

TCRS 2007-01: Department of Labor General Guidance on Pension Benefit Statements – Field Assistance Bulletin (FAB) 2006-03

The Pension Protection Act of 2006 (PPA) amended ERISA Section 105 effective for plan years beginning after December 31, 2006. PPA's amendments to Section 105 require a number of significant changes to pension benefit statements for qualified defined benefit and defined contribution plans. This TCRS release will focus on the PPA requirements applicable to defined contribution plans. The amendments to ERISA Section 105 also increase the amount of information required to be included in the pension benefit statements. PPA requires the Department of Labor (DOL) to develop model pension benefit statements by August 18, 2007.

Since PPA's enactment, plan sponsors and service providers have expressed concerns over the lack of formal guidance, and the cost and administrative burdens necessitated by the changes to ERISA Section 105. To alleviate some of these concerns, the Department of Labor (DOL) issued FAB 2006-03. FAB 2006-03 provides general guidance on what constitutes good faith compliance with the pension benefit statement provisions of PPA pending the issuance of formal guidance. According to the FAB, the DOL, in enforcing these new requirements, will treat a plan administrator of a plan as meeting ERISA Section 105, as amended by PPA, if the plan administrator acts in good faith in interpreting such requirements.

New Requirements for Pension Benefit Statements Under PPA

- Prior to PPA, pension benefit statements had to be provided to participants and beneficiaries only upon request and not more often than annually. Post PPA, pension benefit statements must be provided quarterly to participants and beneficiaries who have the right to direct investments. For participants and beneficiaries who do not have the right to direct investments, pension benefit statements are required to be provided annually. The pension benefit statements must contain the following information:
 - For participants and beneficiaries who have the right to direct investments, information regarding any restrictions on the right to direct investments, the importance of diversification, a statement of the risk of investing more than 20% of participants' portfolios in the security of a single company and a notice directing the participants and beneficiaries to a DOL website for more information on individual investing and diversification.
 - For participants and beneficiaries who have the right to direct investments, the value of each investment to which assets have been allocated, including assets held in employer securities.
 - An explanation of permitted disparity (integration with Social Security) or a floor-offset arrangement, if the plan provides for such a plan design.
 - On the basis of the latest available information, the total account balance and vesting information.

Issues Addressed in FAB 2006-03

- **Form and Manner of Furnishing Benefit Statements**
 - The FAB provides that using multiple sources to meet the new pension benefit statement requirements is permissible pending issuance of regulations, provided advance notice that explains how and when the information will be furnished is made available to participants and beneficiaries. For example, the investment information may come from the investment provider for the plan and the vesting information may come from the plan administrator.
 - The FAB confirms what PPA provides that a pension benefit statement may be provided in written, electronic or other means, including providing continuous access to benefit statement information through a secure website.
- **Dates for Delivering Benefit Statements**

The first pension benefit statement under PPA is required for the quarter ending March 31, 2007 for a calendar plan that permits participants and beneficiaries to direct investments (December 31, 2007 for a calendar plan that does not permit investment direction). Until further guidance is issued, the DOL permits a 45-day extension (following the end of the first quarter or first calendar year) for plans to comply with the pension benefit statement requirements (May 15, 2007 and March 15, 2008, respectively, for calendar plans).

- **Limitations and Restrictions on Right to Direct Investments**

The FAB clarifies that the types of restrictions and limitations required by PPA to be included in pension benefit statements are those that are imposed under the plan. Limitations and restrictions imposed by investment funds, other investment vehicles or by state or federal securities laws need not be included.

- **Investment Principles**

The FAB provides interim language that can be used to explain the importance of a well-balanced diversified portfolio for the long-term retirement security of participants and beneficiaries.

- **Notification of Diversification Rights**

The FAB clarifies that the information required to be disclosed to participants and beneficiaries acquiring new diversification rights as of January 1, 2007 (relating to plans that permit participants and beneficiaries to invest in employer securities, other than stand-alone ESOPs) be furnished as soon as possible after January 1, 2007. However, for plans that prior to January 1, 2007, provided participants and beneficiaries diversification rights at least equal to those conferred under PPA, such disclosure would not be required as a stand-alone notice.

- **DOL Internet Website**

For more information regarding individual investing, diversification and pension benefit statements, go to <http://www.dol.gov/ebsa/investing.html>.

Pension Benefit Statements for TRS Plans

The pension benefit statements for TRS plans already meet the timing requirements of PPA and some of the content requirements. TRS is currently working to complete the content update based on good faith guidance contained in this FAB 2006-03. The TRS pension benefit statements for the quarter ending March 31, 2007 will be in compliance with the good faith standards contained in FAB 2006-03.