



employee benefits update

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THE PENSION PROTECTION ACT OF 2006

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Know your retirement plan service providers

Do you ever get confused about the terminology used to describe the various service providers of your retirement plan? You're not alone — even the service providers themselves use the terminology loosely. Here's a quick rundown of who does what.

Legal services

All retirement plans must have a written plan document. Depending on the document (which may be determined by your plan design), this is generally done by an attorney. Or your third-party administrator (TPA) may provide “prototype” documents.

The attorney who creates the document is called the “document sponsor.” Some of the services a document sponsor may provide are:

- › Consulting and suggestions on provisions of the plan,
- › Writing the plan document,
- › Interpreting the document provisions, and
- › Preparing plan amendments needed for regulatory changes or employer desired changes.

The document sponsor also normally provides your summary plan description (SPD). You must distribute the SPD to all plan participants no later than 120 days after you establish a new plan. You must provide it to new participants no later than 90 days after they join the plan.

Unless the plan administrator is an investment advisor, the plan sponsor will hire an investment advisor.

Administration and compliance services

This is where terms can get really confusing. Who are the “plan sponsor,” the “plan administrator,” the TPA, the “recordkeeper” and the “actuary”? It's



important to know who is responsible for what so you can ensure you're getting the services you need. So let's break these providers down:

Plan sponsor. If a single employer maintains a plan in which only that company's employees participate in the plan, that employer is the plan sponsor. If an organization establishes or maintains a plan for multiple employers, that organization is the plan sponsor. Sometimes, more than one employer maintains the same plan for their employees. Each of these employers is a “participating employer” of the plan, and, unless the plan document specifies otherwise, they're all plan sponsors.

Plan administrator. The term “administrator” is a widely used word in the retirement plan industry. So who is your plan administrator? The plan administrator is the person or party responsible for the administration and day-to-day operations of the plan. The plan document usually identifies the plan administrator either by name, by reference (the employer, for example), or by procedure (such as a committee appointed by the board of directors). Typically the plan document designates the employer as the plan administrator. If the document doesn't indicate the plan administrator, the plan sponsor is considered the plan administrator.

Some of the duties of the plan administrator are:

- 】 Determining eligibility for plan participation and vesting,
- 】 Calculating benefits,
- 】 Advising participants or beneficiaries of their rights and distribution options,
- 】 Preparing reports for participants and governmental requirements,
- 】 Maintaining service, benefit and benefit ownership records as well as other participant information, and
- 】 Maintaining the plan documents, summary plan description, and other vital information relevant to the plan, such as enrollment and beneficiary forms.

TPA. Often the plan administrator isn't an expert on retirement plan compliance and administration. Therefore, the plan sponsor may hire a TPA to perform compliance testing, determine eligibility, compute allocations and prepare the annual Form 5500. The ultimate responsibility for the performance of these tasks, however, lies with the plan administrator.

Recordkeeper. Where the TPA performs the compliance and administrative functions (described above), the recordkeeper keeps track of participant balances (for example, tracks contributions, records deposits, earnings and distributions, and reconciles transactions).

Actuary. An actuary or "enrolled actuary" is a professional who performs the benefits calculations and certifies the various reports associated with defined benefit plans. For example, actuaries determine the minimum, maximum and required contributions for a defined benefit plan and certify those calculations by signing Schedule B, "Actuarial Certification," of the plan's Form 5500 filing.

Trustee. The trustee holds the legal title to the plan's assets and is responsible for the safeguarding and investment of those funds. This person or entity is named in the plan document. The trustee must monitor the plan.

Investment services

An investment advisor oversees the plan's assets. The advisor also provides investment advice to plan participants to assist them in managing their individually directed accounts.

Unless the plan administrator is an investment advisor, the plan sponsor will hire an investment advisor.

Bundled services

Some service providers offer "one-stop shopping" for the employer by acting in the capacity of investment advisor, trustee, TPA and recordkeeper. This is also known in the industry as the "bundled services" or "turn-key" approach. In a bundled program, often the company that holds the plan's investments serves as the recordkeeper, as well as the TPA.

There are advantages and disadvantages to this approach. For example, it's generally more efficient to deal with one provider. But you may find you're satisfied with one service (such as investment advice), but not with another service (such as recordkeeping).

Choosing the right providers

You may have several individuals or companies that provide your plan services or you may have an individual who provides multiple functions for your plan. Whatever choice you make, the goal is to have accurate and efficient administration that meets not only government requirements, but also the goals of the retirement plan program for the participants. 🕒

Who's responsible for your plan assets?

While you can hire several different service providers to handle the various aspects of your benefit plan, not all service providers are equal. The plan administrator, trustee and investment advisor are plan "fiduciaries." Under ERISA, a fiduciary is a person who:

1. Exercises any discretionary authority or control over the plan's management or the disposition of its assets,
2. Renders investment advice with respect to plan funds or property for a fee or other compensation or has any authority or responsibility to render such advice, or
3. Has any discretionary authority or responsibility in the administration of the plan.

All fiduciaries must act in the sole interest of plan participants and beneficiaries with the exclusive purpose of providing benefits to those plan participants and beneficiaries. Under ERISA, fiduciaries are personally liable for any direct misconduct on their own part, and may be held liable for actions taken by another fiduciary.

Plan distribution forms get updated

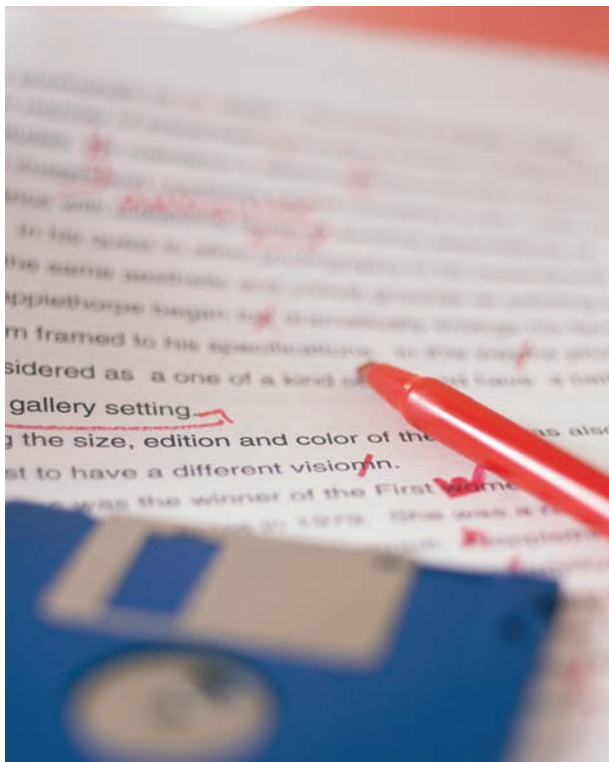
The Pension Protection Act of 2006 (PPA) made significant changes that affect retirement plan designs for the 2007 plan year. In particular, PPA enhanced disclosure requirements that plan sponsors must observe when a participant separates from service. These disclosures are in addition to the current notices in the overall distribution process.

The basics

Before PPA, distribution materials to plan participants upon separation from service generally included:

- › A withdrawal distribution form that allowed participants to choose the various distribution options (such as rollover or cash withdrawal),
- › A special tax notice regarding plan payments informing participants of the tax consequences related to the withdrawal, and
- › Joint and survivor information with spousal consent for plans that offer an annuity option as a form of benefit.

The purpose of the new disclosures is to provide additional information to participants about their



employer-sponsored plan — including the ramifications for keeping money in the plan, costs and other issues.

The new requirements

In addition to the above-mentioned forms that plans must distribute upon separation from service, starting earlier this year PPA requires several new distribution forms and notices:

Participant distribution notice. The new participant distribution notice should state the proposed distribution date. This must be a minimum of 30 days from receipt of the notice. During that time, participants have the right to consider whether to:

- › Remove their account balances,
- › Waive the annuity form of benefit and choose another benefit option (if annuities are an option under the plan), or
- › Roll over the account.

The notice should disclose any fees related to the distribution and the vested and nonvested portions of the participant's accounts at the time of the notice. It should also refer to the special tax notice and "postponement of distribution election" form.

If plan participants opt to delay distribution, they must complete a special "postponement of distribution election" form.

"Postponement of distribution election" form. If plan participants opt to delay distribution, they must complete a special "postponement of distribution election" form. This simply states that the plan sponsor gave the participant all the disclosure notices and that he or she chose under the terms of the plan to keep his or her account in the plan at the present time.

List of investment options. Plan sponsors must provide participants with a listing of all investments under the plan. It must specify the related fees associated with



those funds if they opt to delay the distribution and keep their money in the plan. Fees include the underlying expense ratios related to the fund investments. You can use the participant distribution notice for this list, in addition to the notices they are already receiving.

Involuntary cash-outs. Participants may delay their distributions until normal retirement age if the balance is over \$5,000. Plan sponsors may force an involuntary cash-out of distributions under \$5,000 if the plan adopted automatic rollover provisions. The plan may require that any amounts between \$1,000 and \$5,000 be rolled into an IRA that becomes the participant's sole responsibility. Cash-outs under \$1,000 don't require a mandatory IRA.

The annuity angle

The withdrawal distribution form must offer the annuity option if it's allowed under the plan. For plans that allow annuity options, qualified joint and survivor annuity (QJSA) options require married plan participants to obtain spousal consent to the QJSA and also receive notification of the spouse's right to delay distribution. Formerly, plans had to make sure that participants received all notices no less than 30 days and no more than 90 days before the distribution date or annuity starting date. Under PPA, the date was extended to 180 days.

Beginning after Dec. 31, 2007, a new form of benefit appears on the horizon: qualified optional survivor annuity. This is an annuity payable for the life of the participant with a survivor annuity for the life of the spouse equal to a percentage of the amount payable during the joint lives of the participant and spouse. Simply put, if the survivor percentage under a plan's qualified joint and survivor annuity option is less than 75%, the plan must offer a 75% survivor option; if the QJSA is 75% or more, the plan must offer a 50% survivor option.

Plans with an annuity benefit must offer this new option. These include all defined benefit plans, money purchase plans, target benefit plans, and nonpension plans, such as profit sharing plans, that are subject to the QJSA rules.

Compliance is critical

In addition to your plan document's distribution terms, specific rules — and tax issues — affect rollovers that require the expertise of a seasoned benefits administrator. PPA's new requirements include additional disclosures that make the notices more complex. Failure to comply can cause a distribution to become disqualified and could result in significant tax consequences for both the plan participant and plan sponsor. ☹

New rules on the horizon?

DISCLOSING FEES AND EXPENSES TO PARTICIPANTS

Most 401(k) plans allow participants to have participant-directed investments. To make well-informed investment decisions, participants must have all the necessary information — including plan fees and expenses. Currently, not many ERISA requirements cover fee and expense disclosures to participants in these types of accounts. But this may soon change.

What plan sponsors *must* provide

Generally, on entry to a plan, the plan sponsor must provide the participant with a summary plan description. This will include some information about expenses, such as commissions, deferred sales charges, bonus payments or exchange fees.

Each year you must also distribute a summary annual report to participants that details the plan's total expenses and benefit payments. However, these two documents alone don't provide participants with all of the needed information to make wise investment decisions.

What plan sponsors *should* provide

To help participants make a more informed investment decision, categorize your plan's selected funds by risk factor. This will help participants determine which investment option they're most comfortable putting their retirement money in.

Plan sponsors will need to be cautious of dealing with vendors who refuse to disclose their fees, expenses and compensation received in connection with their plans.

Remember, each of your selected funds may have separate fees and expenses that you must disclose to participants. Keeping participants well informed of each investment's fees and expenses is important because they can affect the size of participants' nest eggs.



What the DOL proposes

Earlier this year, the Department of Labor (DOL) issued a request for information to solicit views, suggestions and comments from plan sponsors, plan participants and plan providers to determine to what extent rules governing the disclosure of plan fees and expenses should be adopted or modified.

Once the DOL decides on a specific disclosure practice, it will be uniform so participants can easily compare investment options. Whether plan sponsors present the disclosure in a fee table or an "all-in" fee expense ratio, it will most likely have to include a comparison chart showing the industry average.

This type of presentation will be clear and understandable to most participants, but for some participants even this proposed amount of disclosure won't be enough. A small group of participants rely solely on plan sponsors to monitor the investment options and their corresponding fees.

What this means for plan sponsors

Plan sponsors will need to be cautious of dealing with vendors who refuse to disclose their fees, expenses and

compensation received in connection with their plans. These expenses include, but aren't limited to:

- › Revenue sharing agreements,
- › Investment management fees,
- › Administrative fees, and
- › Transaction costs.

Get involved in your plan's funds selection. Also, look into other mutual funds, or share classes within a mutual fund, that have lower revenue sharing arrangements before selecting investment options. Require vendors to provide annual written statements detailing all compensation received by them in connection with their services to the plan. This compensation is usually commissions and bonuses, but it may also take the form of a gift, such as a lavish vacation.

Monitor asset-based fees, as they increase with the growth of plan assets. As always, it's the plan sponsors' duty to ensure that employees receive fair value for the costs they are paying associated with their individual accounts and to make sure they receive a fair return on their invested money. Sponsors should ask questions in connection with the investments, fees and expenses associated with their plan.

What's ahead

With the DOL's increased interest in how fees and expenses are disclosed to participants, take the time to pay more attention and ask more questions in connection with your plan's investments, fees and expenses. Your role hasn't changed, but you're accountable for your actions — or lack of action. 🕒

Clarification and guidance on QDROs

Generally, a participant's benefits within a qualified plan are protected. An exception is when a domestic relations order (DRO) is issued identifying an alternate payee's right to all or a portion of these benefits.

The DRO is separate from a decree, judgment or order relating to the rights of a spouse (or former spouse) to marital property, alimony payments or child support. Following specific procedures, the plan administrator must first "qualify" the DRO before the plan can distribute any of the assigned benefits to the alternate payee. Guidance on the requirements of qualifying a DRO is available under ERISA and IRS rules.

Generally, to become legally qualified, a DRO must include the name and address of both the participant and the alternate payee. It must also include the identity of the plan from which the benefit is being transferred, the specific amount or percentage being transferred and the length of time that payments will be made. Once the DRO meets all the requirements, it's then defined as "qualified," or a QDRO.

The Pension Protection Act of 2006 (PPA) provided specific instruction to the Department of Labor (DOL) clarifying when a DRO is considered qualified if a previous DRO was issued or revised, or if the DRO is issued following a participant's death. Based on the instruction, the DOL issued the following short-term guidance:

Successive DROs. A second DRO issued after an initial order (or a revision to the original order) may still be considered qualified. For example, a plan administrator can qualify a DRO, and then later receive a second DRO. Under the DOL guidance, a second DRO wouldn't fail to be qualified solely because it reduces the benefits awarded to the alternate payee under the first QDRO.

Postdeath orders. PPA also provides guidance related to postdeath orders. The DRO won't fail to be qualified because the participant has died, the participant's spouse is no longer surviving, or the participant had retired and opted to receive annuity payments that the spouse had waived their rights to.

Carefully review any issued DROs to ensure they meet the new requirements. Additionally, make sure your QDRO procedures are consistent with the new regulations.