

NEW RULES FOR RETIREMENT PLAN BENEFIT STATEMENTS

Loomis, Ewert, Parsley, Davis & Gotting, P.C.

124 W. Allegan Street, Suite 700

Lansing, MI 48933

(517) 482-2400

February 23, 2007

Retirement plan administrators face additional requirements relating to benefit statements provided to retirement plan participants under the Pension Protection Act of 2006 (PPA).

Previously, retirement plans were required to provide a benefit statement to a participant or beneficiary on written request. Now, under the PPA, plans must furnish such statements automatically, even if a request is not made.

In many cases, the plan's third party administrator or recordkeeper will prepare and provide these statements; however, each plan administrator should be aware of the new requirements to make sure that they are satisfied. In some cases, however, a plan does not have a third party administrator so it will need to provide these statements itself.

Deadlines and Frequency

The new rules have different deadlines for providing benefit statements, depending on whether the plan is a defined contribution plan (i.e., profit sharing, money purchase pension, 401(k)) or a defined benefit plan. Also, different deadlines apply to defined contribution plans, depending on whether or not the plan allows participants to direct how their individual account is invested. These deadlines are as follows:

- **Quarterly**, for defined contribution plans which allow participants to direct their own accounts.
- **Annually**, for defined contribution plans which do not allow participants to direct their accounts.
- **Every three years**, for all defined benefit plans to active or vested Participants.

If the plan which is required to distribute quarterly statements is on a calendar year basis, then the DOL permits the deadline for distribution of the benefit statement to be 45 days after the end of the plan quarter. This requirement is effective starting in the 2007 Plan Year. **Therefore, the deadline for the March 31, 2007 quarter year end is May 15, 2007.**

A defined benefit plan has the option to distribute annual notices to participants telling them that benefit statements are available and how to get them. If the plan chooses to distribute annual notices, then the deadline for the first notice is December 31, 2007. If the plan instead chooses to distribute benefit statements ever three years, then such statements do not have to commence until the 2009 plan year.

In addition to the above requirements, any participant may request and receive a benefit statement once a year.

Contents

The benefit statements must describe (a) the value of a participant's account balance and the portion that is vested; and (b) the value of each investment in a participant's account as of the most recent valuation date.

In addition, if participant direction of account is allowed, then the benefit statement must include (a) a description of any limitations or restrictions on the exercise of rights to direct investments; (b) a statement as to the importance of diversification, and (c) a notice directing the participant to the

Department of Labor's internet website for additional information.

The description of limitations or restrictions does not need to include any limitations or restrictions imposed by investment funds, other investment vehicles, or by state or federal securities laws.

The Department of Labor has provided the following sample language to satisfy the requirement for a statement on diversification.

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.

The following address may be used to satisfy the requirement directing participants to the Labor Department's website: www.dol.gov/ebsa/investing.html.

Manner of delivery

A plan may use multiple documents or sources to satisfy the benefit statement requirements. For example, account information may be derived from several different brokers while the plan administrator may provide information regarding vesting. In such cases, the plan must provide participants and beneficiaries with notification explaining how and when the information will be furnished or made available to them, written in a manner calculated to be understood by the average plan participant, and delivered in any manner that a benefit statement can be furnished, and prior to the date on which a plan is required to furnish the first benefit statement.

A benefit statement may be delivered in written, electronic, or other appropriate form to the extent such form is reasonably accessible to the participant or beneficiary. If a plan provides participants with continuous access to benefit statement information through secure websites, then this requirement will be satisfied, provided participants and beneficiaries are notified explaining the availability of the required benefit statement and how such information may be accessed by them. Also, participants and beneficiaries must be notified of their right to request and obtain, free of charge, a paper version of the benefit statement, written in a manner calculated to be understood by the average participant and delivered in any manner that a benefit statement may be provided and prior to the date on which the plan is required to furnish the first benefit statement and annually thereafter.

If you have any questions regarding the changes in the law relating to retaining patient's records, please contact attorneys Jack C. Davis, Catherine A. Jacobs, or James F. Anderton, V of this office.

Notice: The information contained in this newsletter should not be construed as legal advice. This newsletter is meant as a service to inform our clients about changes in the law. This newsletter does not purport to represent the laws covered by this Article in their entirety. It is recommended that you seek legal advice if situations arise that require exercise of any of the laws discussed in this newsletter.

Contact us:

LOOMIS, EWERT, PARSLEY, DAVIS & GOTTING, P.C.

124 WEST ALLEGAN STREET, SUITE 700

LANSING, MI 48933

TELEPHONE: (517) 482-2400

FACSIMILE: (517) 482-4313

WEBSITE: www.LoomisLaw.com

Email us: jcdavis@loomislaw.com

[cajacobs@loomislaw.com](mailto:cjacobs@loomislaw.com)

jfanderton@loomislaw.com

Summary: Benefit statements must automatically be provided to participants and beneficiaries.

o Stating:

- the value of a participant's account balance and the portion that is vested;
- the value of each investment in a participant's account as of the most recent valuation date;
- a description of any limitations or restrictions on the exercise of rights to direct investments;
- a statement as to diversification; and
- the Department of Labor's internet website for additional information.

o Furnished:

- quarterly, if a defined contribution plan permits participant directed accounts;
- annually, if a defined contribution plan which does not permit participant directed accounts; or
- every three years, if a defined benefit plan. Alternatively, statements as to the availability of such benefit statements may be given annually.
- upon request by the participant one time a year.

o Initial Deadlines for calendar year plans:

- May 15, 2007, if quarterly statements are required;
- December 31, 2007, if annual statements are required; or
- December 31, 2009, if three year statements are required.

o Delivery in writing from single or multiple sources or by electronic medium if appropriate notification conditions are met.