

One Minute Memo™



New Disclosures Required for First Quarter 401(k) Plan Benefit Statements

As March 31 approaches, sponsors of 401(k) plans and other plans that permit participants to direct the investment of their accounts should make sure that their first quarter benefit statements satisfy the new disclosure requirements enacted last year by the Pension Protection Act (the PPA).

New Benefit Statement Disclosures.

Under the PPA, benefit statements for 401(k) or other defined contribution plans that allow participant investment direction must be provided quarterly, beginning with the quarter ended March 31, 2007 for calendar plans. (Defined benefits plans are subject to other requirements.) The PPA also requires additional disclosures about limits on transfers between investment options, the need for a diversified account, and the date upon which the participant's account will vest. These additional disclosures can be either incorporated into the benefit statement or distributed as a separate insert. Good faith compliance requires distribution of statements within 45 days after the end of the quarter.

Employer Stock Diversification Rights.

If a plan provides for any part of a participant's account to be invested in publicly traded employer stock, the PPA also requires that participants be notified of their right to transfer their account to other investment options. For plans that already permitted participants to freely transfer their account out of employer stock at the end of 2006, this notice must be given with the first quarter benefit statement. Technically the notice only has to be given once to each participant, but incorporating into the benefit statement along with the diversification disclosures described above will be the easiest way of complying.

If a plan includes employer stock but does not permit participants to transfer their account to other investments, the plan will need to be amended. The PPA provides that any participant whose account is invested in publicly traded employer stock must have the right, at least quarterly, to transfer his or her account to other plan investment options. If employer contributions are initially invested in employer stock, the right to transfer applies to participants with at least three years of service. However, if employer contributions were made in employer stock in a plan year beginning before January 1, 2007, plan

sponsors may restrict transfers so that participants (other than participants who are age 55) can only transfer up to 1/3rd of their employer stock account balance in each of the next three years. Certain ESOPs are not subject to the new rule.

Due to the specific nature of the timing and the content requirements of new disclosures, plan sponsors should carefully review their plans' benefit statements with their recordkeepers. If you have any questions about the new disclosure and diversification requirements, please contact your Seyfarth Shaw attorney, or any of the attorneys in the Employee Benefits & Executive Compensation Department at www.seyfarth.com.

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