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## ***UPDATE ON PPA PARTICIPANT BENEFIT STATEMENTS***

This bulletin shares our observations, and recommendations, regarding the first round of efforts to comply with the new participant benefit statement requirements under the Pension Protection Act of 2006 (“PPA”).

### **1. BACKGROUND**

Section 508 of the PPA imposes new burdensome requirements regarding the timing and content of statements that retirement plans must provide to plan participants and beneficiaries. Section 508 amends the long-standing participant statement requirements under the Employee Retirement Income Security Act of 1974, as amended (“ERISA”).<sup>1</sup>

Regulations and model benefit statements are expected to be issued by the Department of Labor (“DOL”) in the future. In the meantime, DOL Field Assistance Bulletin No. 2006-03 (“FAB”) provides interim guidance for compliance now, pending the issuance of the final guidance and adjustments. The new law applies as of the first plan year beginning on or after January 1, 2007 (meaning now).

### **2. TIMING FOR DEFINED CONTRIBUTION PLANS**

- (a) For plans that allow self-directed investments, statements must be furnished at least once each calendar quarter.
- (b) For plans that do not allow self-directed investments, statements must be furnished at least once each calendar year.
- (c) Statements must be furnished not later than 45 days following the end of the applicable period (i.e., calendar quarter or calendar year).
- (d) Examples. A calendar year plan that allows for self-directed investments must have furnished statements by May 15, 2007. **The next statements must be furnished by August 14, 2007 relative to the period which ended on June 30, 2007.**

A calendar year plan that does not allow for self-directed investments must issue statements by February 14, 2008.

- (e) Fiscal Year Plan. The deadline for a non-calendar year plan that allows for self-directed investments is not settled among many service providers. We believe the deadline is 45 days following

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<sup>1</sup> Do not confuse this requirement with the requirement that the “summary annual report” (an almost useless document) be provided annually to each participant.

the end of the first quarter of the first plan year beginning after December 31, 2006. Thus, if the plan year ends on June 30, 2007, the statement would need to be provided by November 14, 2007 (45 days after September 30, the first applicable quarter running from July 1, 2007 to September 30, 2007).

For a non-calendar year plan that is not participant directed, the first statement is required for the 2007 calendar year (i.e., by February 14, 2008).

### **3. TIMING FOR DEFINED BENEFIT PLANS**

Defined benefit plans generally are required to furnish statements once every three years. The first statement is not required until the 2009 plan year. However, some employers might want to avail themselves of an alternative procedure which would require a statement by December 31, 2007.

### **4. CONTENT REQUIREMENTS**

Pending further guidance, the DOL has indicated that the required information may be provided in separate documents from separate sources.

The statement must be written in a manner calculated to be understood by the average participant.

The statement must include the following, based on the latest available information. Please note that the information which is required differs depending on the plan type.

- |  |   |
|--|---|
| (a) The total benefits accrued (in a defined contribution plan, this means the participant's account balances),  |   |
| (b) The total benefits accrued that are vested (or the earliest date on which benefits will become vested),  |   |
| (c) An explanation of any permitted disparity (i.e., Social Security integration) or any floor-offset arrangement applied to determine accrued benefits,   | <i>(a), (b) and (c) apply to all defined benefit and defined contribution plans</i>                         |
| (d) The value of each investment to which assets in the participant's account have been allocated,   | <i>(d) applies to all defined contribution plans</i>  |
| (e) An explanation of any limitations or restrictions imposed by the plan on the right to direct investments,  |   |
| (f) An explanation of the importance of a well-balanced and diversified investment portfolio including a statement of risk that holding more than 20% in the security of one entity may not be adequately diversified (the FAB provides model language to satisfy this requirement), and | <i>(e), (f) and (g) apply only to defined contribution plans providing participant-directed investments</i> |
| (g) A notice directing participants to <a href="http://www.dol.gov/ebsa/investing.html">www.dol.gov/ebsa/investing.html</a> for sources of information on investing and diversification.   |   |

## 5. OBSERVATIONS REGARDING INITIAL COMPLIANCE EFFORTS

### (a) Timing

Calendar year defined contribution plans that allow self-directed investments were required to furnish compliant statements by May 15, 2007 (for the period ending March 31, 2007). Everyone was scrambling, but we did not encounter any circumstances where timing was a problem.

### (b) Format

The DOL FAB contemplates, for the present time, that the statements need not be in the form of a single document. It appears that pulling the information together from several sources did not present too significant a problem for most benefit statement providers. More often than not, the information was provided on a single document from a single source (which surprised us because we anticipated problems with obtaining updated vesting information). Although there were numerous circumstances where an easily satisfied element was missed, it appears that a lack of coordination and a failure to consult counsel was the culprit.

### (c) Vesting

Many retirement plan sponsors and professionals expressed frustration with providing up to date vesting information on a quarterly basis (see 4(b) above). The statute itself contemplates that the DOL will issue guidance to allow an alternative means of reporting vested benefits on an annual basis instead of quarterly. Perhaps the future guidance will simply allow a reference to the plan's summary plan description for vesting information. Or perhaps not; a number of options are available.

In the meantime, a good faith effort to satisfy this requirement is necessary and seems achievable. This is particularly true given that the PPA allows the reporting of vested benefits to be based on "the latest available information." We believe this means it is allowable and appropriate to report vesting as of the plan year that concluded preceding the period for which the statement is required. For example, the August 14, 2007 statement may use the participant's vesting as of December 31, 2006, and there would be no need to determine whether the employee had earned another vesting year of service in the 2007 plan year (even if the employer and employee could well deduce that the employee had earned at least 1,000 hours of service in 2007 if the plan uses the 1,000 actual hour vesting provision). Similarly, what if by August 14, 2007 the administration for the 2006 plan year is not yet completed (totally possible), and vesting as of such date was last determined as of the end of 2005? Depending on the circumstances, vesting as of the 2005 plan year for that August 14, 2007 statement may be acceptable.

For plans where all of the plan assets are 100% vested, we believe it would be prudent (and probably necessary) to include a statement to the effect that the participant is 100% vested, instead of remaining silent on the issue (which some recordkeepers did).

**(d) Quarterly Valuations**

At least one recordkeeper advised its clients that all participant-directed plans must, under the new rules, be valued quarterly. For a plan that is valued just once a year (the law requires that a defined contribution plan be valued and the accounting work be done at least once a year), requiring such plan to be valued four times a year would significantly increase the cost and effort to maintain such a plan.

PPA does not require quarterly valuations or otherwise require the frequency or substance of the plan's valuations to change. Accordingly, the four statements in year 2008 may be based on the participant's benefits valued as of December 31, 2007 (if that is the latest available information). Take a participant-directed plan where employees make § 401(k) contributions throughout the year, matching contributions are made quarterly, and profit sharing contributions are made once a year. Might there be an obligation to report at least the § 401(k) contributions made during the year with respect to those statements? Probably not under the current guidance, but we will wait and see how the guidance and model statements develop.

**\*\*\* (e) Plan Limitations and Restrictions**

The issue that presented the greatest challenge for this last quarter was the requirement to provide an explanation of any limitations or restrictions imposed by the plan on the right to direct investments (see 4(e) above). PPA requires that the statement "shall include . . . an explanation of any limitations or restrictions on any right of the participant or beneficiary under the plan to direct an investment . . . ."

Believe it or not, this requirement was simply ignored in the vast majority of statements that were produced. In other circumstances, the issue was addressed by reference to market timing types of limitations imposed by investment companies. This was interesting because the FAB clarified that this provision of the law means limits "'under the plan,' but need not include limitations and restrictions imposed by investment funds, other investment vehicles, or by state or federal securities laws." Plan sponsors should consider asking their recordkeepers to send supplemental statements to address this requirement.

It seems that a lack of understanding still very much exists regarding the explanation of plan limitations and restrictions on investing. Sponsors and providers can and should make better efforts to coordinate their efforts with each other to satisfy this requirement. We are hopeful that this particular mandate will be clarified in future guidance.

In the meantime, the types of limitations that the statements should include are those imposed by the plan. For example, the statement might explain the frequency with which investment selections may be changed by a participant – perhaps each day the markets are open. As another example, the statement may indicate that investments are limited to the plan's menu of investment options. The point is that there always will be some plan limitation or restriction on a participant's right to direct investments that should be identified and set forth in the statements (at least until, if ever, the DOL issues guidance further refining the plan limitations and restrictions that the statements must address).

**(f) Permitted Disparity (Social Security Integration)**

The other issue that created a lot of confusion, and thus also was not included in many statements, was the requirement to provide an explanation of permitted disparity (i.e., Social Security integration). We found this confusion/oversight surprising because the requirement easily can be satisfied by inserting integration language into the benefit statement from the plan's already existing summary plan description. Perhaps the failure to provide any explanation of permitted disparity was also the result of a lack of coordination between the involved parties (or was on account of space limitations, which was at least one stated reason for the failure). In any case, we hope that the DOL will expressly allow a reference to the summary plan description.

**6. IN SUMMARY**

Plan sponsors should contact their recordkeepers, third party administrators, legal counsel, and investment providers to ensure that these parties are coordinating their efforts to ensure compliance with the new benefit statement requirements.

We believe that there is a need for a single party to have oversight to ensure that all of the legal requirements are met, as opposed to allowing the plan's various service providers to address the two or three issues that they determine they will address without consulting with the other service providers, professionals or the client.

The current good faith standard (until regulations are issued) is perhaps encouraging the involved parties to be lazy or less careful than they ought to be. This mindset should be avoided because there are current legal requirements that must be met (even if the DOL's enforcement may be lax). Also, there are potentially significant penalties for noncompliance (up to \$100 per day per participant from the date of such failure, or other relief as a court deems proper).

We believe that satisfying these requirements will be easy if the parties coordinate their efforts. This includes involving ERISA counsel, which group appears to have been largely left out of the loop (by their own design or not). Once done, the process and format will be in place and will require minimal ongoing oversight.

Please contact Jeff Mandell or John Hughes if we may assist you in addressing any of these issues.

*This email is intended to provide general information only and does not provide legal advice.  
The application of ERISA laws can be complex. For information regarding the impact of these developments  
under your particular facts and circumstances, please call us.*

**Attachments**

- (1) ERISA Section 105(a)
- (2) DOL Field Assistance Bulletin No. 2006-03

## REPORTING OF PARTICIPANT'S BENEFIT RIGHTS

➡ **Caution:** *ERISA Sec. 105(a) below, prior to amendment by P.L. 109-280, generally applies to plan years beginning before 2007.*

Act Sec. 105. (a) Each administrator of an employee pension benefit plan shall furnish to any plan participant or beneficiary who so requests in writing, a statement indicating, on the basis of the latest available information—

- (1) the total benefits accrued, and
- (2) the nonforfeitable pension benefits, if any, which have accrued, or the earliest date on which benefits will become nonforfeitable.

➡ **Caution:** *ERISA Sec. 105(a) below, as amended by P.L. 109-280, generally applies to plan years beginning after December 31, 2006.*

Act Sec. 105. (a) REQUIREMENTS TO PROVIDE PENSION BENEFIT STATEMENTS.—

### (1) REQUIREMENTS.—

(A) INDIVIDUAL ACCOUNT PLAN. —The administrator of an individual account plan (other than a one-participant retirement plan described in section 101(i)(8)(B)) shall furnish a pension benefit statement—

- (i) at least once each calendar quarter to a participant or beneficiary who has the right to direct the investment of assets in his or her account under the plan,
- (ii) at least once each calendar year to a participant or beneficiary who has his or her own account under the plan but does not have the right to direct the investment of assets in that account, and
- (iii) upon written request to a plan beneficiary not described in clause (i) or (ii).

(B) DEFINED BENEFIT PLAN. —The administrator of a defined benefit plan (other than a one-participant retirement plan described in section 101(i)(8)(B)) shall furnish a pension benefit statement—

- (i) at least once every 3 years to each participant with a nonforfeitable accrued benefit and who is employed by the employer maintaining the plan at the time the statement is to be furnished, and
- (ii) to a participant or beneficiary of the plan upon written request.

Information furnished under clause (i) to a participant may be based on reasonable estimates determined under regulations prescribed by the Secretary, in consultation with the Pension Benefit Guaranty Corporation.

### (2) STATEMENTS.—

(A) IN GENERAL. —A pension benefit statement under paragraph (1)—

- (i) shall indicate, on the basis of the latest available information—
  - (I) the total benefits accrued, and
  - (II) the nonforfeitable pension benefits, if any, which have accrued, or the earliest date on which benefits will become nonforfeitable,
- (ii) shall include an explanation of any permitted disparity under section 401(l) of the Internal Revenue Code of 1986 or any floor-offset arrangement that may be applied in determining any accrued benefits described in clause (i),
- (iii) shall be written in a manner calculated to be understood by the average plan participant, and
- (iv) may be delivered in written, electronic, or other appropriate form to the extent such form is reasonably accessible to the participant or beneficiary.

(B) ADDITIONAL INFORMATION. In the case of an individual account plan, any pension benefit statement under clause (i) or (ii) of paragraph (1)(A) shall include—

- (i) the value of each investment to which assets in the individual account have been allocated, determined as of the most recent valuation date under the plan, including the value of any assets held in the form of employer securities, without regard to whether such securities were contributed by the plan sponsor or acquired at the direction of the plan or of the participant or beneficiary, and
- (ii) in the case of a pension benefit statement under paragraph (1)(A)(i)—
  - (I) an explanation of any limitations or restrictions on any right of the participant or beneficiary under the plan to direct an investment,
  - (II) an explanation, written in a manner calculated to be understood by the average plan participant, 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
  - (III) a notice directing the participant or beneficiary to the Internet website of the Department of Labor for sources of information on individual investing and diversification.

(C) ALTERNATIVE NOTICE. —The requirements of subparagraph (A)(i)(II) are met if, at least annually and in accordance with requirements of the Secretary, the plan—

- (i) updates the information described in such paragraph which is provided in the pension benefit statement, or
- (ii) provides in a separate statement such information as is necessary to enable a participant or beneficiary to determine their nonforfeitable vested benefits.

### (3) DEFINED BENEFIT PLANS.—

(A) ALTERNATIVE NOTICE. —In the case of a defined benefit plan, the requirements of paragraph (1)(B)(i) shall be treated as met with respect to a participant if at least once each year the administrator provides to the participant notice of the availability of the pension benefit statement and the ways in which the participant may obtain such statement. Such notice may be delivered in written, electronic, or other appropriate form to the extent such form is reasonably accessible to the participant.

(B) YEARS IN WHICH NO BENEFITS ACCRUE. —The Secretary may provide that years in which no employee or former employee benefits (within the meaning of section 410(b) of the Internal Revenue Code of 1986) under the plan need not be taken into account in determining the 3-year period under paragraph (1)(B)(i).

**U.S. Department of Labor**

**Employee Benefits Security Administration  
Washington, D.C. 20210**



**FIELD ASSISTANCE BULLETIN No. 2006 - 03**

Date: December 20, 2006

MEMORANDUM FOR: VIRGINIA C. SMITH, DIRECTOR OF ENFORCEMENT  
REGIONAL DIRECTORS

FROM: ROBERT J. DOYLE  
DIRECTOR OF REGULATIONS AND INTERPRETATIONS

SUBJECT: PERIODIC PENSION BENEFIT STATEMENTS – PENSION  
PROTECTION ACT OF 2006

BACKGROUND:

Section 105 of the Employee Retirement Income Security Act (ERISA) sets forth the requirements applicable to the furnishing of pension benefit statements to plan participants and beneficiaries. Section 508(a) of the Pension Protection Act of 2006 (PPA)<sup>1</sup> amended section 105, making a number of significant changes to the pension benefit statement requirements for both individual account plans and defined benefit plans. Among other things, the amendments to section 105 establish an affirmative obligation to automatically furnish pension benefit statements – at least once each quarter, in the case of individual account plans that permit participants to direct their investments; at least once each year, in the case of individual account plans that do not permit participants to direct their investments; and at least once every three years in the case of defined benefit plans. The amendments also increase the amount of information required to be contained in pension benefit statements for both individual account and defined benefit plans.

The amendments to section 105 are generally applicable to plan years beginning after December 31, 2006, with special rules for plans maintained pursuant to collective bargaining agreements.<sup>2</sup> Section 508(b) of the PPA requires the

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<sup>1</sup> Pub. L. No. 109-280, 120 Stat. 780 (2006).

<sup>2</sup> See § 508(c) of the Pension Protection Act of 2006.

Department to develop one or more model pension benefit statements within one year of the date of enactment of the PPA (i.e., by August 18, 2007).

Since the enactment of the PPA, representatives of plan sponsors, service providers and others in the employee benefits community have raised a number of interpretive and compliance issues concerning the new pension benefit statement provisions. In particular, concerns have been expressed about the imminent effective date, the absence of guidance, and the cost and burdens attendant to pension benefit statement compliance efforts prior to the adoption of pension benefit statement regulations and the issuance of model pension benefit statements by the Department.

In recognition of the foregoing concerns, including the fact that major changes in what, how, and when pension benefit statement information is furnished to participants and beneficiaries may, in the absence of regulatory guidance from the Department, result in plan sponsors, plans, or participants and beneficiaries (in the case of individual account plans) incurring excessive or unnecessary compliance costs, the Department is providing general guidance in this Bulletin for EBSA's national and regional offices, as well as plan sponsors and administrators, concerning good faith compliance with the pension benefit statement provisions pending the issuance of regulations.

#### GOOD FAITH COMPLIANCE:

The Department has not yet issued regulations or other guidance concerning compliance with the pension benefit statement provisions of section 105 of ERISA, as amended by section 508(a) of the PPA. Until such regulations or guidance is issued, the Department will, as an enforcement matter, treat a plan administrator as satisfying the requirements of section 105 if the administrator has acted in good faith with a reasonable interpretation of those requirements. This Bulletin provides the Department's views as to what constitutes good faith compliance with certain requirements of section 105.

#### ISSUES:

**1. Form of furnishing statements.** In the case of individual account plans that provide for participant direction of investments, to what extent can the benefit statement requirements be satisfied by using multiple documents or sources for the required information?

It appears that, in the case of individual account plans that provide for participant direction, the information required to be included in pension benefit statements will, in many instances, involve multiple service providers, each of



whom is a source for some, but not all, of the required information. For example, the plan administrator may be the source for information on vesting, whereas the plan's recordkeeper or brokerage firm may be the source for investment-related account information. We understand that, in the short term, compiling all the required information for disclosure in a single document may be impractical for plans.

Pending the issuance of further guidance, it is the view of the Department that good faith compliance with the pension benefit statement provisions does not preclude the use of multiple documents or sources for benefit statement information, provided that participants and beneficiaries have been furnished notification that explains how and when the information required by section 105 will be furnished or made available to participants and beneficiaries. Such notification should be written in a manner calculated to be understood by the average plan participant, furnished in any manner that a pension benefit statement could be furnished under this Bulletin (see issue two, below), and furnished in advance of the date on which a plan is required to furnish the first pension benefit statement pursuant to section 105(a)(1)(A)(i) of ERISA.

**2. Manner of furnishing statements.** To what extent can the pension benefit statement requirements be satisfied using electronic media?

Section 105(a)(2)(A)(iv) provides that a pension 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. In the Technical Explanation of the PPA, prepared by the staff of the Joint Committee on Taxation, the Committee explains, by way of example, that regulations relating to the furnishing of pension benefit statements, "could permit current benefit statements to be provided on a continuous basis through a secure plan website for a participant or beneficiary who has access to the website."<sup>3</sup>

With regard to the use of electronic media generally, the Department has issued a regulation, at 29 C.F.R. § 2520.104b-1(c), setting forth conditions under which a plan administrator will be deemed to satisfy the requirement, in section 2520.104b-1(b), that certain disclosures be furnished using "measures reasonably calculated to ensure actual receipt of the material." While the furnishing of the required pension benefit statement information in accordance with the safe harbor prescribed in paragraph (c) of section 2520.104b-1 would constitute good faith compliance with section 105, the Department notes that such manner of furnishing is not the exclusive means by which plan administrators could, in the absence of guidance to the contrary, satisfy their obligation to furnish pension

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<sup>3</sup> See Joint Committee on Taxation, *Technical Explanation of H.R. 4, the "Pension Protection Act of 2006," as Passed by the House on July 28, 2006, and as Considered by the Senate on August 3, 2006* (JCX-38-06), August 3, 2006.

benefit statement information. In this regard, we note that the Department of the Treasury and Internal Revenue Service recently issued guidance, at 26 C.F.R. § 1.401(a)-21,<sup>4</sup> relating to the use of electronic media to provide certain notices and documents required to be furnished to participants by retirement plans under the Internal Revenue Code. For purposes of section 105 of ERISA, the Department, pending further guidance and a review of the provisions of section 2520.104b-1(c), will view the furnishing of pension benefit statements in accordance with the provisions of section 1.401(a)-21, as good faith compliance with the requirement to furnish pension benefit statements to participants and beneficiaries.

With regard to pension plans that provide participants continuous access to benefit statement information through one or more secure websites, the Department will view the availability of pension benefit statement information through such media as good faith compliance with the requirement to furnish benefit statement information, provided that participants and beneficiaries have been furnished notification that explains the availability of the required pension benefit statement information and how such information can be accessed by the participants and beneficiaries. In addition, the notification must apprise participants and beneficiaries of their right to request and obtain, free of charge, a paper version of the pension benefit statement information required under section 105. Such notification should be written in a manner calculated to be understood by the average plan participant, furnished in any manner that a pension benefit statement could be furnished under this Bulletin, and furnished both in advance of the date on which a plan is required to furnish the first pension benefit statement pursuant to section 105(a)(1)(A)(i) and (ii) of ERISA and annually thereafter.

**3. Dates for furnishing statements.** Because the new pension benefit statement provisions are applicable as of the first plan year beginning after December 31, 2006, what is the earliest date on which non-collectively bargained pension plans will be required to automatically furnish benefit statements that comply with the new provisions?

With regard to individual account plans that permit participants and beneficiaries to direct the investment of assets in their account, section 105(a)(1)(A)(i) requires that a pension benefit statement be furnished at least once each calendar quarter. For calendar year plans subject to this provision, the first pension benefit statement would be required for the quarter ending March 31, 2007. If a plan operated on a fiscal year basis, with the first plan year (after December 31, 2006) beginning on July 1, 2007, the first pension benefit statement

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<sup>4</sup> 71 FR 61877 (Oct. 20, 2006).

required to comply with the new requirements would be required to be furnished for the quarter ending September 30, 2007.

Plans that do not provide participants or beneficiaries a right to direct their investments are required, pursuant to section 105(a)(1)(A)(ii), to furnish pension benefit statements at least once each calendar year. Whether on a calendar year or fiscal year basis, the first pension benefit statement for such plans that is required to comply with the new requirements would be required to be furnished for the calendar year ending December 31, 2007.

Pending the issuance of further guidance, it is the view of the Department that the furnishing of pension benefit statement information not later than 45 days following the end of the period (calendar quarter or calendar year) will constitute good faith compliance with the requirement to furnish a pension benefit statements in accordance with section 105(a)(1)(A)(i) and (ii).

Defined benefit plans generally are required, pursuant to section 105(a)(1)(B)(i), to furnish participants a pension benefit statement at least once every three years. The first pension benefit statement complying with the new requirements, therefore, would be due for the 2009 plan year, provided that the plan does not elect to comply with the alternative notice requirement in section 105(a)(3)(A). The alternative notice requirement for defined benefit plans provides that the requirements of section 105(a)(1)(B)(i) shall be treated as met with respect to a participant if at least once each year the administrator provides the participant notice of the availability of the pension benefit statement and the ways in which the participant may obtain such statement. If a plan elects to take advantage of the alternative notice provision in section 105(a)(3)(A), the required notification must be furnished not later than December 31, 2007.

It is the view of the Department that, in the absence of guidance to the contrary, similar principles would apply in determining good faith compliance by plans maintained pursuant to one or more collective bargaining agreements, with respect to which PPA section 508(c)(2) provides special rules for determining the date on which the provisions of section 105 are effective.

**4. Right to direct investments.** Will an individual account plan that does not otherwise provide participants the right to direct the investment of assets in their accounts be subject to the requirement to furnish statements quarterly (section 105(a)(1)(A)(i)) merely because the plan permits participants to take participant loans from the plan?

Pending issuance of further guidance, a reasonable interpretation of section 105(a)(1)(A)(i) would be that a participant loan feature does not, standing alone,

cause a plan to be a plan that provides participants the right to direct the investment of assets in their accounts.

**5. Limitations or restrictions on right to direct investments.** Section 105(a)(2)(B)(ii)(I) requires that the pension benefit statement of an individual account plan that permits participant investment direction include "an explanation of any limitations or restrictions on any right of the participant or beneficiary under the plan to direct an investment." What types of limitations and restrictions, if any, need not be included in benefit statements?

In the absence of guidance to the contrary, a reasonable interpretation of section 105(a)(2)(B)(ii)(I) would be that benefits statements must include limitations and restrictions on participants' or beneficiaries' rights imposed "under the plan," but need not include limitations and restrictions imposed by investment funds, other investment vehicles, or by state or federal securities laws.

**6. Investment principles.** Section 105(a)(2)(B)(ii)(II) requires that the pension benefit statement of an individual account plan that permits participant investment direction include "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[.]" In the absence of a model benefit statement, is there language that a plan might use to satisfy this requirement?

It is the view of the Department that, in the absence of guidance to the contrary, the use of the following language will constitute good faith compliance with the requirements of section 105(a)(2)(B)(ii)(II):

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.

**7. Notification of diversification rights.** May an individual account plan that, prior to January 1, 2007, provides participants and beneficiaries diversification rights at least equal to the new rights conferred under section 204(j), satisfy the notice obligations under section 101(m) of ERISA by providing information concerning the importance of a diversified portfolio in connection with the furnishing of the first quarterly pension benefit statement information required by section 105(a)(1)(A)(i)?

Yes. The Department believes that the information required to be disclosed to participants and beneficiaries pursuant to section 101(m) is most significant for those participants and beneficiaries acquiring new diversification rights under section 204(j). For this reason the Department continues to believe that participants and beneficiaries in plans conferring new diversification rights as of January 1, 2007, should be furnished information concerning such rights and the importance of maintaining a diversified portfolio as soon as possible following January 1, 2007.<sup>5</sup>

With regard to individual account plans that, prior to January 1, 2007, provide participants and beneficiaries diversification rights at least equal to those conferred under section 204(j), the Department is persuaded that the furnishing of the 101(m) notice as a stand-alone disclosure may result both in confusion to participants and beneficiaries and distribution costs that, in many instances, will be passed on to the plan's participants and beneficiaries. In view of the fact that the periodic pension benefit statement required to be furnished pursuant to section 105(a)(1)(A)(i) is required, pursuant to section 105(a)(2)(B)(ii)(II), to contain information similar to that required by section 101(m)(2) concerning the importance of maintaining a diversified portfolio, and the fact that the pension benefit statement required to be furnished pursuant to section 105(a)(1)(A)(i) is required to be furnished within a few months of the furnishing of the 101(m) notice, the Department will treat a plan administrator's compliance with the periodic benefit statement requirements of section 105(a)(1)(A)(i) as satisfying the notice requirements of section 101(m) if, prior to January 1, 2007, the individual account plan provided participants and beneficiaries diversification rights at least equal to those conferred under section 204(j).

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<sup>5</sup> I.R.S. Notice 2006-107.

**8. Department of Labor website.** Section 105(a)(2)(B)(ii)(III) requires that the pension benefit statement of an individual account plan that permits participant direction of investment include a notice directing participants and beneficiaries to the Internet website of the Department of Labor for sources of information on individual investing and diversification. What Internet address should plan administrators use for this requirement?

For purposes of section 105(a)(2)(B)(ii)(III), plan administrators may use the following Internet address for pension benefit statements:  
[www.dol.gov/ebsa/investing.html](http://www.dol.gov/ebsa/investing.html).

Questions concerning this matter may be directed to Jeff Turner or Suzanne Adelman, at 202-693-8523.