

LIST OF PARTICIPANT DISCLOSURES

The following list is loosely based on the list presented by Eugene Holmes of Proskauer Rose during an ABA teleconference on disclosure. The list below is more comprehensive and detailed, including most required participant disclosures. Many disclosures have overlapping DOL and IRS jurisdictions, so the groupings below are not absolute. Often DOL is responsible for the notice and IRS for interpretation.

BASIC DISCLOSURES – DOL

- **Summary Plan Description (SPD)** – (See 29 CFR § 2520.104b-2)

To: Participants and those pension plan beneficiaries receiving benefits

When: Within 90 days of becoming covered by a plan and for plan beneficiaries within 90 days after first receiving benefits; Updated SPD every five years if amended or changed; Every ten years if no changes to SPD:

Upon Request: The latest SPD within 30 days (DOL can request any document)
(Note: Separate rules apply to disclosures for claims)

- **Summary of Material Modifications (SMM)** – (See 29 CFR § 2520.104b-3)

To: Participants and plan beneficiaries receiving benefits

When: Within 210 days after the end of the plan year in which change is adopted
(Furnishing an updated SPD satisfies this requirement)

Upon request: Within 30 days

- **Plan Documents** (Including latest SPD, latest Form 5500: See 29 CFR §2520.104b-1)

To: Participants and beneficiaries

When: Within 30 days after a written request
Copies must be available for review at principal offices of employer

DOL has authority to request any document

- **Periodic Benefit Statements** (ERISA Sec.105 and Field Assistance Bulletin 2006-03)

To: Participants and beneficiaries

When:

- DB Plans – Once every three years, or annual notification given that a benefit statement will be provided if requested --Upon request (limit of one per year)
- Participant directed individual account plans – Quarterly to participant or beneficiary who has the right to direct investments
- Individual account plans without participant direction – Once a year to participant or beneficiary who has an account
- All individual account plans - Upon request of a beneficiary not included above (limit of one per year)

- **Statement of Accrued and Nonforfeitable Benefits** (ERISA Sec. 209)

To: Participant

When: If upon request no more than once a year

Upon termination of employment or after one year break in service

FUNDING NOTICES

- **Summary Annual Report** – (DC plans only: See 29 CFR § 2520.104b-10(d))

To: Participants and beneficiaries receiving benefits

When: Within nine months after the end of the plan year or two months after filing Form 5500. (DB plans send annual funding notice beginning in 2008)

- **Annual Funding Notice** (DB plans both single and multiemployer, New with PPA, See ERISA Sec.101(f)) and the PRC summary of this requirement:
<http://www.pensionrights.org/issues/legislation/pension-funding-notices>

To: Participants and beneficiaries receiving benefits, and each labor organization representing participants and each contributing employer

When: Within 120 days after the plan year for plans with over 100 participants
For small plans the date the annual report is filed or the latest date the annual report must be filed, whichever is earlier.

- **Notice of Failure to Meet Minimum-Funding Standard** – (PPA, single employer DB plans, ERISA Sec.101(d))

To: Participants, beneficiaries and alternate payees under QDROs

When: A “reasonable” period of time after the failure or 60 days after denial of request for waiver, if applicable.

- **Notice of Request for a Waiver from Minimum Funding Requirement**
Single and Multiemployer DB Plans: See ERISA Sec. 302(c)(6) and IRC Sec. 412(f)(4))

To: Participants, beneficiaries and alternate payees

When: Within 14 days prior to submitting the application for a waiver

- **Notice of funding based limits on distributions** (PPA, Single employer DB plans: See ERISA Sec.101(j) and IRC Sec. 436)

To: Participants and beneficiaries

When: Within 30 days of becoming subject to a funding- based limitation, and at any other time determined by Treasury

- **Notice of Endangered or Critical Status** (PPA, Multiemployer DB plans only, Includes notice that ‘adjustable benefits’ may be reduced: See ERISA Sec. 305 and IRC Sec. 432)

To: Participants, beneficiaries, bargaining parties, the PBGC and DOL

When: Within 30 days following the date a plan is certified by the actuary to be in critical or endangered status.

Note: Critical status notices provided to DOL are posted on the EBSA Website: <http://www.dol.gov/ebsa/criticalstatusnotices.html>

- **Multiemployer Pension Plan Information on Request** (*PPA, See ERISA Sec. 101(k)*)

What: Financial and actuarial reports

To: Participants and beneficiaries and each labor organization representing participants and each contributing employer

When: Within 30 days of request. Only one copy in a 12 month period.
- **Intranet Posting of Defined Benefit Plan Actuarial Information** (*PPA, effective 2008, no rules as of November 2011*)

Posting of identifying information and actuarial information from Form 5500 on a company intranet site. Not required when there is no intranet website.

INDIVIDUAL ACCOUNT PLAN NOTICES – DOL

- **Blackout Period Notification** (see 29 CFR 2520.101-3 and ERISA 101(i))

To: Participants and beneficiaries

When: Advance notice of 30 to 60 days
- **404(c) Disclosures** (*see 29 CFR 2550.404c-1 – These rules will be superseded by new fee and investment disclosure rules below.*)

To: Participants and applicable beneficiaries

When: Sufficiently in advance of choosing investments
Upon request
- **Fee and expense disclosures for participant- directed accounts**
(*New rule, 29 CFR 2550.404a-5: Fiduciary requirements for disclosure in participant-directed individual account plans – Includes those plans seeking fiduciary relief under ERISA Sec. 404(c): not applicable until May 31, 2012 at the latest,*)

To: Participant or beneficiary

When: See Pension Rights Center summary of the rule
<http://www.pensionrights.org/issues/regulations/401k-fee-disclosure-investment-related-information>

Note: EBSA Technical Release 2011-03R, December 8, 2011, modifies the rule for electronic disclosure for fee and expense information not otherwise included in the SPD or individual benefit statement. This guidance relates only to fee and expense disclosures and is temporary pending issuance of a new rule on electronic disclosure.

- **Notice of Availability of Investment Advice** (*PPA, Final rule October 25, 2011 on EBSA: 29 CFR 2550.408q-1(b)(7), applicable to transactions that occur on or after December 27, 2011*)

This notice must disclose the role of any party affiliated with or contracted to the fiduciary in developing investment advice materials and/or selecting investment options.

To: Participant or Beneficiary

When: Before investment advice concerning investment options is provided

- **Notice of Right to Divest Employer Securities** (*PPA –Notice requirement under DOL (ERISA Sec. 101(m))- Interpretative authority under IRS (ERISA Sec. 204(j) and IRC Sec. 401(a)(35))*)

To: Participants, beneficiaries of deceased participants, and alternate payees with accounts

When: Not later than 30 days before the first date when eligible to divest

OTHER NOTICES – DOL

- **Suspension of Benefits Notice** (*29 CFR 2530.203-3*)

To: Participant whose benefits are being suspended

When: During or before the first month or payroll period in which benefits are withheld

- **Notice of transfer of excess pension assets to retiree health benefit account** (*ERISA Sec.101(e) and 29 CFR 2575.502c-1*)

To: Participants and beneficiaries from plan administrator

When: At least 60 days before date of transfer

- **DROs and QDROs** (*ERISA Sec. 206(d)(3)*)

To: Participants and alternate payees

When: Upon receipt of a DRO
Notice on DRO qualification – issued within “reasonable time”

LIST OF NOTICES - IRS

Distribution notices –

PPA changed the applicable dates of these notices and added a requirement that the consent notice (IRC Sec. 411(a)(11)) include an explanation of the consequences of not deferring a benefit distribution. See IRS Notice and detailed explanation of changes below.

<http://edocket.access.gpo.gov/2008/E8-23918.htm>

- **Explanation of Rollover and Certain Tax Options** – (*IRC Sec. 402(f)- Notice explains rollover options and how they will be taxed*)

To: Participant or surviving spouse

When: 30 to 90 days before benefits are distributed – (Treas. Reg. § 1.402(f)-1, Q-2:A-2
Upon request

- **Notice** regarding immediately distributable benefit under 411(a)(11) includes right to defer receiving benefits and consequences for future retirement of removing money from account – (IRC. Sec. 411(a)(11)) see Treas. Reg. § 1.411(a)-11(c)(3)(A)

To: Participants

When: Within 30 to 90 days prior to date of distribution or when distribution begins

- **Explanation of Qualified Joint and Survivor Annuity (QJSA) & Optional Benefits** (*IRC Sec. 417(a)*)

To: Married participants of plans with joint and survivor requirements

When: 30 to 90 days before the annuity start date (Treas. Reg. § 1.417(e)-1(b)(3)(ii))

- **Explanation of Qualified Preretirement Survivor Annuity (QPSA)** (*IRC Sec. 417(a)*) (*See for explanation – Treas. Reg. § 1.401(a)-20, Q&A-35*)

To: Married participants of plans with joint and survivor requirements

When: The later of the following “applicable” periods –

Between age 32 and the close of the plan year before the year that the participant reaches age 35.

OR

One year after becoming a participant if older than 35

OR

One year after the QPSA is no longer fully subsidized

LIST OF NOTICES - JOINT DOL/IRS

- **Form 5500 Series** (Annual Return/Report of Employee Benefit Plan) and **Schedules And Form 5558** (Application for Extension of Time)

What: The latest annual report

To: Participants and beneficiaries on request

When: Within 30 days of the request

- **Notice to Separated Participants with Deferred Vested Benefits** – (*SSA Notice – IRC Sec. 6057(e) is the notice to the participant and IRC Sec 6057(d) requires filing with the government, also ERISA Sec. 209*)

To: Participants leaving employment with deferred vested benefits

When: At separation from service

- **Notice of Reduction in Future Accruals** – (*ERISA Sec. 204(h) notice and IRC Sec. 4980F*))

To: Participants and alternate payees under a QDRO

When: 45 days before the effective date of the plan amendment

Notice requirements under automatic enrollment and default investments

These notices may be combined where applicable or delivered separately. These notices are somewhat overlapping. A QDIA investment provides relief for fiduciaries making default investments for participants. The IRS auto enrollment plans (QACA and EACA) are safe harbors for discrimination testing. See EBSA Field Assistance Bulletin 2008-03, FAQs #8 - 10.

- **Automatic enrollment notice** – (*Includes right to opt-out or contribute at a difference rate and describes how contributions will be invested- (See ERISA Sec. 514(e)(3))*)

To: Applicable participants

When:

- Annually with enough time prior to the plan year to make or change an election
- A reasonable period of time before first contribution and sufficient time to make an election

- **Notice of Qualified Default Investment Alternative (QDIA)** – (*See ERISA Sec. 514(e)(3) and 29 CFR 2550.404c-5*)

To: Participants and beneficiaries

When:

- 30 days before plan eligibility or 30 days before first investment in a QDIA, or on or before plan eligibility for participants with a 90 day withdrawal option
- Annual notice at least 30 days in advance of the plan year

- **Notice of Intent to Use Safe-Harbor Formula** (*PPA – safe harbor satisfies discrimination testing, See Treas. Reg. 1.401(k)-3(d)*)

To: Each eligible employee

When: A reasonable period before the plan year (between 30 and 90 days) or a

reasonable period before the employee becomes eligible (the date the employee becomes eligible and no more than 90 days in advance of eligibility)

- **Notice of Qualified Automatic Contribution Arrangement (QACA)** (See IRC 401(k)(13))

What: A QACA meets specified IRS non-discrimination requirements

To: Each eligible employee

When:

- Before an employee's eligibility date but not more than 90 days in advance
- Annually at least 30 days but not more than 90 days before plan year

- **Eligible Automatic Contribution Arrangement (EACA)** (See IRC. Sec. 414(w))

What: Permits employee to withdraw contributions within initial 90 days of default contributions

To: Each eligible employee

When: On or before, but no more than 90 days in advance, of an employee's eligibility to join the plan

LIST OF NOTICES – PBGC

- **Intent to terminate for standard and distress terminations** (ERISA Sec. 4041(a))

To: Participants, beneficiaries, alternate payees

When: No later than 60 days prior to proposed termination

- **Distress or Involuntary Termination Information** (ERISA Sec. 4041(c)(2)(D))

What: Information submitted to the PBGC

To: Participants, beneficiaries, alternate payees

When: No later than 15 days following a request for the information

AND

Upon submitting any new information to the PBGC

BASIC DISCLOSURE REQUIREMENTS

- What Type of Document
- Type of Information Needed
- To Whom
- When Must the Information Be Disclosed
- Medium – Note that the DOL and IRS rules for electronic disclosure are not the same at this time. DOL rules are generally more restrictive and require permission for electronic disclosure from people who do not work with the employer's computer network. DOL has granted some exceptions in recent years and some notices can also be delivered using IRS rules. The DOL rules are a safe harbor.

LINKS TO DISCLOSURE INFORMATION

EBSA Disclosure Guide-

<http://www.dol.gov/ebsa/pdf/rdguide.pdf>

IRS list of disclosures-

<http://www.irs.gov/retirement/participant/article/0,,id=211621,00.html>