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Labor and Employment Update: Qualified Plan Periodic Benefit Statements After the Pension Protection Act

By Erwin D. Kratz

The recently enacted Pension Protection Act ("Act") amended the Employee Retirement Security Act (ERISA) requirements for qualified plans to provide benefit statements to their participants and beneficiaries. Until now, a benefit statement was only required if a participant or beneficiary requested one. Effective for Plan Years starting after December 31, 2006, the Act requires plans to provide more detailed statements, and to provide them as frequently as quarterly, depending on the type of plan. This alert summarizes the new requirements for benefit statements. Employers must take action as soon as May 15, 2007.

When Are The New Statements Required?

Individual account (defined contribution) plans that permit participants to direct their investments must provide the new benefit statements at least quarterly. Defined contribution plans that do not permit participants to direct their investments must provide the statement annually. Defined benefit plans must do so every three years. For calendar year plans that allow participant investment direction, this means the first statement is due for the quarter ending March 31, 2007. The Department of Labor (DOL) has taken the enforcement position that providing the statement by 45 days after the end of the applicable quarter is sufficient. Calendar year plans that allow participants to direct their investments, therefore, have until May 15, 2007 to provide benefit statements that satisfy the new requirements.

What Information Must Benefit Statements Include?

All benefit statements, whether for defined contribution or defined benefit plans, must indicate the participant's total accrued benefit and the total vested benefit (or the earliest date on which the accrued benefit will become vested). All defined contribution plans must also indicate the value of each investment in the participant's account.

Defined contribution plans that permit participants to direct their investments must also include:

- An "explanation of any limitations or restrictions on any right of the participant or beneficiary under the plan to direct an investment."
- An explanation of investment principles, including "an explanation ... of the importance, for the long-term retirement security of participants and beneficiaries, of a well-balanced and diversified investment portfolio, including a statement of the risk that holding more than 20 percent of a portfolio in the security of one entity (such as employer securities) may not be adequately diversified"; and

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- A notice directing the participant or beneficiary to the DOL website for information on individual investing and diversification.

Each of these requirements is discussed in more detail below.

Limitations or Restrictions on Right to Direct Investments

The DOL has explained in written guidance that the benefit statement need only explain limitations and restrictions on the right to direct an investment if the limitation or restriction is imposed “under the plan.” The benefit statement need not include limitations and restrictions imposed by investment funds, other investment vehicles, or by state or federal securities laws.

Investment Principles

The DOL has not yet published a model benefit statement regarding the importance of a well-balanced and diversified investment portfolio, which the Act requires it do by August 17, 2007. In the meantime, the DOL has endorsed the use of the following language:

“To help achieve long-term retirement security, you should give careful consideration to the benefits of a well-balanced and diversified investment portfolio. Spreading your assets among different types of investments can help you achieve a favorable rate of return, while minimizing your overall risk of losing money. This is because market or other economic conditions that cause one category of assets, or one particular security, to perform very well often cause another asset category, or another particular security, to perform poorly. If you invest more than 20% of your retirement savings in any one company or industry, your savings may not be properly diversified. Although diversification is not a guarantee against loss, it is an effective strategy to help you manage investment risk.

In deciding how to invest your retirement savings, you should take into account all of your assets, including any retirement savings outside of the Plan. No single approach is right for everyone because, among other factors, individuals have different financial goals, different time horizons for meeting their goals, and different tolerances for risk.

It is also important to periodically review your investment portfolio, your investment objectives, and the investment options under the Plan to help ensure that your retirement savings will meet your retirement goals.”

Department of Labor Website

Benefit statements should direct plan participants and beneficiaries to www.dol.gov/ebsa/investing.html for sources of information on individual investing and diversification.

Multiple Documents: One Benefits Statement?

For many plan sponsors, the required benefit statement information comes from several sources. For example, the plan administrator may have the vesting information, while the plan’s record keeper or brokerage firm may have the investment-related account information. In light of this reality, the DOL will not require that all of the information be in a single document. Plan Administrators can use multiple documents or sources, as long as they provide participants and beneficiaries a timely benefit statement explaining how and when any information that will be provided by a separate document or from a separate source will be furnished.

Need to Know

Plans can also meet the benefit statement requirements by giving participants continuous access to the required information through a secure website, as long as participants and beneficiaries are given a timely notice that explains the availability of the information and how it can be accessed. In addition, the notification must inform participants and beneficiaries of their right to request and obtain, free of charge, a paper version of the benefit statement.

For More Information

If you have any questions about this update, or would like assistance complying with the new benefit statement requirements, please contact Fennemore Craig's ERISA and Employee Benefits practice group.

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