

SPONSOR E-NEWS



Welcome to the September 2007 edition of Sponsor E-News!

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Our series, *Fiduciary Focus*, continues this month with the focus on activities surrounding prohibited transactions. We explore parties of interest and prohibited transactions as defined by ERISA¹.

Virtual Hold is a new feature available to you and your participants at TransDirect, our toll-free automated voice response system. See how this great feature can help your participants.

Also, digging deeper into Loan Defaults and Deemed Distributions may help you better understand the differences between the two.

Lastly, we are putting a spotlight on one of our plan sponsors and their success story.

To help convey important information to you quickly, our newsletter messages are color-coded:



Action Required: Noted in red, these messages require action, such as a signature, by the Trustee or Fiduciary of the plan



Legislative / Compliance Update: Noted in blue, these messages discuss legislative or compliance-related topics.



For Your Information: Noted in green, these messages provide you with general information covering subjects such as participant education, product and service features, and helpful tips for using the Web site.

Fiduciary Focus: Prohibited Transactions



Last month we discussed the extremely high standard of care expected of plan fiduciaries and how that standard of care translates into four fundamental obligations that each fiduciary owes the plan. In this article we will explore a group of activities so contrary to this standard of care that it was deemed appropriate to prohibit them by law. These activities are known as *prohibited transactions* and by statutorily forbidding these activities the plan fiduciary is legally prevented from engaging the plan in specific activities that are known to offer significant opportunity for the abuse of plan assets.

Party in Interest

Before discussing prohibited transactions themselves, it is important that you have a general understanding of the term “party in interest” because the transactions that are legally restricted all involve “parties in interest”. For purposes of this article, parties in interest will be identified at a very general level. Broadly defined, parties of interest include all fiduciaries, legal counsel and employees of the plan; persons who provide services to the plan; and any employer or organization who has employees covered by the plan. Parties in interest also include certain owners and officers of the company, those owners’ lineal ancestors and descendants and, in most instances, the spouses of all of the above.

If you require specific identification of the parties in interest to your plan we suggest you consult with your ERISA counsel.

Prohibited Transactions defined in ERISA Section 406(a)

Section 406(a) states that a plan fiduciary may not engage the plan in an activity or transaction if he or she knows, or should know that the action directly or indirectly involves the:

- Sale, exchange, or lease of any property between the plan and a party in interest
- Lending of money or extending of credit between the plan and a party in interest
- Furnishing of goods, services, or facilities between the plan and a party in interest
- Transfer of a plan asset to a party in interest
- Use of assets by, or for the benefit of, a party in interest
- The acquisition or holding on behalf of the plan of any employer security or employer real property in excess of ERISA Section 407 limits

Prohibited Transactions defined in ERISA Section 406(b)

The prohibitions established in Section 406(b) are commonly recognized as *ERISA’s prohibitions against fiduciary self-dealing* and were designed to prevent fiduciaries from using plan assets for their own personal gain and to prevent plan fiduciaries from receiving “kickbacks” as a result of their position with respect to the plan.

Section 406(b) establishes that with respect to the plan no plan fiduciary can:

- Deal with plan assets for his or her own interest or for his or her own account.
- Participate in any capacity whatsoever in a transaction involving the plan on behalf of a party, or represent a party, whose interests are contrary to the interests of the plan, its participants, or its beneficiaries. This would violate the *exclusive benefit rule* discussed last month.

- Receive any consideration of any kind from any party dealing with a plan in connection with a transaction involving plan assets.

Differences between Section 406(a) & Section 406(b) Transactions

The differences between the transactions defined in the two code sections are based on a combination of who is involved in the transaction and who derives a benefit at the expense of the plan. Generally speaking, in a prohibited transaction:

- If a plan fiduciary alone is involved in a prohibited transaction and only the plan fiduciary receives a benefit Section 406(b) is likely to be the only code section violated.
- If a plan fiduciary and a nonfiduciary party in interest are involved in a transaction and the plan fiduciary alone, or both the plan fiduciary and nonfiduciary party in interest, receive a benefit, both Sections 406(a) and 406(b) will likely be violated.
- If a plan fiduciary and a nonfiduciary party in interest are involved in a transaction and only the nonfiduciary party in interest receives a benefit Section 406(a) is likely to be the only code section violated.

Simply put, the number of code sections violated and legal consequences of the violation will vary depending upon who is involved in a prohibited transaction and who receives a benefit.

Next month, *Fiduciary Focus* will begin to examine each of the prohibited transactions in more detail, including the consequences of violation and certain statutory exemptions.



What is Virtual Hold?

In today's busy environment, the last thing anyone wants is to be placed on hold for an extensive period of time when contacting a service center. With this in mind, Transamerica has implemented virtual hold. We respect and value your participant's time and are focused on reducing the amount of wait time during periods of high call volume.

During times of peak call volume, virtual hold intercedes and informs the caller of the estimated wait time. The caller is then offered two options: remain on hold, or choose a return call from Transamerica.



When the call back option is chosen, virtual hold collects the caller's name and phone number. After the call is disconnected, a placeholder with the caller's information is inserted into the queue to reserve the caller's space in line. Once the call is ready to be handled, virtual hold places a call back to the caller. At that time, the caller chooses to be connected to the call center or to schedule a call later—up to a week in advance! Calls are still handled in the order they were received, but with the virtual hold option, participants have a choice to hold or receive a call back.

This is another way Transamerica demonstrates its dedication and commitment to providing quality customer service to you and your participants.

Understanding Loan Defaults and Deemed Distributions

If your retirement plan offers loans to participants, it is a good idea to understand the difference between Loan Defaults and Deemed Distributions in order to keep your plan in compliance. Often participants take out loans, with the full intent of repaying them, but their situation and employment status may change before the loan is completely paid off. This article is designed to help you navigate the differences between defaults and deemed distributions so you can keep your plan in compliance with current rules.



Loan Defaults

A loan default occurs whenever the terms of an outstanding loan have not been followed and the cure period (the period ending on the last day of the calendar quarter following the quarter during which the loan repayment was missed) has passed. This situation most often occurs when a participant terminates their employment with their employer. Terminated participants have the opportunity to pay off their outstanding loan balance prior to requesting a distribution from the plan. If this option is not chosen at the time their account is distributed, the outstanding loan balance (principal and interest) is defaulted and treated as a taxable distribution in the year distributed.

Deemed Distributions

Deemed distributions result from a loan that has been re-characterized as a distribution. A deemed distribution may result due to a number of factors such as:

- A loan could be considered deemed if its repayment term exceeds the allowable term on the loan (ex: a 10 year repayment schedule for a loan that was not made for the purchase of a participant's principal residence, because the maximum allowable term for that type of loan is only 5 years).
- A loan could be considered deemed if the maximum loan amount was exceeded (ex: a loan is taken for \$75,000 and the maximum allowed is \$50,000)
- A loan could be considered deemed if there was no intention to repay the loan (e.g. the participant clearly indicated that they had no intention of repaying the loan and has never made any repayments)
- A loan could be considered deemed if the terms of the loan were not followed (e.g. the loan is in default and has passed the cure period for making up missed payments)

A critical factor to understand is that a deemed distribution occurs because the participant is not yet allowed to take a distribution from the plan, and yet a taxable event occurs (i.e. the participant has not achieved a distributable event, such as having terminated employment, having become disabled, having retired, or having passed away). Since no actual distribution has occurred the term deemed distributed is used.

Trustees should recognize that there are some exceptions that need to be considered when looking at deemed distributions. Participants on disability are permitted to have their loan repayments suspended without the loan being considered a deemed distribution. When the

participant returns from disability, the participant can either make up the missed payments or re-amortize the loan.

For military leave, the participant may suspend the loan repayments without the loan being considered a deemed distribution. This differs from the disability procedure. After returning from military service, the original maximum maturity date may be extended by the length of military service time. Therefore, re-amortization is not required unless the intent is to keep the original date.

If you would like to discuss either of these situations in further detail, please contact your Third Party Administrator. They'll be happy to help you.



Sponsor Exchange



The Sponsor Exchange is a great opportunity to share your success stories, as well as learn some great tips from other plan sponsor. For example, [take a look](#) at how Schumacher Homes increased their plan participation by 50%.

This invaluable feature is also a helpful resource for finding innovative solutions to every-day retirement plan management issues.

Don't miss your opportunity to join the Exchange! If you have a Transamerica Retirement Services success story or any important information you'd like to share with other plan sponsors, please contact La Tanya Hayes at LaTanya.Hayes@transamerica.com.

At your request, we will send Sponsor E-News to anyone at your organization who you believe would benefit. Just e-mail us at sponsorconnect@transamerica.com, and we will add them to our mailing list.

We would also like to hear your suggestions and ideas for future topics for E-News. Please let us know how we can be of service to you by replying to this e-mail, or by calling (866) 498-4557. We look forward to hearing from you.

¹ Employee Retirement Income Security Act of 1974 (ERISA).

² Transamerica Retirement Services ("Transamerica"), a marketing unit of Transamerica Financial Life Insurance Company ("TFLIC"), 4 Manhattanville Road, Purchase, New York 10577, and Transamerica Life Insurance Company ("TLIC"), 4333 Edgewood Road NE, Cedar Rapids, Iowa 52499, and other TFLIC and TLIC affiliates, specializes in the promotion of retirement plan products and services. TLIC is not authorized in New York and does not do business in New York.

