

# Pension ANALYST

Important Information

Plan Administration and Operation

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## DOL Provides Interim Guidance Regarding Pension Protection Act's Periodic Benefit Statement Requirement

**WHO'S AFFECTED** This guidance applies to qualified defined benefit and defined contribution plans that are subject to the ERISA reporting and disclosure rules, including multiemployer plans and ERISA section 403(b) plans. It does not apply to non-ERISA 403(b) programs, governmental plans, or to church plans that do not elect to be covered by ERISA.

**BACKGROUND AND SUMMARY** The Pension Protection Act of 2006 (PPA) requires plans that are subject to the ERISA reporting and disclosure rules to provide periodic benefit statements to participants and beneficiaries. In general, defined benefit plans must provide benefit statements once every three years. Defined contribution plans, including 403(b) plans, that permit participant investment direction must provide quarterly statements, while defined contribution plans that do not permit participant investment direction must provide annual statements. For plans that are not collectively-bargained, these requirements are effective for the first plan year beginning on or after January 1, 2007. [A later effective date applies to collectively-bargained plans.](#)

On December 20, 2006, the Department of Labor (DOL) published Field Assistance Bulletin No. 2006-03, providing interim guidance regarding these new benefit statement requirements. This guidance clarifies:

- The interaction between the requirement to provide notices to participants of their right to diversify employer securities and the diversification information that must appear on benefit statements;
- The earliest date that PPA benefit statements are required;
- The form in which benefit statements may be provided;
- The rules for providing statements using electronic media; and
- Certain content requirements.

**ACTION AND NEXT STEPS** Plan sponsors should review the information provided in the publication to identify those items that apply to their plans. Prudential Retirement will follow this guidance as we make changes to the benefit statements that we provide to plan participants.

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## Notice of Diversification Rights

Separate sections of PPA require defined contribution plans:

- To notify participants of their right to diversify employer security investments; and
- To explain the importance of having a well-balanced and diversified retirement investment portfolio.

To satisfy the first of these two requirements, plan sponsors must provide notices to participants, alternate payees under qualified domestic relations orders, and beneficiaries of deceased participants. In consultation with the DOL, the IRS recently published Notice 2006-107, providing [transitional guidance regarding these notices](#). This guidance provided a delayed notification deadline for certain plans but confirmed that plans that already permitted diversification as required by PPA still had to provide these notices.

The new guidance notes that the DOL has now been “persuaded” that requiring these plans to provide these notices may cause confusion to participants, as well as result in additional administrative costs that may be passed along to participants. Since similar information must be provided on benefit statements beginning in 2007 (later, for certain collectively-bargained plans), plans that already provide diversification rights at least equal to those required by PPA *do not* have to provide separate diversification notices, as long as the appropriate disclosures are provided on benefit statements.

## Timing of Benefit Statements

Effective for plan years beginning on or after January 1, 2007 (later, for certain collectively-bargained plans), defined contribution plans, including 403(b) plans, must provide quarterly statements to participants and beneficiaries who have the right to direct their account investments. Annual statements must be provided to defined contribution plan participants who do not have the right to direct investments. As a result:

- A plan that permits participant investment direction and has a calendar plan year must provide the first PPA benefit statements for the quarter ending March 31, 2007.
- A plan that permits participant investment direction and has a plan year beginning on July 1 must provide the first PPA benefit statements for the quarter ending September 30, 2007.
- A plan that does not permit participant investment direction must provide the first PPA benefit statements for the calendar year ending December 31, 2007, regardless of the plan’s plan year.

The interim DOL guidance indicates that as long as a defined contribution plan provides the PPA benefit statement information no more than 45 days following the end of the applicable period (e.g., by May 15, 2007, for a plan that permits participant investment direction and has a calendar plan year), it will be considered to be in compliance with these requirements.

Under PPA, defined benefit plans must either provide statements every three years to vested participants who are active employees, or provide an annual notice indicating how a statement may be obtained. As a result:

- A non-collectively-bargained plan that follows the three-year rule must provide the first PPA benefit statements for the 2009 plan year.
- A non-collectively-bargained plan that provides the annual notice regarding statement availability must provide the first notice no later than December 31, 2007.

## Benefit Statement Format

PPA's requirements regarding the benefit statement contents may require plans to obtain information from multiple sources (e.g., the plan sponsor, one or more recordkeepers, the plan trustee), which may be difficult to consolidate into a single statement. As a result, the DOL indicates that until additional guidance is issued, it will be acceptable for plans to provide multiple documents or sources for the required information, as long as participants are notified how and when that information will be available.

This notification:

- Must be written in a manner calculated to be understood by the average plan participant;
- May be furnished in any manner that may be used for providing benefit statements (as described below); and
- Must be provided before the date the first PPA benefit statements are required to be provided.

## Delivering Benefit Statements

PPA provides that benefit statements may be provided in written, electronic, or other appropriate form that is reasonably accessible to participants and beneficiaries. The interim DOL guidance indicates that, until additional guidance is issued, plan sponsors have essentially three options for providing statements using electronic media. These three options are:

- Following the safe harbor method described in [the DOL's 2002 final regulations](#);
- Following the [IRS final regulations regarding the Use of Electronic Media for Providing Employee Benefit Notices and Making Employee Benefit Elections and Consents](#), which were published on October 20, 2006, and will be discussed in an upcoming *Pension Analyst*; or
- Providing continuous access to benefit statement information through one or more secure websites, provided certain requirements, described below, are met.

The continuous access website option is only available if participants and beneficiaries have been provided with advance notice of the availability of this information and how it can be accessed. This notice:

- Must apprise participants and beneficiaries of their right to request and receive, free of charge, a paper version of the required benefit statement information;
- Must be written in a manner calculated to be understood by the average plan participant;
- May be furnished in any manner that may be used for providing benefit statements;
- Must be provided before the date the first PPA benefit statements are required to be provided; and
- Must be provided annually.

## Benefit Statement Contents

PPA requires defined contribution plans that permit participant investment direction to include an explanation in their benefit statements of any limitations or restrictions on any participant or beneficiary's right to direct investments under the plan. The DOL guidance indicates that, until further guidance is issued, statements must describe limitations or restrictions "imposed by the plan," but do not have to disclose limitations imposed by investment funds, other investment vehicles, or by state or federal securities laws.

This interim guidance also provides the following sample language that plans may include in benefit statements to satisfy the PPA requirements to explain the importance of a well-balanced and diversified investment portfolio:

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.

Finally, the DOL provides that the following Internet address may be included on statements to meet the PPA requirement that statements include a notice directing participants and beneficiaries to the DOL website for additional information regarding individual investing and diversification:  
[www.dol.gov/ebsa/investing.html](http://www.dol.gov/ebsa/investing.html).

## **Additional Clarification**

Participant loans are often considered to be participant-directed investments. This guidance also clarifies that a plan will not be considered to be participant-directed, and therefore subject to the quarterly statement requirement, simply because it allows participants to take loans but does not otherwise provide for participant-directed investments.

## **Next Steps**

Plan administrators should review this guidance as they develop procedures for complying with the PPA benefit statement requirements. Prudential Retirement will provide benefit statement services for both defined benefit and defined contribution plans that are consistent with the guidance provided by the DOL. If you have questions about the application of this interim guidance to your plan, including the optional features of the DOL's Field Assistance Bulletin, please contact your Prudential Retirement representative for assistance.

### **Pension Analyst by Prudential Retirement**

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