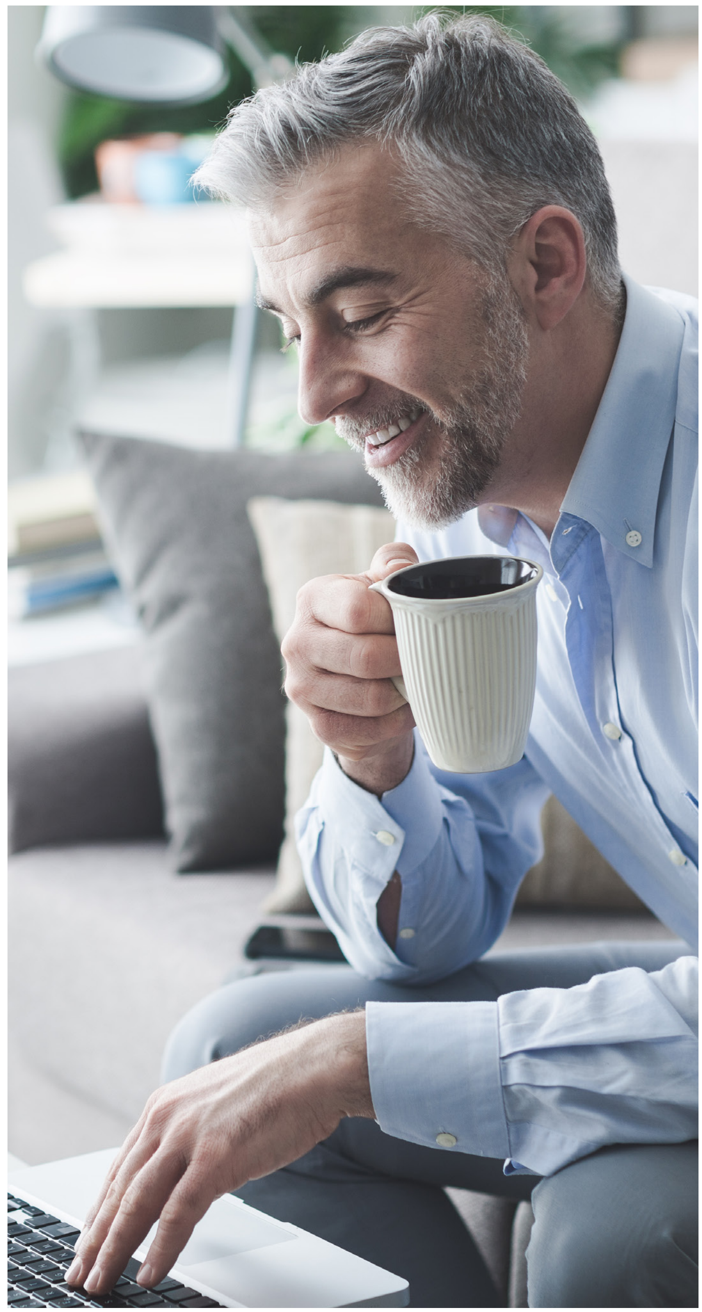
Reduce your plan expenses by using forfeitures to fund QNECs and QMACs



A simple rule change may make it easier for employers to reduce their out-of-pocket retirement plan expenses. In January 2017, the IRS issued a proposed Treasury Regulation that changed the definition of Qualified Nonelective Contributions (QNECs) and Qualified Matching Contributions (QMACs), and will now allow forfeitures to fund these types of contributions.

QNECs and QMACs are special types of employer contributions typically used to help pass compliance testing or to help correct a plan operational failure. Safe harbor 401(k) contributions are also considered QNECs and QMACs. These types of contributions must be 100-percent vested and are subject to special distribution restrictions. Under the old rule, forfeitures couldn't be used to satisfy QNEC and QMAC contributions. The new rule relaxes how employers can use forfeitures, permitting their use to fund QNECs and QMACs.

Previously, employers had to make a separate contribution to fund all QNEC and QMAC contributions. Funding these special contributions with assets you already have in your forfeiture account—assets that former employees forfeit if they leave before they're 100-percent vested—could save you money.

Generally, IRS pre-approved plan documents will require an amendment to take advantage of this new source to fund QNECs and QMACs. Additionally, your plan document must permit the use of forfeitures to fund an employer contribution; some plans may require an additional amendment change.

Different document types and document providers have different solutions for making the needed amendment available. In some cases, the document sponsor is able to adopt an amendment on behalf of all underlying employers using that document. In other cases, an amendment will be

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made available to individual employers to adopt for their own plan. If Ascensus Consulting provides your document services, we'll communicate with you this fall to let you know of any required actions to implement this amendment.

Once an amendment is in place, if your plan permits using forfeitures to reduce employer contributions, then you may be able to use forfeitures to make a QNEC or QMAC to

- help pass compliance testing,
- help correct a plan operational failure, and
- fund a safe harbor 401(k) contribution.

Please contact your plan's consultant with any questions.

Protecting your participants: The more you know, the less you worry

The emerging Department of Labor (DOL) fiduciary rule governs how financial professionals can provide service to your retirement plan. In this article, we'd like to cover how you need to act in relation to your plan. We can't possibly cover all that you need to know in the space we have here, so we'll just set the stage. But, we also want to give you concrete guidance now. So we'll offer you access to a helpful fiduciary checklist at the end of this article.

Let's start by focusing on the overarching principles that dictate how you must deal with your retirement plan. The DOL makes it clear that employers must follow these principles in order to meet the high fiduciary standard.

- Act for the exclusive purpose of providing benefits to participants and beneficiaries, and defraying reasonable expenses of administering the plan
- Use the care, skill, prudence, and diligence that a person acting in a like capacity would use; seek professional advice if you lack experience in a particular area
- Diversify plan investments to minimize the risk of large losses
- Follow the documents and instruments governing the plan

If you don't follow these rules, you may put your retirement plan in jeopardy. Although the IRS and DOL prefer to help plans with compliance rather than disqualify them, plans have sometimes lost their tax-exempt status through repeated or serious rule violations. Most employers find that closely following the rules can provide for a well-run retirement plan that not only keeps workers happier but also saves effort in the long run.

We've designed the checklist to help you identify best practices, evaluate current processes and procedures, and recognize fiduciary responsibility and liability. The checklist comprises four separate functional areas, each with its own list of key points to consider.

1. Compliance
2. Investments
3. Administration
4. Plan Design

While each function contains numerous checkpoints, here are the highlights of each:

Compliance

- Define roles within your organization and within plan operations
- Establish, document, and follow procedures
- Train staff and educate participants
- Review provider services, fees, and expenses to make sure they're reasonable
- Regularly monitor service providers and plan
- Perform routine audits

Investments

- Draft an investment policy
- Form an investment committee
- Consider strategies to help relieve fiduciary liability for investments

Administration

- Complete year-end testing and reporting timely
- Maintain appropriate insurance for the plan and fiduciaries
- Provide timely plan notices
- Deposit plan contributions on time
- Use DOL and IRS correction programs as needed

Plan Design

- Review, amend, or restate your plan document as needed

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This is just a partial list of the items that can improve your current plan operations. Contact your plan's consultant for a copy of the job aid, *Fiduciary Checklist for Plan Sponsors*, to use as a handy reference to better understand the best ways to keep your plan trouble-free and working well for you and your employees. ■

Year-end reminders

September

15 Minimum funding requirements for defined benefit, money purchase, and target benefit pension plan years ended December 31, 2016, must be met by September 15 to avoid excise taxes. An electronic transfer must be completed or a check mailed by this date.

15 Pension Benefit Guaranty Corporation (PBGC) premium filing due date for (pension plan related) premium payment year beginning November 2, 2016, to December 1, 2016.

15 Retirement plan employer contributions are due to be deducted on employer tax returns due to be filed September 15, 2017.

15 Form 5500 Series/8955-SSA – Forms that are on extension are due for the plan year ending November 30, 2016.

October

1 Last day to start a new safe harbor 401(k)/403(b) plan for the calendar year 2017.

2 Form 5500 Series/8955-SSA – Forms are due for the plan year ending February 28, 2017, that are not on extension.

15 Minimum funding requirements for defined benefit, money purchase, and target benefit pension plan years ended January 31, 2017, must be met by October 15 to avoid excise taxes. An electronic transfer must be completed or a check mailed by this date.

16 Pension Benefit Guaranty Corporation (PBGC) premium filing due date for (pension plan related) premium payment year beginning December 2, 2016, to January 1, 2017.

16 Retirement plan employer contributions are due to be deducted on employer tax returns due to be filed October 16, 2017.

16 Form 5500 Series/8955-SSA – Forms that are on extension are due for the plan year ending December 31, 2016.

31 Form 5500 Series/8955-SSA – Forms are due for the plan year ending March 31, 2017, that are not on extension.

November

15 Minimum funding requirements for defined benefit, money purchase, and target benefit pension plan years ended February 28, 2017, must be met by November 15 to avoid excise taxes. An electronic transfer must be completed or a check mailed by this date.

15 Pension Benefit Guaranty Corporation (PBGC) premium filing due date for (pension plan related) premium payment year beginning January 2, 2017, to February 1, 2017.

15 Retirement plan employer contributions are due to be deducted on employer tax returns due to be filed November 15, 2017.

15 Form 5500 Series/8955-SSA – Forms that are on extension are due for the plan year ending January 31, 2017.

30 Form 5500 Series/8955-SSA – Forms are due for the plan year ending April 30, 2017, that are not on extension.

December

1 Last day to provide certain safe harbor 401(k)/403(b) plan notices to plan participants.

15 Minimum funding requirements for defined benefit, money purchase, and target benefit pension plan years ended March 31, 2017, must be met by December 15 to avoid excise taxes. An electronic transfer must be completed or a check mailed by this date.

15 Pension Benefit Guaranty Corporation (PBGC) premium filing due date for (pension plan related) premium payment year beginning February 2, 2017, to March 1, 2017.

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Hurricane relief for certain IRS, DOL, and PBGC deadlines

The IRS, Department of Labor (DOL), and Pension Benefit Guaranty Corporation (PBGC) have granted extensions for many of their deadlines for certain parts of states along the Gulf of Mexico and the East Coast, as well as Puerto Rico and the US Virgin Islands, affected by Hurricanes Harvey, Irma, and Maria.

Extension effective dates

- For Hurricane Harvey, August 23, 2017, for affected Texas counties
- For Hurricane Irma, September 4, 2017, for affected Florida counties. September 7, 2017, for affected Georgia counties. September 5, 2017, for affected portions of U.S. Virgin Islands and Puerto Rico.
- For Hurricane Maria, September 17, 2017, for affected parts of Puerto Rico

Extended to January 31, 2018

Some of the extensions are:

- Tax return filings due within the relief period, including Form 5500 series returns
- Minimum funding deposit deadlines
- Required minimum distributions due by December 31, 2017
- 60-day rollover window ending within relief period
- Employer contributions due during the relief period

Not extended

Not all tax responsibilities are extended. Any income tax payment or filing originally due before the relief date, and not lawfully extended before that date, isn't affected by the relief. Plan sponsors are still responsible to collect documentation needed to support hardship distributions and loans, including spousal consent, although there is some limited discretion to collect as soon as possible after the event if impractical to collect ahead of time.

Congress has been continuing re-evaluation and extension of certain hurricane relief. Please contact your plan's consultant for clarification on retirement plan responsibilities that are extended related to the recent rash of hurricanes.

15 Retirement plan employer contributions are due to be deducted on employer tax returns due to be filed December 15, 2017.

15 Form 5500 Series/8955-SSA – Forms that are on extension are due for the plan year ending February 28, 2017.

31 Due date for certain required minimum distributions (RMDs) for certain participants who have attained age 70 ½.

January

2 Form 5500 Series/8955-SSA – Forms are due for the plan year ending May 31, 2017, that are not on extension.

15 Retirement plan employer contributions are due to be deducted on employer tax returns due to be filed January 15, 2018.

The new fiduciary rule: What does it mean for your plan?

The fiduciary rule is a new Department of Labor (DOL) regulation that updates the definition of an investment advice fiduciary for retirement plans. These regulations are lengthy and complex, but your financial advisor and their broker-dealer company are working behind the scenes to implement the rule.

What is an investment advice fiduciary?

Let's start by defining the term "fiduciary." Generally, a fiduciary is someone who is legally obligated to act in the best interest of another person.

There are different types of fiduciaries. For example, as a plan sponsor, you're a fiduciary in relation to your retirement plan, and you're obligated to operate your plan in the best interest of your participants. The DOL's new fiduciary rule is specifically about investment advice fiduciaries: those individuals or organizations who give recommendations about

- retirement plan investments, including buying, selling, exchanging, or holding investments
- investment advice providers and services

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- investment strategies; and
- distributions and rollovers, including whether to roll over plan assets, and the amount, form, destination, and investment of those assets.

If your financial advisor provides recommendations on these topics to your plan or plan fiduciaries, or possibly to your participants if negotiated as part of your services package, they become an investment advice fiduciary. The new fiduciary rule also covers outside investment advice fiduciaries, such as your participants' personal advisor or financial institution.

How is the new rule different?

At the heart of the new rule is the "impartial conduct standard." Under the impartial conduct standard, effective on June 9, 2017, investment advisors acting as fiduciaries must give only investment advice that is in the best interest of retirement investors.

> **Impartial Conduct Standard**
>
> To meet the impartial conduct standard, investment advice fiduciaries must
>
> - provide best interest advice
> - charge no more than reasonable compensation, and
> - make no misleading statements.

Until this updated regulation came out, retirement plan regulations defined "investment advice fiduciary" narrowly. In most cases, those who worked with investments had to specifically opt in to being considered an investment advice fiduciary, usually through a contract or written disclosure. Those who didn't opt in were held to a "suitability"standard rather than the fiduciary "best interest" standard. Suitability meant that advisors were legally obligated to recommend investments that were generally appropriate for their clients, but they weren't required to conduct a full analysis to make sure that an investment was in the best interest of the advice recipient.

The new rule defines fiduciary investment advice broadly. Anyone who provides investment advice and receives compensation of any kind is a fiduciary. The DOL was worried that the suitability standard left too much room for conflict of interest for investment advisors who weren't considered investment advice fiduciaries. So they created rules that require impartial conduct—investment advice providers have to implement procedures and documentation that remove the possibility of an investment advisor personally benefitting from the advice provided. Advisors must conduct enough analysis to ensure that any investment advice they provide is in the best interest of the plan and participants.

The DOL grandfathers recommendations made before June 9 under the prior guidance, but specifies that any new investment recommendations after June 9 should meet the new impartial conduct standard.

Best Interest Contract

In addition to imposing the impartial conduct standard, the rules also require investment advisors to follow a detailed system of checks and balances. The "Best Interest Contract" provisions require investment advisers to

- disclose their fiduciary role (non-ERISA plans, such as IRAs or owner-only plans, require a specific contract);
- povide details about their roles, fees and compensation, and conflicts of interest;
- document specific recommendations to show that they're in the best interest of the advice recipient; and
- monitor the processes and procedures for investment broker-dealers and fund families to ensure that individual advisers are meeting the new requirements.

Investment advisors must have these administrative components of the Best Interest Contract in place by the end of the transition period. Currently, that's January 1, 2018. The DOL has proposed an additional delay in the end of the transition period to July 1, 2019. Until the transition period ends—whether it's January 1, 2018 or July 1, 2019—they're required to meet only the impartial conduct standard. This transition window allows investment advisors and their broker-dealer organizations time to shift their processes to full compliance, as long as they make a diligent and good faith effort toward compliance.

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Looking ahead: What's next?

As the plan sponsor, you must understand whether your investment advisor is a fiduciary or has a conflict of interest. As broker-dealer organizations implement the administrative requirements over the next six months or so, you'll receive disclosures about roles, compensation, or potential conflicts of interest. As a fiduciary of your plan, you should review these disclosures to make sure that you're continuing to operate your plan in the best interest of your participants. Benchmarking reports can be a good resource to compare fees and services. Contact your financial advisor to learn about available resources. Place all materials into your plan documentation files for future reference.

If your advisor's broker-dealer firm makes updates to comply with the new requirements, your financial adviser may recommend changes to your plan's investment lineup or may discuss a compensation structure change with you. We've developed a streamlined process to help implement any changes that you and your advisor decide to make because of these updates.

Finally, you should review any communications your company provides to individual participants to be sure you're providing educational materials only, and not investment advice.

Education is OK	Investment advice should be avoided
YOU CAN discuss the processes and rules for your plan	DO NOT recommend that new employees consolidate their retirement savings in your plan
YOU CAN explain the rules and the process to request a distribution	DO NOT ask former employees to roll over their 401(k) accounts from your plan to an IRA or their new employer's plan
YOU CAN provide a copy of the investment choices under the plan and information about the investment-selection process	DO NOT advise an individual participant to choose a specific investment or investment strategy, perhaps by giving them a "sample" set of investment elections in materials for the investment-selection process

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