



PWBA History and ERISA

History of the Pension and Welfare Benefits Administration and the Employee Retirement Income Security Act of 1974

The Pension and Welfare Benefits Administration (PWBA) of the Department of Labor is responsible for administering and enforcing the fiduciary, reporting and disclosure provisions of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Prior to January 1986, PWBA was known as the Pension and Welfare Benefits Program. At the time of its name change, PWBA was upgraded to a sub-cabinet position with the establishment of Assistant Secretary and Deputy Assistant Secretary positions.

The provisions of Title I of ERISA, which are administered by the Labor Department, were enacted to address public concern that funds of private pension plans were being mismanaged and abused. ERISA was the culmination of a long line of legislation concerned with the labor and tax aspects of employee benefit plans. Since its enactment in 1974, ERISA has been amended to meet the changing retirement and health care needs of employees and their families. The role of PWBA has also evolved to meet these challenges.

The administration of ERISA is divided among the Labor Department, the Internal Revenue Service of the Department of the Treasury (IRS), and the Pension Benefit Guaranty Corporation (PBGC). Title I, which contains rules for reporting and disclosure, vesting, participation, funding, fiduciary conduct, and civil enforcement, is administered by the Labor Department. Title II of ERISA, which amended the Internal Revenue Code to parallel many of the Title I rules, is administered by the IRS. Title III is concerned with jurisdictional matters and with coordination of enforcement and regulatory activities by the Labor Department and the IRS. Title IV covers the insurance of defined benefit pension plans and is administered by the PBGC.

Prior to a 1978 reorganization, there was overlapping responsibility for administration of the parallel provisions of Title I of ERISA and the tax code by the Labor Department and the IRS, respectively. As a result of this reorganization, the Labor Department has primary responsibility for reporting, disclosure and fiduciary requirements; and the IRS has primary responsibility for participation, vesting and funding issues. However, the Labor Department may intervene in any matters that materially affect the rights of participants, regardless of primary responsibility.

As a result of the enactment of the Federal Employees' Retirement System Act of 1986 (FERSA), PWBA has fiduciary and auditing oversight of the Thrift Savings Plan that was established by this Act.

Pre-ERISA Legislation

Initially, the IRS was the primary regulator of private pension plans. The Revenue Acts of 1921 and 1926 allowed employers to deduct pension contributions from corporate income, and allowed for the income of the pension fund's portfolio to accumulate tax free. The participant in the plan realized no income until monies were distributed to the participant, provided the plan was "tax qualified." To qualify for such favorable tax treatment, the plans had to meet certain minimum employee coverage and employer contribution requirements. The Revenue Act of 1942 provided stricter participation requirements and, for the first time, disclosure requirements.

The Department of Labor became involved in the regulation of employee benefits plans upon passage of the Welfare and Pension Plans Disclosure Act in 1959 (WPPDA). Plan sponsors (e.g., employers and labor unions) were required to file plan descriptions and annual financial reports with the government; these materials were also available to plan participants and beneficiaries. This legislation was intended

to provide employees with enough information regarding plans so that they could monitor their plans to prevent mismanagement and abuse of plan funds. The WPPDA was amended in 1962, at which time the Secretary of Labor was given enforcement, interpretative, and investigatory powers over employee benefit plans to prevent mismanagement and abuse of plan funds. Compared to ERISA, the WPPDA had a very limited scope.

ERISA

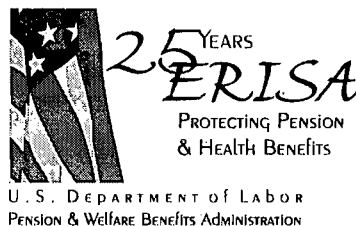
The goal of Title I of ERISA is to protect the interests of participants and their beneficiaries in employee benefit plans. Among other things, ERISA requires that sponsors of private employee benefit plans provide participants and beneficiaries with adequate information regarding their plans. Also, those individuals who manage plans (and other fiduciaries) must meet certain standards of conduct, derived from the common law of trusts and made applicable (with certain modifications) to all fiduciaries. The law also contains detailed provisions for reporting to the government and disclosure to participants. Furthermore, there are civil enforcement provisions aimed at assuring that plan funds are protected and that participants who qualify receive their benefits.

ERISA covers pension plans and welfare benefit plans (e.g., employment based medical and hospitalization benefits, apprenticeship plans, and other plans described in section 3(1) of Title I). Plan sponsors must design and administer their plans in accordance with ERISA. Title II of ERISA contains standards that must be met by employee pension benefit plans in order to qualify for favorable tax treatment. Noncompliance with these tax qualification requirements of ERISA may result in disqualification of a plan and/or other penalties.

Important legislation has amended ERISA and increased the responsibilities of PWBA. For example, the Retirement Equity Act of 1984 reduced the maximum age that an employer may require for participation in a pension plan; lengthened the period of time a participant could be absent from work without losing pension credits; and created spousal rights to pension benefits through qualified domestic relations orders (QDROs) in the event of divorce, and through pre-retirement survivor annuities. The Omnibus Budget Reconciliation Act of 1986 eliminated the ability of employers to limit participation in their retirement plans for new employees who are close to retirement and the ability to freeze benefits for participants over age 65. The Omnibus Budget Reconciliation Act of 1989 requires the Secretary of Labor to assess a civil penalty equal to 20% of any amount recovered for violations of fiduciary responsibility.

The Department's responsibilities under ERISA have also been expanded by health care reform. The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) added a new part 6 to Title I of ERISA which provides for the continuation of health care coverage for employees and their beneficiaries (for a limited period of time) if certain events would otherwise result in a reduction in benefits. More recently, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) added a new Part 7 to Title I of ERISA aimed at making health care coverage more portable and secure for employees, and gave the Department broad additional responsibilities with respect to private health plans.

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ERISA's ANNIVERSARY — 25 YEARS OF COMMITMENT TO EMPLOYEE PENSION & HEALTH BENEFITS

FACT SHEET

September 1999

A Historical Perspective

- Ten years after Congress introduced the first pension reform bill, ERISA — the Employee Retirement Income Security Act — was enacted into law
- President Gerald R. Ford signed the law on Sept. 2, 1974, thus giving workers the first Federal labor law that created rules by which to earn a right to a pension.
- The Labor Department was given responsibility for protecting the assets of plans and the rights of workers and their families to pension, health and other employee benefits. The department has jurisdiction over issues relating to coverage by the law, eligibility for plan participation, vesting, rights of spouses, funding, responsibility of those handling plan funds, reporting and disclosure, and enforcement authority.
- When ERISA took effect, there were only 270,000 pension plans covering some 42 million participants. These plans had \$225 billion in assets.

Largest Source of Capital

- Today private pension plans are major holders of corporate stocks and bonds, holding an estimated 20% of all outstanding stocks and 17% of all outstanding bonds.
- The Labor Department's Pension and Welfare Benefits Administration (PWBA) is charged with protecting the \$4.3 trillion of retirement assets owed to 90 million participants nationwide by 700,000 pension plans. The Department also assures that 6 million health and welfare plans deliver benefits to 150 million participants and their families.
- More importantly, PWBA has evolved to meet the ongoing economic and market trends that affect the financial viability of these plans. In meeting its mission, PWBA uses a philosophy of "prudent" regulation, targeted enforcement and expeditious service to workers as its guideposts in administering plans under its jurisdiction during good and bad economic times.

Commitment to Service to America

- In the early 1980s, PWBA started a new program to handle individual problems encountered by participants in obtaining pension, health and other benefits. The Division of Technical Assistance and Inquiries was created in the national office to address this public need that workers get clear information about their rights and benefits.

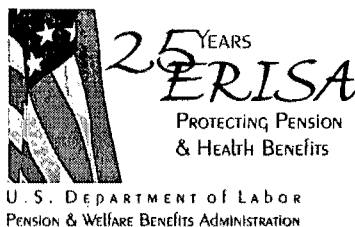
- Starting in Fiscal Year 1995, PWBA began to place greater emphasis on meeting the growing public demand for information and help in resolving problems with their plans. As a result, the number of staff providing technical assistance to the public grew from 12 benefit advisors located just in PWBA's headquarters to 84 benefit advisors serving customers in 15 field offices around the country.
- Today there are dedicated benefit advisors in each field offices to handle the 150,000+ inquiries received each year. Benefit advisors are a valuable complement to the investigative staff since cases involving potential violations which affect classes of participants may be identified from complaints received from the public.
- Since October 1994, the agency has answered over 625,000 public inquiries and recovered \$147 million in pension benefits for individual participants. This money was returned to participants as a lump sum payment or increased benefits.
- For the same period, the agency's enforcement program recovered approximately \$1.71 billion for plans so that these plans would have the money to pay promised benefits to participants and their families.
- Workers and their families can call or write the agency about problems in obtaining their pension or health benefits. Problems may include situations involving:
 - failure to count all the years covered by a plan when determining pension benefits
 - improper determination of eligibility for benefits
 - failure to vest or accrue all earned pension contributions
 - theft or mismanagement of the assets held by plans funds or the payment of benefits.
- The agency also has handled many calls and letters from the public where no money is recovered; however, these people benefitted by obtaining medical benefits for conditions that required expedited handling of requests for health care from their plans. Benefit advisors have assisted participants in obtaining necessary surgical procedures and other medical care that has been denied. They have also assisted individuals in obtaining transitional benefits.
- In an effort to increase public awareness about job-based pension and health benefits, the agency launched the national pension education campaign in July 1995 and the national health benefits education campaign in December 1998.
- These campaigns have resulted in tangible information products (booklets, public service announcements, interactive websites) and greater access to a variety of public and private resources to help them understand their benefits and how to preserve their rights to those benefits.
- The department's "800" publications hotline (at 1-800-998-7542) serves the public and private partners in the two campaigns. To date, more than 5 million publications have been distributed nationwide providing valuable information to the agency's various constituencies.
- PWBA's website, at www.dol.gov/dol/pwba, offers informational material as well as interactive sites to help workers, employers and the benefit community make informed decisions about pension and health benefit programs.

On the Horizon

- Our vision for America in the next millennium is a place where —

- more workers have adequate retirement and health coverage on the job
- there are expanding savings options for workers and non-working spouses
- retirement benefits are portable from job to job
- workers are educated about their plan benefits and the legal protections afforded by the law
- credible and "inclusive" federal oversight operates to help workers resolve benefit problems and to
- provide the employer community with flexible guidance to fulfill their investment and management obligations to plans

To achieve this vision, we are working within the executive branch and with Congress to improve the retirement and health systems for all Americans. In addition, the Department is strengthening the protections for the people who have pension and health benefits on the job by updating the enforcement program, regulations and exemptions.



CHANGES IN THE PRIVATE EMPLOYMENT BASED PENSION AND HEALTH SYSTEMS OVER THE PAST 25 YEARS

FACT SHEET September 1999

Over the past 25 years the percentage of the private wage and salary labor force covered by employer pension plans has remained relatively stable while the coverage rate under employer health plans has declined somewhat. While changes in coverage rates have been relatively small, there have been major shifts under both the pension and health plan systems in the types of plans providing benefits and in the relative share of costs provided by employers and employees.

PRIVATE PENSION SYSTEM

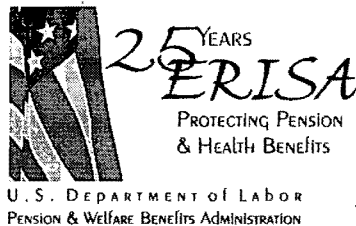
- Over the past 25 years the pension coverage rate among private sector wage and salary workers has remained relatively stable at about 50% of the full-time labor force.
- The coverage rate of women has increased in recent years, from 38% in 1972 to 48% in 1993, while the coverage rate for men decreased from 54% to 51% over the same period.
- The overall increase in the coverage rate for women resulted primarily from an increase in coverage rates among workers in service and retail trade industries, where the majority of women workers are employed. From 1972 to 1993, the coverage rate for full-time women employees increased from 25% to 41% in service industries and from 26% to 35% in retail trade industries.
- The decrease in the coverage rate for male employees resulted primarily from a shift in the percentage of the labor force employed in high coverage unionized manufacturing industries, where men are disproportionately employed, to lower coverage service industry jobs.
- While the overall coverage rate has remained relatively flat since the enactment of ERISA, the type of pension plans providing coverage has been shifting from traditional defined benefit plans that provide benefits based on a formula usually involving years of service and pay to defined contribution plans, where benefits are based on contributions made to individual accounts established for each participant and the earnings on each account.
- In 1975, 68% of all pension plan participants were enrolled in only a defined benefit plan, 13% were in only a defined contribution plan, and 19% were in both types of plans. By 1996, 19% were covered only under a defined benefit plan, 50% were covered only under a defined contribution plan, and 31% received coverage under both types of plans.
- The most common type of defined contribution plan is now a 401(k) plan. In 1996, 31

million workers were enrolled in 401(k) plans as either their primary or supplemental plan. This represents over 30% of all private wage and salary workers and about 65% of all pension covered workers.

- Unlike defined benefit plans, which are generally financed entirely by the employer, 401(k) plans are financed primarily by voluntary employee contributions. When offered a 401(k) plan, younger workers are far less likely to participate than older workers. This has led to a decrease in overall pension coverage among younger workers. For full-time workers under age 25, the pension coverage rate decreased from 31% in 1972 to 21% in 1993. Among workers age 55-59 the coverage rate increased from 53% in 1972 to 59% in 1993.
- The number of private pension annuity recipients age 65 and older more than doubled over the last two decades, from 3.8 million in 1978 to 7.8 million in 1996. The number of women annuity recipients increased by 154% from 1.3 million in 1978 to 3.3 million in 1996, while the number of male annuity recipients increased by 88% from 2.4 million in 1978 to 4.5 million in 1996.
- Benefit payouts from pension plans have increased substantially in recent years for both men and women. In 1978, median annual income from annuities were \$2,480 for men and \$1,420 for women. In 1996, median annual annuity benefits were \$6,442 for men and \$3,679 for women. In both 1978 and 1996 median benefit amounts received by women were about 57% of the amount of benefits received by men.
- Assets held by private pension plans have increased tremendously over the past 25 years, from \$220 billion in 1974 to an estimated \$4.4 trillion at the end of the first quarter of 1999.
- In 1974, 72% of all pension plan assets were held by defined benefit plans. By 1999 only about half of pension assets are in defined benefit plans.
- In 1974, about 90% of all pension plan contributions were made by employers, compared to only about 60% in 1996.

PRIVATE EMPLOYMENT BASED HEALTH SYSTEM

- The coverage rate of private sector wage and salary workers under health plans provided by their employer decreased from 64% in 1979 to 58% in 1993.
- The coverage rate among men decreased from 71% in 1979 to 63% in 1993, while the coverage rate among women decreased from 53% in 1979 to 51% in 1993.
- Among full-time workers in median and large private establishments in 1983, 96% were enrolled in traditional fee for service plans and about 4% were covered by health maintenance organizations. By 1997, only 27% of health plan participants were enrolled in fee for service plans, 40% were in preferred provider organizations, and 33% were in health maintenance organizations.
- In 1982, 71% of health plan participants in median and large private establishments were in plans financed entirely by their employer. In 1997, only 31% of workers with health coverage were in plans where the employer paid the entire cost of single coverage.



PWBA Milestones 1974 - 1999

September 2, 1974

President Gerald R. Ford signs the Employee Retirement Income Security Act (ERISA). The Office of Employee Benefits Security of the Labor Management Services Administration (LMSA) of the Department of Labor administers the labor provisions of ERISA. There are 270,000 private pension plans containing \$225 billion in assets with 42 million participants.

April 16, 1975

The Office of Pension and Welfare Benefit Programs is established within LMSA to strengthen the management of the program and to give it higher visibility.

August 8, 1975

The Department issues its first regulations under ERISA, interpreting the key ERISA definitions of "employee welfare benefit plan," "employee pension benefit plan," "employee benefit plan" and "fiduciary."

October 31, 1975

The first prohibited transaction class exemption, PTE 75-1, covering certain transactions in the securities industry, is issued by the Department in conjunction with the Internal Revenue Service.

June 24, 1977

The Department, in conjunction with the IRS, issues regulations delineating the scope of the general statutory exemption for the provision of services and office space to a plan and of the statutory exemptions relating to investments in bank deposits, to the provision of ancillary services by banks, and to the receipt by a plan fiduciary of compensation for services.

July 7, 1977

The Summary Plan Description regulation is issued by the Department, laying out the requirements for the basic disclosure document provided to plan participants.

October 3, 1977

Pursuant to an agreement between the Department, the IRS, and the Trustees of the Central States Teamsters Pension and Health and Welfare Funds, the Trustees of the Funds transfer the investment of the Funds' assets to independent institutional fiduciaries approved by the Department. The agreement, which later became part of a consent decree, provided for independent investment management of the Funds through at least the year 2002. The Department's investigation of the various aspects of the operation of the Central States Teamster's Pension and Health and Welfare Funds, beginning in 1976 and extending over a period of years, results in a recovery of over \$21.5 million for these funds.

March 10, 1978

Permanent regulations governing the content of the annual report are issued by the Department in conjunction with the IRS and the Pension Benefit Guaranty Corporation (PBGC). These regulations, which are periodically revised, specify forms (the form 5500 series) for reporting basic plan information to the Department, IRS, and PBGC.

January 1 1979

President's Reorganization Plan No. 4 of 1978 becomes effective. It generally eliminates dual jurisdiction over ERISA's participation, vesting and funding provisions and ERISA's prohibited transaction provisions, giving the IRS exclusive jurisdiction over the participation, vesting and funding provisions of ERISA and the Department exclusive jurisdiction over the prohibited transaction provisions of ERISA, although the IRS retains authority to impose an excise tax on parties engaged in a prohibited transaction. Dual jurisdiction is retained over provisions relating to employee stock ownership plans (ESOPs).

June 26, 1979

The regulation defining prudence in investment under section 404(a) is issued by the Department.

January 20, 1984

The Office of Pension and Welfare Benefit Programs is made a separate entity within the Department, with an Administrator reporting directly to the Secretary of Labor.

March 13, 1984

Prohibited Transaction Class Exemption (PTE 84-14) is issued for transactions involving plan assets managed by an independent qualified professional asset manager (QPAM) - This exemption allows numerous transactions to be undertaken between plans managed by QPAMs and parties in interest without the need to secure an individual prohibited transaction exemption.

August 23, 1984

The Retirement Equity Act is enacted to further improve the delivery of retirement benefits and to provide greater equity for workers and their spouses.

January 16, 1986

The Pension and Welfare Benefits Administration is created, headed by an Assistant Secretary reporting to the Secretary of Labor.

April 7, 1986

The Consolidated Omnibus Budget Reconciliation Act (COBRA) is enacted. COBRA mandates that group health plans must offer continuation coverage to ex-employees and their dependants if certain conditions are met.

November 13, 1986

The Department issues a regulation defining "plan assets" for plan investment purposes. This key term was not defined in ERISA.

November 17, 1986

The U.S. Court of Appeals for the Fifth Circuit issues a ruling in favor of the Department in Brock v. Cunningham, requiring restitution of \$400,000 to plan participants and beneficiaries of the Metropolitan Contract Services, Inc. Employee Stock Ownership Plan. The appeals court rules that the defendants breached their fiduciary duties. The opinion contains a full discussion of ERISA's "adequate consideration" requirement. This case is typical of the Department's enforcement actions, in that it both restored assets to the plan and clarified a key ERISA term. As a result of investigations and enforcement actions initiated by the Department, from October 1, 1990 through June 30, 1999, \$1.599 billion of plan assets were recovered and \$1.25 billion of prohibited transactions were corrected.

December 4, 1990

The District Court for South Carolina enters a consent judgement in DeArment v. Graniteville Corporation, in which the textile manufacture Graniteville Corporation agrees to contribute \$7,628,138 to the Graniteville Retirement Savings Plan and \$236,862 in civil penalties to the United States government in settlement of a lawsuit brought by the Department alleging breach of fiduciary duties against corporate officers who served as fiduciaries of the Graniteville ESOP in failing to collect a contribution that the company had promised to make to the ESOP.

September 8, 1992

A consent order is entered in the U.S. District Court for the state of Washington whereby Boeing Company agrees to pay its retirement plan more than \$22 million and to guarantee that it will make up any loss to the plan from a real estate investment made by the plan. Boeing also agrees to purchase a \$26 million bond to assure repayment of any losses. The real estate investment had been purchased by the retirement plan from an investment plan run by Boeing in a transaction which the Department alleged was not arm's length.

October 13, 1992

A regulation is issued setting forth the criteria for section 404 (c) participant-directed individual account plans and describing what constitutes the exercise of control by a participant in such plans.

December 10, 1993

William Loeb is sentenced to six years in jail and ordered to make restitution of \$494,000 that he had stolen from a sham union health plan which he had set up to avoid state insurance regulation. The prosecution is the result of an investigation conducted jointly by PWBA and the Department's Office of the Inspector General. The case is part of the ongoing efforts of the Department relating to health plans sponsored by bogus unions.

January 1 to December 31, 1994

PWBA adds full time benefit advisors to each field office to handle participant inquiries, supplementing national office personnel. Customer service standards are adopted. Between October 1, 1994 and June 30, 1999, PWBA benefit advisors assist over 675,000 participants and recover over \$140 million for participants.

July 19, 1995

The Retirement Savings Education campaign is launched by the Department with 65 private sector partners. As of June 30, 1999, the campaign has distributed over 5 million publications. Also, print, radio and TV public service announcements are created which generate hundreds of newspaper articles and radio and TV spots. The most popular brochures relating to retirement savings are translated into Spanish and made available to the public in August 1997.

September 10, 1995

The PWBA Web site is launched.

October 18, 1995

The 401(k) plan enforcement project is begun to assure that employers promptly transmit participant contributions to 401(k) plans and do not divert such contributions to their own use. In conjunction with the project, the Department publishes two booklets "Protect Your Pension" and "10 Warning Signs" that participants should be aware of if they suspect fraud in their 401(k) plan. As of May 31, 1999, the Department has recovered over \$67 million for plan participants.

June 11, 1996

Interpretive Bulletin 96-1 is adopted, providing guidance as to how participant investment education can be provided without the provider becoming a plan fiduciary.

July 30, 1996

The Department launches an initiative to educate women about retirement savings, and releases an information kit on "Women and Pensions."

July 31, 1996

Prohibited Transaction Class Exemption (PTE 96-62) is issued by the Department. It provides an expedited procedure whereby applicants can obtain an authorization on an accelerated basis to engage in an otherwise prohibited transaction, where the transaction for which the authorization is sought is substantially similar to at least two individual exemptions previously granted by the Department. As of June 30, 1999, 79 final authorizations have been issued by the Department under the expedited procedure.

August 21, 1996

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) is enacted. HIPAA, which significantly limits the ability of health plans and insurers to place a preexisting condition exclusion on persons who previously had health coverage under a group health plan or with a health insurer, and prohibits discrimination against persons based on health status, significantly expanded the Department's responsibility in the health area.

September 26, 1996

The Mental Health Parity Act (MHPA) is enacted. MHPA provides for parity in the application of dollar limits on mental health benefits with dollar limits on medical/surgical benefits in group health plans that provide coverage for both mental health and medical/surgical benefits.

September 26, 1996

The Newborns' and Mothers' Health Protection Act (NMHPA) is enacted. NMHPA provides protections for mothers and their newborn children with regard to hospital lengths of stay following childbirth in group health plans that provide coverage for hospital stays in connection with childbirth.

December 18, 1996

The Department issues a booklet containing answers to the most frequently asked questions relating HIPAA, MHPA and NMHPA.

March 31, 1997

PWBA launches a toll free publication hotline.

April 8, 1997

The Department, in conjunction with the IRS and the Department of Health and Human Services, issues interim regulations implementing HIPAA.

October 24, 1997

The Department announces a public bidding process for developing an electronic filing system for filing annual reports ("EFAST"). EFAST, when fully developed, will make it faster and cheaper for plans to file and the government to process Form 5500 annual reports.

November 12, 1997

PWBA holds hearings to determine whether plan sponsors and participants understand the fees and expenses they are charged and whether more disclosure is needed. This leads to public hearings held by PWBA, the issuance by PWBA of a research study on fees, and publication of two booklets, entitled "A Look at 401(k) Plan Fees" to help employers and employees understand 401(k) fees and expenses.

November 19, 1997

The SAVER Act is enacted, calling for periodic savings education summits to emphasize the need for retirement savings.

June 4-5, 1998

The Department coordinates the first National Retirement Savings Education Summit, co-hosted by the President, Vice President and congressional leadership.

June 6, 1998

The Department launches a new interactive Web site, the Small Business Retirement Savings Advisor, for small business owners who want basic information about starting a retirement plan for their employees.

June 9, 1998

Gary Moore, the trustee of the Emergi-Lite Inc. 401(k) plan, pleads guilty to embezzling over \$1.5 million from the 401(k) plan, in a criminal case resulting from an investigation by PWBA in conjunction with the Department's Office of the Inspector General and the FBI. Moore is sentenced to 51 months in jail. In addition, as a result of PWBA's civil investigation of the procedure of the plan fiduciary's oversight of Moore and of collection on the plan's fidelity bond, over \$2.5 million will be restored to plan participants, which constitutes a full return of principal and of lost income. The distribution of the recovered sums is expected to take place in September 1999.

September 9, 1998

The Department proposes a revised claims procedure regulation to take into account advances in claims processing technology and changes in the health care system since the existing claims procedure regulation was promulgated 22 years ago.

December 16, 1998

The Department launches a Health Benefits Education Campaign in conjunction with 70 public and private partners and publically distributes a new tool kit for workers facing life and work events that impact their health benefits.

June 29, 1999

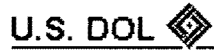
The Department and the IRS publish for comment a proposed computer scannable form of the 1999 Form 5500 annual report.

July 15, 1999

The Department announces the availability of a new 401(k) fee disclosure form. This form, jointly developed by the American Bankers Association, the American Council of Life Insurance, and the Investment Company Institute with the active encouragement of the Department of Labor, is meant to give employers, and especially small employers, a cost effective tool to compare the investment fees and administrative costs of competing 401(k) plan service providers.

September 2, 1999

There are over \$4 trillion of assets held in 700,000 private pension plans covering over 90 million participants, with another 6 million health and welfare plans covering over 150 million participants and beneficiaries.



What You Should Know About Your Pension Rights

Introduction

Few investments are more important than the one you have in your pension plan. Because the average American will rely on pension savings for 18 years after retirement, it is essential that you understand your rights and obligations under your pension plan.

Participants in pension plans have certain rights that are governed by federal law. They also have obligations. Similarly, the people who sponsor your pension plan also have rights and obligations. Most are spelled out by a law called the Employer Retirement Income Security Act of 1974 (ERISA). The purpose of this booklet is to explain some of the most important features of this law.

This booklet explains, for example, the role of different federal agencies in regulating pension plans. It describes the obligations of your employer (or other appropriate plan official) to provide you with information about the plan, and tells you what information must be made available automatically, at regular intervals, and, in many cases, at no cost to you. It also points out the importance of keeping informed on any changes in your plan's rules of operation.

This booklet tells you what is generally required to become eligible for your pension plan, including how long you may have to be an employee before becoming a participant. Important concepts such as accruing benefits and being vested in your pension are explained. The booklet also answers common questions about changes in your employee status might affect your pension, such as termination or returning to your job after an interruption of employment. And it discusses the potential impact on your pension plan of mergers, acquisitions and plant shutdowns.

Other important features of this booklet include:

- A description of your plan fiduciary's obligations to invest your money prudently and the sanctions against fiduciaries who misuse or mismanage your money.
- An explanation of the rules that require your employer to adequately fund your pension plan, as well as description of the penalties for employers who fail to comply with minimum funding requirements.
- Instructions on how to file a claim for a pension benefit and how to appeal for a review of any denial of your claim.

The information contained in the following pages answers many of the most common questions about pension plans. Keep in mind, however, that this booklet is a simplified summary of participant rights and responsibilities, not a legal interpretation of ERISA.

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Chapter 1: ERISA and Your Pension Plan

This chapter explains the purpose of the Employee Retirement Income Security Act, what it covers, and what is excluded from its coverage. It tells which plans are exempt from the law and who administers it. The following questions are addressed:

- What Is ERISA?
 - What Are Defined Benefit and Defined Contribution Pension Plans?
 - What Are Simplified Employee Pension Plans (SEPs)?
 - What Are Profit Sharing Plans or Stock Bonus Plans?
 - What Are 401(k) Plans?
 - What Are Employee Stock Ownership Plans (ESOPs)?
 - What Is The Role Of The Labor Department In Regulating Pension Plans?
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What Is ERISA?

The Employee Retirement Income Security Act of 1974 (ERISA) is a federal law that sets minimum standards for pension plans in private industry. For example, if your employer maintains a pension plan, ERISA specifies when you must be allowed to become a participant, how long you have to work before you have a nonforfeitable interest in your pension, how long you can be away from your job before it might affect your benefits, and whether your spouse has a right to part of your pension in the event of your death. Most of the provisions of ERISA are effective for plan years beginning or after January 1, 1975.

ERISA does not require any employer to establish a pension plan. It only requires that those who establish plans must meet certain minimum standards. The law generally does not specify how much money a participant must be paid as a benefit.

ERISA does the following:

- Requires plans to provide participants with information about the plan including important information about plan features and funding. The plan must furnish some information regularly and automatically. Some is available free of charge; some is not.
- Sets minimum standards for participation, vesting, benefit accrual and funding. The law defines how long a person may be required to work before becoming eligible to participate in a plan, to accumulate benefits, and to have a nonforfeitable right to those benefits. The law also establishes detailed funding rules that require plan sponsors to provide adequate funding for your plan.
- Requires accountability of plan fiduciaries. ERISA generally defines a fiduciary as anyone who exercises discretionary authority or control over a plan's management or assets, including anyone who provides investment advice to the plan. Fiduciaries who do not follow the principles of conduct may be held responsible for restoring losses to the plan.
- Gives participants the right to sue for benefits and breaches of fiduciary duty.
- Guarantees payment of certain benefits if a defined benefit plan is terminated, through a federally

chartered corporation, known as the Pension Benefit Guaranty Corporation.

ERISA also creates standards welfare benefit plans, but those plans are not discussed in this booklet.

What Are Defined Benefit and Defined Contribution Pension Plans?

Generally speaking, there are two types of pension plans: defined benefit plans and defined contribution plans. A defined benefit plan promises you a specified monthly benefit at retirement. The plan may state this promised benefit as an exact dollar amount, such as \$100 per month at retirement. Or, more commonly, it may calculate a benefit through a plan formula that considers such factors as salary and service -- for example, 1 percent of your average salary for the last 5 years of employment for every year of service with your employer.

A defined contribution plan, on the other hand, does not promise you a specific amount of benefits at retirement. In these plans, you or your employer (or both) contribute to your individual account under the plan, sometimes at a set rate, such as 5 percent of your earnings annually. These contributions generally are invested on your behalf. You will ultimately receive the balance in your account, which is based on contributions plus or minus investment gains or losses. The value of your account will fluctuate due to the changes in the value of your investments. Examples of defined contribution plans include 401(k) plans, 403(b) plans, employee stock ownership plans, and profit-sharing plans. The general rules of ERISA apply to each of these types of plans, but some special rules also apply. To determine what type of plan your employer provides, check with your plan administrator or reach your summary plan description (see p.13).

A money purchase pension plan is a plan that requires fixed annual contributions from your employer to your individual account. Because a money purchase pension plan requires these regular contributions, the plan is subject to certain funding and other rules.

What Are Simplified Employee Pension Plans (SEPs)?

Your employer may sponsor a simplified employee pension plan or SEP. SEPs are relatively uncomplicated retirement savings vehicles. A SEP allows employees to make contributions on a tax-favored basis to individual retirement accounts (IRAs) owned by the employees. SEPs are subject to minimal reporting and disclosure requirements.

Under a SEP, you as the employee must set up an IRA to accept your employer's contributions. As a general rule, your employer can contribute up to 15 percent of your pay into a SEP each year, up to a maximum of \$30,000.

If you work for a company employing 25 or fewer people, your employer may establish a salary reduction SEP. If your employer has such a plan, in addition to any employer contributions to your SEP, you may also elect to have SEP contributions made on your behalf from your salary on a before-tax basis, up to the lesser of 15 percent of your pay or \$9,240 in 1995. Your deferral contributions are added to any employer contributions to determine the annual limit (\$30,000 or 15% of your pay). Other limits may apply to the amount that may be contributed on your behalf. State and local governments and tax-exempt organizations are not eligible to establish salary reduction SEPs.

What Are Profit Sharing Plans or Stock Bonus Plans?

A profit sharing or stock bonus plan is a defined contribution under which the plan may provide, or the employer may determine, annually, how much will be contributed to the plan (out of profits or otherwise). The plan contains a formula for allocating to each participant a portion of each annual contribution. A profit sharing plan or stock bonus plan include a 401(k) plan.

What Are 401(k) Plans?

Your employer may establish a defined contribution plan that is a cash or deferred arrangement, usually

called a 401(k) plan. You can elect to defer receiving a portion of your salary which is instead contributed on your behalf, before taxes, to the 401(k) plan. Sometimes the employer may match your contributions. There are special rules governing the operation of a 401(k) plan. For example, there is a dollar limit on the amount you may elect to defer each year. The dollar limit on the amount you elect to defer each year. The dollar limit in 1995 is \$9,240. The amount may be adjusted annually by the Treasury Department to reflect changes in the cost of living. Other limits may apply to the amount that may be contributed on your behalf. For example, if you are highly compensated, you may be limited depending on the extent to which rank and file employees participate in the plan. Your employer must advise you of any limits that may apply to you.

Although a 401(k) plan is a retirement plan, you may be permitted access to funds in the plan before retirement. For example, if you are an active employee, your plan may allow you to borrow from the plan. Also, your plan may permit you to make a withdrawal on account of hardship, generally from your funds you contributed. The sponsor may want to encourage participation in the plan, but it cannot make your elective deferrals a condition for the receipt of other benefits, except for matching contributions.

The adoption of 401(k) plans by a state or local government or a tax-exempt organization is limited by law.

What Are Employee Stock Ownership Plans (ESOPs)?

Employee stock ownership plans (ESOPs) are a form of defined contribution plan in which the investments are primarily in employer stock. Congress authorized the creation of ESOPs as one method of encouraging employee participation in corporate ownership.

What Is The Role Of The Labor Department In Regulating Pension Plans?

The Department of Labor enforces Title I of ERISA, which, in part, establishes participants rights and fiduciaries' duties. However, certain plans are not covered by the protections of Title I. They are:

- Federal, state, or local government employee plans, including plans of certain international organizations.
- Certain church or church association plans.
- Plans maintained solely to comply with state workers compensation, unemployment compensation or disability insurance laws.
- Plans maintained outside the United States primarily for non-resident aliens.
- Unfunded excess benefit plans -- plans maintained solely to provide benefits or contributions in excess of those allowable for tax-qualified plans.

The Labor Department's Pension and Welfare Benefits Administration is the agency charged with enforcing the rules governing the conduct of plan managers, investment of plan money, reporting and disclosure of plan information, enforcement of the fiduciary provisions of the law, and workers benefit rights. But other agencies also are involved in pension law monitoring and enforcement. They are:

What Other Federal Agencies Regulate Plans?

- The Treasury Department's Internal Revenue Service is responsible for ensuring compliance with the Internal Revenue Code, which establishes the rules for operating a "tax-qualified" pension plan, including pension plan funding and vesting requirements. A pension plan that is "tax-qualified" can offer special tax benefits both to the employer sponsoring the plan to the participants who receive pension benefits. The IRS maintains a taxpayer assistance line for employee plans at (202) 622-6074 (1:30-4:00 p.m. Eastern Time, Monday- Thursday).
- The Pension Benefit Guaranty Corporation. The PBGC, a non-profit, federally created corporation, guarantees payment of certain pension benefits under defined benefit plans that are terminated with insufficient money to pay benefits. The PBGC may be contacted at 1200 K Street, N.W., Washington, D.C. 20005, telephone (202) 326-4000.

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Chapter 2: Your Right to Plan Information

Accessibility Information

This chapter outlines the disclosure requirements of pension plans. It describes the documents that a plan administrator must make available to you, the information these documents should contain and alternative sources of the information. The following questions are addressed:

- What Information Is Your Plan Required to Disclose?
 - Sources of Plan Information
 - What Documents Are Available At Other Federal Agencies?
-

What Information Is Your Plan Required to Disclose?

ERISA requires plan administrators -- the people who run plans -- to give you in writing the most important facts you need to know about your pension plan. Some of these facts must be provided to you regularly and automatically by the plan administrator. Others are available upon request, free-of-charge or for copying fees. Your request should be made in writing.

One of the most important documents you are entitled to receive automatically when you become a participant of an ERISA-covered pension plan or a beneficiary receiving benefits under such a plan, is a summary of the plan, called the summary plan description or SPD. Your plan administrator is legally obligated to provide to you, free of charge, the SPD. The summary plan description is an important document that tells you what the plan provides and how it operates. It tells you when you begin to participate in the plan, how your service and benefits are calculated, when your benefit becomes vested, when you will receive payment and in what form, and how to file a claim for benefits. You should read your summary plan description to learn about the particular provisions that apply to you. If a plan is changed, you must be informed, either through a revised summary plan description, or in a separate document, called a summary of material modifications, which also must be given to you free of charge.

In addition to the summary plan description, the plan administrator must automatically give you each year a copy of the plan's summary annual report. This is a summary of the annual financial report that most pension plans must file with the Department of Labor. These reports are filed on government forms called Form 5500 or 5500-C/R. The summary annual report is available to you at no cost. To learn more about your plan's assets, you may ask the plan administrator for a copy of the annual report in its entirety.

If you are unable to get the summary plan description, the summary annual report or the annual report from the plan administrator, you may be able to obtain a copy by writing to the Department of Labor, PWBA, Public Disclosure Room, Room N-5638, 200 Constitution Avenue, N.W., Washington, D.C. 20210, for a nominal copying charge. If possible, provide the name of the plan, employer identification number (a 9-digit number assigned by the IRS) and the plan number (a 3-digit number, such as 002). If you do not have this information, give the name of the plan and the city and state.

If you have information that plan assets are being mismanaged or misused, send details to the nearest regional or district office of the Department of Labor, see paragraphs 46 thru 48 for a list of PWBA office.

Following is a list and description of the documents that must be made available to you. If a plan administrator refuses to comply with your request for documents, and the reasons are within his or her

control, a court may impose a penalty of up to \$100 per day. The Department of Labor does not have the authority to impose this penalty. See Chapter 6 on your right to sue under ERISA to enforce your rights.

Sources of Plan Information

Type of Document	Who you can get it from	When you can get it	Your cost
Summary Plan Description (SPD): This summary of your pension plan tells you what the plan provides and how it operates.	Plan Administrator	Upon Written Request	<i>Reasonable Charge</i>
		Automatically within 90 days of your becoming covered under the plan	<i>Free</i>
		Automatically every 5 years if your plan is amended	<i>Free</i>
		Automatically every 10 years if your plan has not been amended	<i>Free</i>
	Department of Labor	Upon request	<i>Copying Charge</i>
Summary of Material Modifications (SMM): This summarizes material changes to your plan.	Plan Administrator	Automatically within 210 days after the end of the plan year for which the plan has been amended or modified (distribution of a revised SPD satisfies this requirement)	<i>Free</i>
	Department of Labor	Upon request	<i>Copying Charge</i>
Summary Annual Report: This summarizes the annual financial reports that most pension plans file with the Department of Labor.	Plan Administrator	Automatically within 9 months after the end of the plan year, or 2 months after the due date for filing the annual report.	<i>Free</i>
Annual Report (Form 5500 Series): Annual financial reports that most pension plans file with the Department of Labor.	Plan Administrator	Latest annual report upon written request	<i>Reasonable Charge</i>
	Department of Labor	Upon request	<i>Copying Charge</i>
Individual Benefit Statement: A statement describing your total accrued and vested benefits is required to be provided by most pension plans.	Plan Administrator	Upon written request once every 12 months	<i>Free</i>
Documents and instruments under which the plan is established or operated: This includes, for example, the plan document, collective bargaining agreement, trust agreement, SPD, SMM, and latest annual report.	Plan Administrator	Upon written request	<i>Reasonable Charge</i>
		Available for inspection upon request	<i>Free</i>
Disclosure Notice: Plan administrators with plans less than 90% funded must inform you about the plan funding level and limits on PBGC's guarantees.	Plan Administrator	Within 2 months after the due date for filing the annual report	<i>Free</i>

**Documents filed with the Labor Department can be obtained by contacting the U. S. Department of Labor, PWBA, Public Disclosure Facility, Room N5638, 200 Constitution Avenue, NW, Washington, D.C. 20210, (202) 219-8771.*

What Documents Are Available At Other Federal Agencies?

Documents for some plans are available for public inspection at the Internal Revenue Service. These documents include the applications filed by pension plans to determine if they meet federal tax-qualification requirements, applications filed by certain organizations to determine if they qualify as tax-exempt, and the Internal Revenue Service responses to these applications. Get in touch with the Internal Revenue Service Freedom of Information Reading Room, P.O. Box 795, Washington, D.C. 20044, tel. (202) 622-5164, for information on available documents.

If you terminate employment and you have a vested pension benefit (see Chapter 3 for an explanation of vested benefits) that you are not eligible to receive until later, that information will be reported by your plan to the Internal Revenue Service, which, in turn, will inform the Social Security Administration. This information must also be provided to you by the plan. The Social Security Administration will tell you, upon request, whether you were reported as having a deferred vested benefit under any plan; for information about making these requests, call 1-800-772-1213 (toll-free). The Administration will automatically give you this information when you apply for social security benefits. Nevertheless, it is in your interest to keep the plan administrator informed about any change of address or name change after you leave employment to assure that you will receive the pension benefit due to you.



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Chapter 3: Benefit Accrual and Vesting

Accessibility Information

This chapter describes ERISA's rules for eligibility, benefit accrual and vesting. It addresses the following questions:

- What is the Earning Service Credit?
 - Who Must Be Allowed to Participate In Your Employer's Pension Plan?
 - What Is Benefit Accrual And How Does It Work?
 - What Other Rights Are Protected As Part Of Your Accrued Benefits?
 - Can Your Plan Reduce Future Benefits?
 - What Happens To Your Service Credit If You Leave Your Job And Later Return?
 - What Happens To Your Benefit Accruals (And Your Pension Payments) If You Retire And Later Go Back To Work?
 - What Is Vesting And How Does It Work?
 - May Plans Use Other Vesting Schedules?
-

What is the Earning Service Credit?

ERISA establishes rules for how employers must measure employees' employment service to determine how the eligibility, benefit accrual, and vesting rules apply. ARISE generally defines a year of service as 1,000 hours of service during a 12-month period. Different rules apply to counting service for purposes of eligibility, benefit accrual, and vesting.

A plan basically has a choice among three methods for determining whether you must be credited with a year of service for participation, vesting, and, in some circumstances, benefit accrual: the general method of counting service, a simplified equivalency method, or the elapsed time method. Refer to your summary plan description to see which method is used by your plan.

Who Must Be Allowed to Participate In Your Employer's Pension Plan?

Generally speaking, if your employer provides a plan that covers your position, you must be permitted to become a participant if you have reached age 21 and have completed 1 year of service. Even if you work part-time or seasonally, you cannot be excluded from the plan on the grounds of age or service if you meet this service standard. You must be permitted to begin to participate in the plan no later than the start of the next plan year or 6 months after meeting the requirements of membership, whichever is earlier. You should be aware, however, that your employer may provide one or more plans covering different groups of employees or may exclude certain categories of employees from coverage under any plan. For example, your employer may sponsor one plan for salaried employees and another for union employees, or you may not be within the group that the employer defines as covered by a plan.

ERISA imposes certain other participation rules. They depend on the type of employer for whom you work, the type of plan your employer provides, and your age. For example:

- If you were an older worker when you were hired, you cannot be excluded from participating in the plan on the grounds of age just because you are close to retirement age.
- If upon your entry into the plan, your benefit will be immediately fully "vested," or nonforfeitable (see Page 23), the plan can require that you complete 2 years of service before you become eligible to participate in the plan. 401(k) plans, however, cannot require you to complete more than one year of service before you become eligible to participate.
- If you work for a tax-exempt educational institution and your plan benefit becomes vested after you earn 1 year of service, the plan can require that you be at least age 26 (instead of age 21) before you can participate in the plan.
- If your employer maintains a SEP, you must be permitted to participate if you have performed services for the employer in 3 of the immediately preceding five years.

What Is Benefit Accrual And How Does It Work?

When you participate in a pension plan, you accrue (earn) pension benefits. Your accrued benefit is the amount of benefit that has accumulated or been allocated in your name under the plan as of a particular point in time. ERISA generally does not set benefit levels or specify precisely how benefits are to accumulate.

Plans may use any definition of service for purposes of benefit accrual as long as the definition is applied on a reasonable and consistent basis. Service for purposes of benefit accrual generally takes into account only the years of service you earn after you become a plan participant, not all service you may perform since you were hired by your employer. Employees who work less than full time, but at least 1,000 hours per year, must be credited with a pro rata portion of the benefit that they would accrue if they were employed full-time.

To illustrate: If a plan requires 2,000 hours of service for full benefit accrual, then a participant who works 1,000 hours must be credited with at least 50 percent of the full benefit accrual.

A special rule applies to SEPs: all participants who earn at least \$400 (in 1995) in compensation from their employers are entitled to receive a contribution or, if the SEP is a salary reduction SEP, to elect to make a contribution.

Since ERISA generally does not regulate the amount of your benefit, you can estimate how much pension you are building up only by examining the summary plan description or the plan document. These documents should explain how you earn service credit for full benefit accrual each plan year.

What Other Rights Are Protected As Part Of Your Accrued Benefits?

Your accrued benefit includes more than just the amount of benefit you have accumulated. Your plan provides you with various rights and options, some of which are protected rights attached to your benefit amount. As a general rule, protected rights cannot be reduced or eliminated, nor can they be granted or denied at your employer's discretion. If a plan feature you care about has been eliminated, this section is designed to help you determine if it was a protected right or not.

The rights that are protected include optional forms of benefit, early retirement benefits, and retirement-type subsidies.

- Optional forms of benefit payment. An example of an optional form of benefit that your plan may provide is the right to receive payment of your benefits in a lump sum payment rather than as an annuity.
- Early retirement benefit. ERISA does not require a pension plan to provide participants with the option to retire earlier than at the plan's normal retirement age, but if such an option is offered, a plan generally may not be amended to eliminate the right to take such an early retirement with respect to benefits accrued before the amendment.
- Retirement-type subsidy. Retirement-type subsidies are also a protected part of your benefit and

cannot be eliminated retroactively.

Certain important plan features are not protected, such as a social security supplement, the right to direct investments, the right to a particular form of investment, the right to take a loan from a plan, or the right to make employee contributions at a particular rate on either a before- or after-tax basis.

Can Your Plan Reduce Future Benefits?

ERISA does not prohibit your employer from amending the plan to reduce the rate at which benefits accrue in the future. For example, a plan that pays \$5 in monthly benefits at age 65 for years of service up through 1995, may be amended to provide that years of service beginning in 1996 will be credited at the rate of \$4 per month.

If you are a participant in a defined benefit plan or a money purchase plan, you must receive written notice of a significant reduction in the rate of future benefit accruals after the plan amendment is adopted and at least 15 days before the effective date of the plan amendment. The written notice must describe the plan amendment and its effective date.

What Happens To Your Service Credit If You Leave Your Job And Later Return?

A break in service can have serious consequences for your pension if it extends for a long enough time and your pension benefit is not yet fully vested. However, ERISA does not permit your accrued benefit to be forfeited if you have a short break in service. ERISA establishes rules governing the circumstances under which a plan is required to continue to credit a participant with service earned before a break in service if the participant later returns to employment. These rules are very technical, but in general guarantee your service credit cannot be forfeited for absences shorter than 5 consecutive years. If you need to take a leave of absence, you should carefully examine your plan's rules so that you do not inadvertently and unnecessarily lose pension benefits you have accrued.

What Happens To Your Benefit Accruals (And Your Pension Payments) If You Retire And Later Go Back To Work?

If you continue to work past normal retirement age (without retiring), you continue to accrue benefits, regardless of age. However, a plan can limit the total number of years of service that will be taken into account for benefit accrual for anyone under the plan. If you retire and later go back to work with your employer, you must be allowed to continue to accrue additional benefits, subject to any such limited on total years of service credited under the plan.

Plans that provide for the payment of early retirement benefits may suspend payment of those benefits if you are reemployed before reaching normal retirement age. However, if the plan suspends payment of benefits before normal retirement age, under circumstances that would not have permitted a suspension after normal retirement age, and the plan pays an actuarially reduced early retirement benefit, the plan must actuarially recalculate your monthly payment when you begin again to receive payments.

Under certain circumstances (described below), your pension payments after you reach normal retirement age may be suspended if you return to work. For example, ERISA permits a multiemployer plan to suspend the payment of normal retirement benefits if you return to work in the same industry, the same trade, and the same geographical area covered by the plan as when benefits commenced.

Before suspending benefit payments, however, the plan must notify you of the suspension during the first calendar month in which the plan withholds payments. The notification must give you the information on why benefit payments are suspended, a general summary and a copy of the plan's suspension of benefit provisions, a statement regarding the Department of Labor regulations, and information on the plan's procedure under which you may request a review of the decisions to suspend benefit payments. If most of this information is contained in the plan's summary plan description, the notification may simply refer to the appropriate pages of the summary plan description.

A plan that suspends benefit payments must advise you of its procedures for requesting an advance determination of whether a particular type of reemployment would result in a suspension of benefit payments. If you are a retiree and are considering taking a job, you may wish to write to the administrator of your plan to ask if your pension benefits would be suspended.

What Is Vesting And How Does It Work?

Vesting refers to the amount of time you must work before earning a nonforfeitable right to your accrued benefit. When you are fully "vested," your accrued benefit will be yours, even if you leave the company before reaching retirement age. Generally, if you are employed when you reach your plan's "normal" retirement age (usually 65), you will be fully vested. You also must be permitted to earn a vested right to your accrued benefit through service as described below.

You are always entitled to 100 percent vesting in your own contributions and salary reduction contributions and their investment earnings. However, if your employer contributes to your accrued benefit (as most do), you may be required to complete a certain number of years of service with the employer before the employer portion of your accrued benefit becomes vested. Thus, if you terminate employment before working for a long enough period with your employer, you may forfeit all or part of your accrued benefit provided by your employer.

You must be permitted to earn vesting credit according to a vesting schedule that is at least as generous as one of the two following schedules. ERISA sets these standards as a minimum for counting vesting service. Plans may provide a different standard, as long it is more generous than these minimums. Check your summary plan description for a description of your employer's vesting schedule.

7-YEAR "GRADED" VESTING SCHEDULE

Years of vesting service you have completed.	Percentage of your accrued benefit that is vested.
Less than 3	0%
At least 3 but less than 4	20%
At least 4 but less than 5	40%
At least 5 but less than 6	60%
At least 6 but less than 7	80%
At least 7	100%

5-YEAR "CLIFF" VESTING SCHEDULE

Years of vesting service you have completed.	Percentage of your accrued benefit that is vested.
Less than 3	0%
At least 5	100%

With some exceptions, once you begin participating in a pension plan, all of your years of service with the employer maintaining the plan after you reached age 18 must be taken into account to determine whether and the extent to which your accrued benefits are vested, including service you earned before you began to participate in the plan and service you earned before the effective date of ERISA.

However, ERISA does allow plans to disregard certain periods for purposes of determining an employee's vesting service. If you wish further details on what periods of service may be disregarded, see your summary plan description or the plan document to find out what periods are counted in your plan.

When you receive a benefit statement, compare the amount of your accrued benefit with the amount or

percentage of your vested benefit to determine its accuracy. If these items are not clear from your benefit statement, ask your plan administrator. The plan administrator send you a benefit statement each year. If not, you may request a copy. In order to keep track of your vesting service, you may want to keep records of your hire date, the date you began participating in the plan, and the dates of any leaves of absence that could affect your total service.

If the plan's vesting schedule is changed after you have completed at least 3 years of service, you have the right to select the vesting schedule that existed prior to the change for the entire length of your service, rather than the new schedule.

May Plans Use Other Vesting Schedules?

Multiemployer plans can have a slower vesting schedule, and top-heavy plans must have a faster vesting schedule. A multiemployer plan is a plan to which several unrelated employers are required to contribute under one or more collective bargaining agreements. Participants in a multiemployer plan who are covered by the collective bargaining agreement may need to complete 10 years of service to be fully vested, in accordance with the following vesting schedule:

Years of vesting service you have completed.	Percentage of your accrued benefit that is vested.
Less than 10	0%
At least 10	100%

Plans are considered "top-heavy" if they are tax qualified and more than 60 percent of the benefits accrue to certain owners and officers, otherwise known as "key employees." This could, for example, occur in small companies that have frequent turnover of rank-and-file workers. In years in which a plan is top-heavy, you have the right to both faster vesting and minimum benefits, if you are not a key employee.

All benefits under a SEP must be fully vested at all times.



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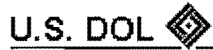
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Chapter 4: Payment of Benefits

This chapter outlines your rights to payment of your benefits. The following questions are addressed:

- When Can You Expect Payment Of Your Benefits?
 - When Can You Expect Payment Of Your Benefits?
 - When Must You Take Payment?
 - In What Form Will Your Benefits Be Paid?
-

As described in the previous chapter, ERISA sets rules protecting your eligibility to participate, your accrual of benefits, and your becoming vested under your pension plan. ERISA also provides a variety of rights that you have as a plan participant concerning when you may or must be permitted to receive your benefits. This chapter describes your payment rights.

When Can You Expect Payment Of Your Benefits?

ERISA provides specific rules governing when you may or must begin receiving your pension benefits. First, ERISA sets the latest date by which the plan must permit you to begin receiving your benefit. Under this rule, payment must begin by the 60th day after the end of the plan year in which the latest of the following events occur:

- (1) you reach age 65 or, if earlier, the normal retirement age specified by your plan;
- (2) the end of the 10th year after you began participation in the plan ends; or
- (3) you terminate your service with the employer.

Thus, for example, your plan must provide at a minimum that you will be entitled to begin to receive your benefit 60 days after the end of the year in which you reach age 65, if you began participation in the plan at least 10 years before that year.

Your plan may allow you to receive payment of your benefit earlier than required by the above rule (and many plans do, subject to rules described below). However, as long as the present value of your vested accrued benefit is greater than \$3,500, the plan cannot force you to begin receiving your benefit before you reach the age that is generally considered normal retirement age (or age 62 if later).

If the present value of your vested accrued benefit under the plan is \$3,500 or less, the plan may require you to receive your benefit when it first becomes distributable, such as when you terminate employment.

When May Your Plan Permit You To Take Payment?

ERISA provides rules governing the times at which a pension plan may permit you to receive benefits. As these limitations on "distribution events" for payment vary depending on the type of pension plan, you should consult your summary plan description for the specific events or times that are the conditions under which you will be entitled to receive your benefits. After the event occurs that permits payment of your benefit, your plan may require some reasonable period of time during which to calculate your benefit and determine your payment schedule, or to value your account balance and to liquidate any investments in which your account is invested. The following are a few general rules about possible

distribution events for which your plan may provide.

If your plan is a defined benefit plan or a money purchase plan, it will set a normal retirement age, which is generally the time at which you will be eligible to begin receiving your vested accrued benefit. These types of plans may permit earlier payments, however, either by providing for "early retirement" benefits, for which the plan may set additional eligibility requirements, or by permitting benefits to be paid when you terminate employment, suffer a disability, or die.

If your plan is a 401(k) plan, it may permit you to take some or all of your vested accrued benefit when you terminate employment, retire, die, become disabled, reach age 59 1/2, or if you suffer a hardship.

If your plan is profit-sharing plan or a stock bonus plan, your plan may permit you to receive your vested accrued benefit after you terminate employment, become disabled, die, reach a specific age, or after a specific number of years have elapsed.

Your plan's summary plan description should describe all of the rules applicable to any of the events that permit distributions.

When Must You Take Payment?

ERISA also sets a date by which you must begin to receive your benefits, regardless of your wishes or the plan's rules, if your plan is tax-qualified. This mandatory beginning date is generally April 1 of the calendar year following the calendar year in which you reach age 70 1/2. ERISA provides rules for determining how much of your accrued benefit you must then receive each year.

In What Form Will Your Benefits Be Paid?

With some very important limits, your plan can dictate the forms in which you may receive your accrued benefit. The protections that ERISA provides about form of benefit payments vary (again) depending on whether you have a defined benefit plan, money purchase plan, or other kind of defined contribution plan. If you are covered under a defined benefit plan or a money purchase plan, your benefit must be available in the form of a life annuity, which means you will receive equal periodic payments (e.g., monthly, quarterly, etc.) for the rest of your life. If you are married, your benefit must be available in the form of a "qualified joint and survivor annuity." (That form of benefit payment is described in the next chapter, concerning spousal rights to benefit payments).

If you are covered under a defined contribution plan that is not a money purchase plan, the plan may choose to pay your benefits in a single lump sum payment, or in any other form it chooses. If it offers a life annuity option, however, and you choose that option, you and your spouse(if any) will be protected by being offered a life annuity or a joint and survivor annuity that satisfies the requirements of ERISA.



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U.S. DOL Chapter 5: Providing Survivor Benefits To Your Spouse

This chapter tells you what protections ERISA provides to your surviving spouse if your benefit was vested upon your death. The following questions are addressed:

- What Happens To Your Benefits Upon Death?
 - What Is A Qualified Joint and Survivor Annuity (QJSA)?
 - What Is A Qualified Preretirement Survivor Annuity (QPSA)?
 - What Survivor Benefit Rules Apply To Most Defined Contribution Plans (Such As 401(k) Plans)?
 - Where Can You Get More Information About QJSA And QPSA Rights?
-

What Happens To Your Benefits Upon Death?

ERISA provides some protection to surviving spouses of deceased participants who had a vested pension benefit before death. The nature of the protection depends on the type of plan and whether the participant dies before or after payment of the pension benefit is scheduled to begin, otherwise known as the annuity starting date. The summary plan description, described in Chapter 2, will tell you the type of plan involved and whether survivor annuities or other death benefits are provided under the plan.

What Is A Qualified Joint and Survivor Annuity (QJSA)?

In a defined benefit plan or a money purchase plan, the form of retirement benefit payment, unless you and your spouse (if any) chose otherwise, must be a series of equal, periodic payments over your lifetime, with a payment continuing to your spouse for the rest of his or her life if he or she survives you. The periodic payment to your surviving spouse must be at least 50 percent, and not more than 100 percent, of the periodic payment received during your joint lives. This form of payment is called a "qualified joint and survivor annuity" (QJSA).

If the plan provides other forms of benefit payment, and you and your spouse want to waive your rights to receive the QJSA and select one of the other payment forms available, you can do so according to specific rules. You and your spouse must receive a timely explanation of the QJSA, your waiver must be made in writing within certain time limits, and your spouse must give consent to the waiver in writing witnessed by a notary or plan representative.

What Is A Qualified Preretirement Survivor Annuity (QPSA)?

A survivor annuity must also be offered by a defined benefit or money purchase plan if a married participant with a vested benefit dies before he or she begins receiving benefits. This survivor annuity is called a "qualified preretirement survivor annuity" (QPSA), and ERISA specifies how the QPSA is calculated. You and your spouse must be given a timely explanation of the QPSA. You may only waive the right to a QPSA in writing, and your spouse must consent to the waiver of the QPSA in writing, witnessed by a notary or plan representative.

What Survivor Benefit Rules Apply To Most Defined Contribution Plans (Such As 401(k) Plans)?

Most profit sharing and stock bonus plan, like 401(k) plans, generally need not offer a survivor annuity. However, there are rules for such plans that protect the spouse as beneficiary.

Before you begin to receive your benefits under such a plan, your spouse is automatically presumed to be your beneficiary. Thus, if you die before you receive your benefits, all of your benefits will automatically go to your surviving spouse. If you wish to select a beneficiary other than your spouse, your spouse must consent in writing, witnessed by a notary or plan representative. This protects your spouse in the event of your death before any payout has been made. When you reach a distribution date, however, such as when you terminate employment or reach retirement, you may choose, without your spouse's consent, among any optional forms of payment offered by the plan, including a life annuity, if offered by the plan. If you choose a life annuity, however, your spouse is then protected by QJSA rules, and the benefit will be paid as a QJSA unless you and your spouse consent to a different form, as outlined above.

Where Can You Get More Information About QJSA And QPSA Rights?

ERISA and the Internal Revenue Code prescribe detailed rules regarding the QJSA and QPSA rights. You may wish to obtain from the Internal Revenue Service the following publications on survivor annuities:

- IRS Publication 1565 -- "Looking Out for #2: A Married Couple's Guide to Understanding Your Benefit Choices at Retirement From a Defined Contribution Plan"
- IRS Publication 1566 -- "Looking Out for #2: A Married Couple's Guide to Understanding Your Benefit Choices at Retirement From a Defined Benefit Plan."

These rules reflect the law in effect for participants who completed an hour of service (or paid leave) on or after August 23, 1984. ERISA's survivor annuity rules are different if you are the surviving spouse of a participant who left employment before that date.



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U.S. DOL Chapter 6: Making a Benefits Claim And Filing Suit Under ERISA

This chapter outlines how and under what circumstances you can make a benefits claim. It tells you what appeal procedures to follow if your claim for benefits is denied, and describes your rights to pursue a lawsuit. The following questions are addressed:

- How Do You Make A Claim For Benefits?
 - May You Sue Under ERISA?
 - What Is The Role Of The Department Of Labor If You Sue Under ERISA?
 - May Your Employer Fire You For Asserting Your Rights Under ERISA?
-

How Do You Make A Claim For Benefits?

Under ERISA you have a right to make a claim for benefits due under a plan. ERISA requires all plans to have a reasonable written procedure for processing your claims for benefits and for appealing if your claim is denied. The summary plan description (see Chapter 2) should contain a description of your plan's claims procedure. If you believe you are entitled to a benefit from a pension plan, but your plan fails to set up a claims procedure, you may present the claim to the plan administrator.

If you make a claim for benefits that is denied, the plan must notify you in writing - generally within 90 days after receipt of the claim - of the reasons for the denial and the specific plan provisions on which the denial is based. If the plan denies your claim because the administrator needs more information to make a decision, the administrator must tell you what information is needed. Any notice of denial must also tell you how to file an appeal. If special circumstances require your plan to take more time to examine your request, it must tell you within 90 days that additional time is needed, why it is needed, and the date by which the plan expects to make a final decision. If you receive no answer at all in 90 days, this is treated the same as a denial, and you can proceed to appeal.

You must be allowed at least 60 days to appeal any denial. After receiving your appeal, the plan generally must issue a ruling within 60 days, unless the plan provides for a special hearing. If the plan notifies you that it must hold a hearing, or that it has other special circumstances, it may have an additional 60 days.

The plan must furnish you with the final decision on your appeal and the reasons for the decision with references to the relevant plan documents. If you disagree with the final decision, you may then file a lawsuit seeking your benefit under ERISA, as explained below. But courts generally require that you complete all the steps available to you under the claims procedure in a timely manner before you seek relief through a lawsuit. This is called "exhausting your administrative remedies."

May You Sue Under ERISA?

As a plan participant or beneficiary, you may bring a civil action in court to:

- Recover benefits due you and enforce your rights under the plan.
- Get access to plan documents you requested in writing. If your plan administrator does not supply the plan documents within 30 days of your written request, a court could find the plan administrator personally liable for up to \$100 per day (unless the failure results from circumstances reasonably beyond his or her control).

- Clarify your right to future benefits.
- Get appropriate relief from a breach of fiduciary duty.
- Enjoin any act or practice that violates the terms of the plan or any provision of Title I of ERISA, such as the reporting and disclosure, participation, vesting or funding, and fiduciary provisions, or to obtain other equitable relief.
- Enforce the right to receive a statement of vested benefits upon termination of employment.
- Obtain review of a final action of the Secretary of Labor, to restrain the Secretary from taking action contrary to ARISE, or to compel the Secretary to take action.
- Obtain review of any action of the PBGC or its agents that adversely affects you.

You may file your lawsuit under ERISA in a federal district court. If you seek benefits or clarification of your right to future benefits, you may file an alternative suit in a state court. The court in its discretion may order either party in the suit (you or the plan/plan fiduciaries/plan sponsor) to pay reasonable attorney fees and costs, when a participant or beneficiary sues under ERISA.

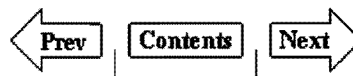
What Is The Role Of The Department Of Labor If You Sue Under ERISA?

The Secretary of Labor may directly bring a civil action under ERISA to enforce the fiduciary duty provisions of ERISA. The Secretary also has limited authority to bring a civil action to enforce ERISA's participation, vesting, and funding standards with respect to a tax-qualified plan. In addition, the Secretary of Labor has discretion to intervene in lawsuits filed in federal court to enforce rights under ERISA. A participant or beneficiary who brings an action in federal court claiming a breach of fiduciary duty must provide a copy of the complaint to the Secretary of Labor and the Secretary of the Treasury by certified mail. It is not necessary to provide such notice to any government agency if you bring a lawsuit solely to recover benefits under the plan.

May Your Employer Fire You For Asserting Your Rights Under ERISA?

ERISA prohibits employers from promising pensions and then firing or disciplining workers to avoid paying a pension. To that end, ERISA says it is unlawful for an employer to discharge, fine, suspend, expel, discipline, or discriminate against you or any beneficiary for the purpose of interfering with the attainment of any right to which you may become entitled under the plan or the law.

Also, employers cannot take any of these steps against you for exercising any of your rights or prospective rights under a plan or ERISA, or for giving information or testimony in any inquiry or proceeding relating to ERISA. Moreover, the use of force or violence to retrain, coerce, or intimidate you for the purpose of interfering with your rights or prospective rights, is punishable by a fine of up to \$10,000 and/or up to one year in prison.



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Chapter 7: Dividing Your Pension For Family Support

This chapter describes the rights of the parties and the obligations of the plan if a spouse, former spouse, child or other dependent seeks a portion or all of your pension benefits. It addresses the following:

- Can Your Pension Be Attached for Family Support?
 - What Requirements Must Be Met For A Domestic Relations Order To Be Qualified?
-

Can Your Pension Be Attached for Family Support?

In general, your pension benefits cannot be taken away from you by people to whom you owe money. The law makes a limited exception, however, when family support is at stake. Thus, a state court can award part or all of your pension benefit to your spouse, former spouse, child or other dependent by issuing a qualified domestic relations order, which must be honored by the plan. The person named in such an order is called an alternate payee. The court's order can be in the form of a state court judgment, decree, or order, or court approval of a property settlement agreement.

What Requirements Must Be Met For A Domestic Relations Order To Be Qualified?

When a plan receives a domestic relations order purporting to divide pension benefits, it must first determine whether the order is a qualified domestic relations order (QDRO). The order must relate to child support, alimony, or marital property rights and be made under state domestic relations law. To be "qualified" the order should clearly specify your name and last known mailing address and the name and last known address of each alternate payee. It also must state the name of your plan; the amount or percentage -- or the method of determining the amount or percentage -- of the benefit to be paid to the alternate payee; and the number of payments or time period to which the order applies. The order cannot provide a type or form of benefit not otherwise provided under the plan and cannot require the plan to provide an actuarially increased benefit. And if an earlier QDRO applies to your benefit, the earlier QDRO takes precedence over a later one.

In certain situations, a QDRO may provide that payment is to be made to an alternate payee before you are entitled to receive your benefit. For example, if you are still employed, a QDRO could require payment to an alternate payee on or after your "earliest retirement age," whether or not the plan would allow you to receive benefits at that time. If you are in the process of a divorce, and a QDRO is being prepared for your family, you may wish to be sure that the QDRO addresses whether a benefit is payable to an alternate payee upon your death and the consequences of the death of the alternate payee.



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U.S. DOL Chapter 8: Protecting Your Plan's Assets From Mismanagement and Misuse

This chapter is about the responsibilities of fiduciaries. Fiduciaries must act in accordance with ERISA guidelines and the rules of your plan. The following questions are addressed:

- What Protections Do The Fiduciary Requirements Of ERISA provide?
 - When Can Your Choose Your Own Investments?
-

What Protections Do The Fiduciary Requirements Of ERISA provide?

ERISA protects your plan from mismanagement and misuse of assets through its fiduciary provisions. ERISA defines a fiduciary as anyone who exercises discretionary control or authority over plan management or plan assets, anyone with discretionary authority or responsibility for the administration of a plan, or anyone who provides investment advice to a plan for compensation or has any authority or responsibility to do so. Plan fiduciaries include, for example, plan trustees, plan administrators, and members of a plan's investment committee.

The primary responsibility of fiduciaries is to run the plan solely in the interest of participants and beneficiaries and for the exclusive purpose of providing benefits and paying plan expenses. Fiduciaries must act prudently and must diversify the plan's investments in order to minimize the risk of large losses. In addition, they must follow the terms of plan documents to the extent that the plan terms are consistent with ERISA. They also must avoid conflicts of interest. In other words, they may not engage in transactions on behalf of the plan that benefit parties related to the plan, such as other fiduciaries, services providers or the plan sponsor.

Fiduciaries who do not follow these principles of conduct may be personally liable to restore any losses to the plan, or to restore any profits made through improper use of plan assets. Courts may take whatever action is appropriate against fiduciaries who breach their duties under ERISA including their removal.

When Can Your Choose Your Own Investments?

In some defined contribution plans, a group or an individual makes all the investment decisions for the plan's assets. In certain defined contribution plans, however, plan officials may decide to provide a number of investment options, and they may ask you to decide how to invest your account balance by choosing among those investment options.

The Department of Labor has established rules about plans that permit participants to direct their own investments. Under these rules, if, and only if, you truly exercise independent control in making your investment choices, plan officials will be excused from the fiduciary responsibility for the consequences of your investment decisions. A plan under which you in fact exercise independent control over the investment of your individual account is called a 404(c) plan (after § 404(c) of ERISA). If you are a participant in a 404(c) plan, you are responsible for the consequences of your investment decisions, and you cannot sue the plan officials for investment losses that result from your decision.

You are entitled to receive a broad range of information about the investment choices available under a 404(c) plan. Thus, a plan that intends to relieve plan officials of fiduciary duties over investments must inform you of that fact. Also, the 404(c) plan must give you sufficient information about investment options under the plan for you to be able to make informed decisions. The information you are entitled to receive without asking includes the following:

- A description of each investment option, including the investment goals, risk and return characteristics.
- Information about designated investment managers.
- An explanation of when and how to make investment instructions and any restrictions on when you can change investments.
- A statement of the fees that may be charged to your account when you change investment options or buy and sell investments.
- Information about your shareholder voting rights and the manner in which confidentiality will be provided on how you vote your shares of stock.
- The name, address, and phone number of the plan fiduciary or other person designated to provide certain additional information on request.



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Chapter 9: ERISA's Protections Against Inadequate Plan Funding

This chapter is about the rules that require employers to adequately fund their pension plans. The following questions are answered:

What Are The Funding Standards For Plans?

What Are The Funding Standards For Plans?

ERISA sets minimum funding rules to provide that sufficient money is available to pay promised pension benefits to you when you retire. Funding rules establish the minimum amounts that employers must contribute to plans in an effort to ensure that plans have enough money to pay benefits when due. The rules are applicable primarily to defined benefit plans and also to money purchase plans.

Defined benefit plans generally fund future benefits over time. The plans consider probable investment gains and losses and make assumptions about factors such as future interest rates and potential workforce changes. ERISA provides detailed funding rules to protect you from financing methods that could provide inadequate to pay the promised benefits when they are due.

ERISA provides severe sanctions against an employer who fails to meet the funding obligations. Any employer who fails to comply with the minimum funding requirements is charged an excise tax on the amount of the accumulated funding deficiency, unless the employer receives a waiver of the minimum funding requirements. This tax is imposed whether the underfunding was accidental or intentional. Certain actions can also be taken by the Department of Labor and the Pension Benefit Guaranty Corporation to enforce the minimum funding standards.

In the case of defined benefit plans that are less than 90 percent funded, you must be notified each year about the plan's funding status and PBGC's guarantees. This rule is effective for plan years beginning after December 8, 1994.



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Chapter 10: Protecting Your Benefits in the Event of Plan Terminations and Mergers

This chapter describes what might happen to your benefits if your employer decides to terminate or merge your pension plan with another plan. It covers the following questions:

- Can A Plan Be Terminated?
 - What Happens If Your Plan Terminates Without Enough Money To Pay The Benefits? Which Benefits Are Guaranteed?
 - Is Your Accrued Benefit Protected If Your Plan Merges With Another Plan?
-

Can A Plan Be Terminated?

Although pension plans must be established with the intention of being continued indefinitely, employers may terminate plans. If your plan terminates or becomes insolvent, ERISA provides you some protection. In a tax qualified plan, your accrued benefit must become 100 percent vested immediately upon plan termination, to the extent then funded. If a partial termination occurs in such a plan, for example, if your employer closes a particular plant or division that results in the termination of a substantial portion of plan participants, immediate 100 percent vesting, to the extent funded, also is required for affected employees.

What Happens If Your Plan Terminates Without Enough Money To Pay The Benefits? Which Benefits Are Guaranteed?

If your terminated plan is a defined benefit plan insured by Pension Benefit Guaranty Corporation, PBGC will guarantee the payment of your vested pension benefits up to the limited set by law. Benefits that are guaranteed or that exceed PBGC's limits may be paid depending on the plan's funding and on whether PBGC is able to recover additional amounts from the employer. For further information on plan termination guarantees, write to the Pension Benefit Guaranty Corporation, Administrative Review and Technical Assistance Department, 1200 K Street, N.W., Washington, D.C. 20005, telephone (202) 326-4000.

If a plan terminates and the plan purchases annuity contracts from an insurance company to pay pension benefits in the future, plan fiduciaries must take certain steps to select the safest available annuity. Thus, in accordance with Department of Labor guidance, the plan must conduct a thorough search with respect to the financial soundness of insurance companies that provide annuities, to better assure the future payment of benefits to participants and beneficiaries.

Is Your Accrued Benefit Protected If Your Plan Merges With Another Plan?

Your employer may choose to merge your plan with another plan. If your plan is terminated as a result of the merger, the benefit you would be entitled to receive after the merger must be at least equal to the benefit you were entitled to receive before the merger. Special rules apply to mergers of multiemployer plans, which are generally under the jurisdiction of the PBGC.



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SMALL BUSINESS HANDBOOK

Retirement and Health Benefit Standards

Employee Benefit Plans

Accessibility Information

Disclaimer

Updated: November 1997

Employee Retirement Income Security Act (ERISA), (29 USC §1001 et seq., 29 CFR 2509 et seq.)

Who is Covered

The provisions of Title I of ERISA cover most private sector employee benefit plans. Employee benefit plans are voluntarily established and maintained by an employer, an employee organization, or jointly by one or more such employers and an employee organization. Pension plans--a type of employee benefit plan--are established and maintained to provide retirement income or to defer income until termination of covered employment or beyond. Other employee benefit plans are called welfare plans and are established and maintained to provide health benefits, disability benefits, death benefits, prepaid legal services, vacation benefits, day care centers, scholarship funds, apprenticeship and training benefits, or other similar benefits.

In general, ERISA does not cover plans established or maintained by governmental entities or churches for their employees, or plans which are maintained solely to comply with applicable workers compensation, unemployment or disability laws. ERISA also does not cover plans maintained outside the United States primarily for the benefit of nonresident aliens or unfunded excess benefit plans.

Basic Provisions/Requirements

ERISA sets uniform minimum standards to assure that employee benefit plans are established and maintained in a fair and financially sound manner. In addition, employers have an obligation to provide promised benefits and satisfy ERISA's requirements for managing and administering private pension and welfare plans. The Department's Pension and Welfare Benefits Administration (PWBA), together with the Internal Revenue Service (IRS), carries out its statutory and regulatory authority to assure that workers receive the promised benefits. The Department has principal jurisdiction over Title I of ERISA, which requires persons and entities who manage and control plan funds to:

- Manage plans for the exclusive benefit of participants and beneficiaries;
- Carry out their duties in a prudent manner and refrain from conflict-of-interest transactions expressly prohibited by law;
- Comply with limitations on certain plans' investments in employer securities and properties;
- Fund benefits in accordance with the law and plan rules;
- Report and disclose information on the operations and financial condition of plans to the government and participants;
- Provide documents required in the conduct of investigations to assure compliance with the law.

The Department also has jurisdiction over the prohibited transaction provisions of Title II of ERISA. However, the IRS administers the rest of Title II of ERISA, as well as the vesting, participation, nondiscrimination and funding standards of Title I of ERISA.

Reporting and Disclosure

Any individual or organization affected by ERISA may request an advisory opinion or information letter regarding the interpretation or application of the statutory provisions (or the implementing regulations, interpretive bulletins or exemptions) within the Department's jurisdiction. *ERISA Procedure 76-1*, 41 Federal Register 36281 (August 27, 1976), sets forth the procedures governing the advisory opinion process.

Part 1 of Title I requires the administrator of an employee benefit plan to furnish participants and beneficiaries with a summary plan description (SPD), describing in understandable terms, their rights, benefits and responsibilities under the plan. Plan administrators are also required to furnish participants with a summary of any material changes to the plan or changes to the information contained in the summary plan description. Copies of these documents are not required to be automatically filed with the Department, but must be furnished to the Department on request.

In addition, the administrator generally must file an annual report (Form 5500 Series) each year containing financial and other information concerning the operation of the plan. Plans with 100 or more participants file the **Form 5500**. Plans with fewer than 100 participants file the **Form 5500-C/R**; the form 5500-C at least every third year and the Form 5500-R, an abbreviated report, in the two intervening years. Plan administrators must furnish participants and beneficiaries with a summary of the information in the annual report.

Certain pension and welfare benefit plans may be exempt from the requirement to file an annual report. For example, welfare benefit plans with fewer than 100 participants that are fully insured or unfunded within the meaning of the Department's regulation at **29 CFR 2520.104-20** are not required to file an annual report.

The Department's regulations governing these reporting and disclosure requirements are set forth beginning at **29 CFR 2520.101-1**.

Fiduciary Standards

Part 4 of Title I sets forth standards and rules governing the conduct of plan fiduciaries. In general, persons who exercise discretionary authority or control over management of a plan or disposition of its assets are "fiduciaries" for purposes of Title I of ERISA. Fiduciaries are required, among other things, to discharge their duties solely in the interest of plan participants and beneficiaries and for the exclusive purpose of providing benefits and defraying reasonable expenses of administering the plan. In discharging their duties, fiduciaries must act prudently and in accordance with documents governing the plan, to the extent such documents are consistent with ERISA. Certain transactions between an employee benefit plan and "parties in interest," which include the employer and others who may be in a position to exercise improper influence over the plan, are prohibited by ERISA and may trigger civil monetary penalties under Title I of ERISA. Most of these transactions are also prohibited by the Internal Revenue Code ("Code"). The Code imposes an excise tax on "disqualified persons" -- whose definition generally parallels that of parties in interest -- who participate in such transactions.

Exemptions

Both ERISA and the Code contain various statutory exemptions from the prohibited transaction rules and give the Departments of Labor and Treasury, respectively, authority to grant administrative exemptions and establish **exemption procedures**. Reorganization Plan No. 4 of 1978 transferred the authority of the Treasury Department over prohibited transaction exemptions, with certain exceptions, to the Labor Department.

The statutory exemptions generally include loans to participants, the provision of services necessary for operation of a plan for reasonable compensation, loans to employee stock ownership plans, and investment with certain financial institutions regulated by other State or Federal agencies. (See ERISA section 408 for the conditions of the exemptions.)

Administrative exemptions may be granted by the Department on a class or individual basis for a wide variety of proposed transactions with a plan. Applications for individual exemptions must include, among other information:

- A detailed description of the exemption transaction and the parties for whom an exemption is requested;
- Reasons a plan would have for entering into the transaction;
- Percentage of assets involved in the exemption transaction;
- The names of persons with investment discretion;
- Extent of plan assets already invested in loans to, property leased by, and securities issued by parties in interest involved in the transaction;
- Copies of all contracts, agreements, instruments and relevant portions of plan documents and trust agreements bearing on the exemption transaction;
- Information regarding plan participation in pooled funds when the exemption transaction involves such funds;
- Declaration, under penalty of perjury by the applicant, attesting to the truth of representations made in such exemption submissions;
- Statement of consent by third-party experts acknowledging that their statement is being submitted to the Department as part of an exemption application.

The Department's exemption procedures are set forth at **29 CFR 2570.30 through 2570.51**.

Enforcement

ERISA confers substantial **law enforcement responsibilities** on the Department. Part 5 of ERISA Title I gives the Department authority to bring a civil action to correct violations of the law, gives investigative authority to determine whether any person has violated Title I, and imposes criminal penalties on any person who willfully violates any provision of Part 1 of Title V.

Health Insurance Portability and Accountability Act of 1996

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. 104-191, was enacted on August 21, 1996. HIPAA amended ERISA to provide for, among other things, improved portability and continuity of health insurance coverage provided in connection with employment. The HIPAA portability provisions relating to group health plans and health insurance coverage offered in connection with group health plans are set forth under a new Part 7 of Subtitle B of Title I of ERISA. These provisions include rules relating to preexisting conditions exclusions, special enrollment rights, and prohibition of discrimination against individuals based on health status-related factors.

Continuation of Health Coverage

Continuation of health care provisions were enacted as part of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) and are codified in Part 6 of Title I of ERISA. These provisions apply to group health plans of employers with 20 or more employees on a typical working day in the previous calendar year. COBRA gives participants and beneficiaries the right to maintain, at their own expense, coverage under their health plan that would be lost due to a triggering event, such as termination of employment at a cost that is comparable to what it would be if they were still members of the employer's group. Plans must give covered individuals an initial general notice informing them of their rights under COBRA and describing the law. The law also places notification obligations upon plan administrators, employers, and qualified beneficiaries with regard to certain "qualifying events." In most instances of employee death, termination, reduced hours of employment, entitlement to Medicare, or bankruptcy, it becomes the employer's responsibility to provide a specific notice to the plan administrator. The plan administrator must then notify the qualified beneficiaries the opportunity to elect

continuation coverage.

The Department's regulatory and interpretive jurisdiction over the COBRA provisions is limited to the COBRA notification and disclosure provisions.

Jurisdiction of the Internal Revenue Service

The IRS has regulatory and interpretive responsibility for all provisions of COBRA not under the Department's jurisdiction. In addition, ERISA provisions relating to participation, vesting, funding and benefit accrual, contained in parts 2 and 3 of Title I, are generally administered and interpreted by the Internal Revenue Service.

Assistance Available

PWBA has numerous **general publications** designed to assist employers and employees in understanding their obligations and rights under ERISA. A list of PWBA booklets and pamphlets is available by writing to: Publications Desk, PWBA, Division of Public Affairs, Room N-5656, 200 Constitution Ave., NW, Washington, DC 20210. Many of these documents are available via **PWBA's homepage**.

Individualized assistance is offered by PWBA's **national** and **field offices** for persons seeking information and assistance on benefits and rights under employee benefit plans. PWBA also issues advisory opinions and information letters in response to requests from individuals and organizations. Advisory opinions apply the law to a specific set of facts, while information letters merely call attention to well-established principles on interpretations. Further information about these programs is contained in PWBA's booklet on "Customer Service Standards."

In addition, employee benefit plan documents and other materials are available from the PWBA Public Disclosure Room. This facility may be used to view and to obtain copies of materials on file. Materials include: summary plan descriptions, Form 5500 Series reports, Master Trust reports, 103-12 Investment Entity Reports, Common or Collective Trust or Pooled Separate Account direct filings, Apprentice and Other Training Plans notices, "Top Hat" plan statements, advisory opinions, exemptions, announcements and transcripts of public hearings and proceedings.

The PWBA Public Disclosure Room is open to the public Monday through Friday, from 8:30 a.m. to 4:30 p.m. Copies of materials are available at a cost of 15 cents per page by ordering in person or writing to: PWBA Public Disclosure Room, U.S. Department of Labor, Room N-5638, 200 Constitution Ave., NW, Washington, DC 20210. Given the complexity of ERISA requirements, employers may wish to seek the assistance of an attorney, CPA firm, investment or brokerage firm, and other employee benefit consultants in complying with the law.

Penalties

PWBA has authority under ERISA Section 502© to assess civil penalties for reporting violations and prohibited transactions involving a plan. A penalty of up to \$1,000 per day may be assessed against plan administrators who fail or refuse to comply with annual reporting requirements. Section 502(l) gives the agency authority to assess civil penalties against parties in interest who engage in prohibited transactions with welfare and nonqualified pension plans. The penalty can range from five percent to 100 percent of the amount involved in a transaction. A parallel provision of the Code directly imposes an excise tax against disqualified persons, including employee benefit plan sponsors and service providers, who engage in prohibited transactions with tax-qualified pension and profit sharing plans. Finally, the Department is required under Section 502(l) to assess mandatory civil penalties equal to 20

percent of any amount recovered with respect to fiduciary breaches resulting from either a settlement agreement with the Department or a court order as the result of a lawsuit by the Department.

Relation to State, Local and Other Federal Laws

Part 5 of Title I provides that the provisions of ERISA Titles I and IV supersede State and local laws which "relate to" an employee benefit plan. ERISA, however, saves certain state and local laws from ERISA preemption, including state insurance regulation of multiple employer welfare arrangements (MEWAs). MEWAs generally constitute employee welfare benefit plans or other arrangements providing welfare benefits to employees of more than one employer, not pursuant to a collective bargaining agreement.

In addition, ERISA's general prohibitions against assignment or alienation of pension benefits do not apply to **qualified domestic relations orders**. Plan administrators must comply with the terms of orders made pursuant to State domestic relations law and award all or part of a participant's benefit in the form of child support, alimony, or marital property rights to an alternative payee (spouse, former spouse, child or other dependent). In addition, group health plans covered by ERISA must provide benefits in accordance with the applicable requirements of qualified medical child support order issued under State domestic relations laws.

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U.S. Department of Labor



PWBA Office of Exemption and Determinations

FOREWORD

This booklet provides information about the exemption provisions under Section 408(a) of Title I of the Employee Retirement Income Security Act (ERISA). The booklet is intended to provide employers, plan administrators and employee benefit practitioners with the basic requirements and procedures needed to apply for exemptions from the prohibited transaction rules of ERISA. Included are discussions of the statutory criteria for granting an exemption under the law; description of the procedures for requesting an exemption from the U. S. Department of Labor; examples of exemption requests; and where to go for assistance with exemption application requests.

To assist readers, the full text of the exemption procedures is included in the Appendix of this booklet.

EXEMPTION PROCEDURES

UNDER FEDERAL PENSION LAW

U. S. Department of Labor

Pension and Welfare Benefits Administration

1995

INTRODUCTION

The Employee Retirement Income Security Act of 1974 (ERISA) prohibits certain classes of transactions between employee benefit plans and certain persons defined as "parties in interest". **The law does, however,** contain a number of statutory exemptions from the prohibited transaction rules.

In addition, **ERISA gives** the Department of Labor authority to grant administrative exemptions from the prohibited transaction provisions **if the Department** first finds that the exemption is:

- administratively feasible;
- in the interest of the plan and of its participants and beneficiaries; and
- protective of the rights of participants and beneficiaries of the plan.

Most of the transactions prohibited by ERISA are likewise prohibited under the Internal Revenue Code. The Code also contains exemptive authority similar to that found under ERISA. By virtue of Reorganization Plan No. 4 of 1978, the authority of the Treasury Department to grant exemptions for prohibited transactions under the Code was largely transferred to the Department.

On August 10, 1990, the Department adopted a final exemption procedure detailing the steps to be taken by applicants in applying for an exemption and the steps normally taken by the Department in considering the applications. **With adoption of those procedures, the Department believes the process for reviewing exemption applications can be expedited.**

The Department has gained 20 years of experience with the processing of large numbers of

applications for exemptions from ERISA's prohibited transaction provisions. Through that experience with a wide variety of transactions, a number of transactions have emerged which have similar characteristics. This booklet describes the factors the Department ordinarily requires in routine exemption requests.

Questions or requests for advice about an exemption or application should be put in writing and directed to the:

Office of Exemption Determinations
Pension and Welfare Benefits Administration
U. S. Department of Labor
Room N-5649
200 Constitution Avenue, N.W.
Washington, D. C. 20210

STATUTORY EXEMPTIONS

The ERISA law contains several specific exemptions whereby plans may engage in transactions otherwise prohibited by law. In order to use these statutory exemptions, parties must meet the conditions of the applicable exemption.

ERISA generally provides statutory exemptions for, among other things, loans to participants, the provision of services necessary for the operation of a plan for no more than reasonable compensation, loans to employee stock ownership plans, and deposits in certain financial institutions regulated by other State or federal agencies.

ADMINISTRATIVE EXEMPTIONS

Under ERISA, the Department may grant administrative exemptions to an individual or a class of individuals allowing them to engage in a variety of transactions involving employee benefit plans.

The Department notes that each application it receives must be considered on its own merits. Therefore, the fact that an application contains all of the information described herein does not, in itself, guarantee that an exemption will be granted. Further, the transactions described herein are intended to represent the ordinary case; many applications will involve factors so unique in nature that they must be given special consideration before the Department can make a determination on the case. Nonetheless, this brochure is intended to assist applicants by describing the information that is typically required in order to obtain an exemption for a number of common transactions.

Class Exemptions

Class exemptions are administrative "blanket" exemptions which permit persons to engage in similar transactions with plans in accordance with the conditions of the class exemption without asking for an individual exemption. For information see section 2570.34 of the exemption procedures in the Appendix.

For example, class exemptions have been granted covering:

- * Transfers of individual life insurance contracts between plans and their participants (PTE's 92-5 and 92-6)**
- * Sales of customer notes to plans by their sponsoring employers (PTE 85-68)**
- * Interest-free loans made to plans by their sponsoring employers (PTE 80-26)**

Individual Exemptions

Applications for individual exemptions must, at a minimum, include the following information:

- * Description of the transaction**
- * Description of relevant safeguards and conditions**
- * Percentage of assets involved in the exemption transaction**
- * Names of persons with investment discretion**
- * Extent of plan assets already invested in loans to, property leased by, and securities issued by parties in interest involved in the transaction**
- * Copies of all contracts, agreements, instruments and relevant portions of plan documents and trust agreements bearing on the exemption transaction**
- * Information regarding plan participation in pooled funds when the exemption transaction involves such funds**
- * Declaration, under penalty of perjury by the applicant, attesting to the truth of representations made in such exemption submissions**
- * Statement of consent by third-party experts acknowledging that their statements are being submitted to the Department as part of an exemption application**

See Appendix for the complete text of the exemption procedures.

Hypothetical Examples of Common Transactions

EXAMPLE 1: SALE OF PROPERTY BY PLAN TO PARTY IN INTEREST OR DISQUALIFIED PERSON FOR CASH

C Corporation sponsors a retirement plan for its employees. The Plan owns an asset, such as a parcel of real property, which it wishes to sell to C Corporation. These are the factors which the Department ordinarily would consider and that should be addressed by applicants.

1. The Plan pays no commissions or other expenses in connection with the sale.
2. If there is no generally recognized market for the property, the fair market value of the property must be determined by a Qualified Independent Appraiser and reflected in a Qualified Appraisal Report. If there is a generally recognized market for the property, the fair market value of the property is the value objectively determined by reference to the price on such market on the date of the transaction (e.g., the closing price on the New York Stock Exchange).
3. If the party in interest engaging in the transaction (or a related entity) caused the Plan to invest in the property, then the Plan should receive no less than the greater of its cost of acquiring and holding the property (e.g., original purchase price, insurance, real estate taxes, etc.) or the current fair market value of the property at the time of the sale; provided, however, that a purchase price in excess of such fair market value may not be required if (A) the applicant provides sufficient documentation that the Plan's original investment was consistent with ERISA's fiduciary standards, or (B) the sale is made from a one-participant Plan, an IRA not subject to Title I of ERISA, or an individual account or accounts in the Plan and the affected participant voluntarily consents to the sale.

In order to complete our consideration of the application, we need to know the background history of the property: from whom was it acquired (party in interest?), date of acquisition, and price paid. Information must also be furnished concerning whether the property has been used by or leased to anyone, including parties in interest, since its acquisition by the Plan. We also need to know why the Plan proposes to sell

the property, and whether it has made any efforts to sell the property to an unrelated third party.

4. Where the sale of property eliminates an on-going prohibited transaction (such as a prohibited lease to a party in interest), we will not grant an exemption unless the prohibited transaction is corrected (within the meaning of section 502(i) of ERISA and section 4975 of the Internal Revenue Code and the regulations thereunder), and the party in interest pays the appropriate excise taxes.

5. If the sale of the property will result in a contribution to the Plan under the Code, the applicant must represent that such contribution will not result in any violation of the requirements for tax-qualification (or, if there would be a violation, that it will be remedied without any adverse consequences for the Plan).

EXAMPLE 2: LOAN BY PLAN TO PARTY IN INTEREST OR DISQUALIFIED PERSON

The Huge Corporation, Inc. would like to borrow \$100,000 from its pension plan. These are the factors which the Department ordinarily would consider and that should be addressed by the applicants.

1. At the time the loan is made, the sum of the principal amount of the loan, plus the amount¹ of all other Plan loans and leases to such party in interest (or a related entity), does not exceed 25% of the aggregate fair market value of the Plan's (or individually-directed account's) assets. The aggregate fair market value is to be determined as of the Plan's most recent valuation date (no more than 12 months before the transaction). This 25% limitation is a continuing requirement that must be met throughout the term of the loan.
2. The exemption request must include a statement that the terms of the loan (interest rate, repayment schedule, duration of the loan, etc.) are not less favorable to the Plan than those obtainable in an arm's-length transaction between unrelated parties. The exemption request must also set forth the basis for this determination. To assure comparability with arm's-length loans, a statement from a third party in the business of lending money under similar circumstances may be required.
3. The loan is secured by collateral having a fair market value, at the time the loan is made, which is at least 150% of the principal amount of the loan if the collateral is real property, and at least 200% of the principal amount of the loan if the collateral is personal property or accounts receivable.
4. The collateral securing the loan has been appraised by a Qualified Independent Appraiser who has issued a Qualified Appraisal Report.
5. The property securing the loan is insured against casualty loss in an amount not less than the amount of the outstanding principal of the loan (plus accrued but unpaid interest), and the Plan is a named beneficiary of the policy.
6. The Plan's security interest must be perfected in the manner required by applicable state law. For example, if recording is required for perfection, the security agreement must be recorded with the appropriate government officials.
7. Unless the loan is from an individually-directed account or a non-Title I IRA, a Qualified Independent Fiduciary who has the experience necessary to effectively review and monitor loans of this type:

(a) Has reviewed the terms of the loan and compared the terms with the terms for similar loans between unrelated parties;

(b) Has examined the Plan's overall investment portfolio, considered the Plan's liquidity and diversification requirements, in light of the proposed transaction, and determined whether the proposed transaction complies with the Plan's investment objectives and policies;

(c) Has stated that he/she believes that the proposed transaction is in the best interests of the Plan and its participants and beneficiaries and has explained in detail the reasons for such opinion; and

(d) Has agreed to monitor the loan and the conditions of the exemption on behalf of the Plan throughout the term of the loan, taking all appropriate actions to safeguard the interests of the Plan and has stated that he/she has been or will be given the authority to so act.

EXAMPLE 3: SALE OF PROPERTY TO PLAN WITH A SIMULTANEOUS LEASE-BACK TO THE PARTY IN INTEREST

The Great Big Corporation, Inc. sponsors a pension plan for its employees. The Corporation wishes to sell a parcel of land to the Plan, which then will be leased back to the Corporation. These are the factors that the Department ordinarily would consider and that should be addressed by the applicants.

1. At the time that the sale and leaseback transactions are effectuated, the sum of the fair market value of the property, plus the amount² of all other Plan loans and leases to such party in interest (or a related entity), does not exceed 25% of the aggregate fair market value of the Plan's assets. The aggregate fair market value is to be determined as of the Plan's most recent valuation date (no more than 12 months before the transaction). This 25% limitation is a continuing requirement which must be met throughout the term of the lease.
2. Both the fair market value of the property acquired by the Plan and the fair market rental value of the property to be leased to the party in interest have been appraised by a Qualified Independent Appraiser and reflected in a Qualified Appraisal Report.
3. The exemption request must include a representation that the terms of the lease (e.g., rent, duration, allocation of expenses, etc.) are not less favorable to the Plan than those obtainable in an arm's-length transaction between unrelated parties. The exemption request must also set forth the basis for this determination.
4. A Qualified Independent Fiduciary who has the experience necessary to effectively review and monitor transactions of this type:

(a) Has reviewed the terms of the purchase by the Plan and of the lease and compared them with the terms of similar transactions involving unrelated parties;

(b) Has examined the Plan's overall investment portfolio, considered the Plan's liquidity and diversification requirements in light of the proposed transactions, and determined whether the proposed transactions comply with the Plan's investment objectives and policies;

(c) Has stated that he/she believes the proposed transactions are in the best interests of the Plan and its participants and beneficiaries and has explained in detail the reasons for such opinion; and

(d) Has agreed to monitor the lease on behalf of the Plan throughout the term of the lease, taking all appropriate actions to safeguard the interests of the Plan and has stated that he/she has been or will be given the authority to so act.

5. The lease must provide for periodic adjustments (no less frequently than every year) to the rents payable thereunder, so that the rents will be no less than the fair market rental value of the leased premises at the time of the adjustment. Generally, the initial rent will be the "floor rental" during the term of the lease, even if the fair market rental value has decreased. The adjustment may be made by using the consumer price index, or by retaining a Qualified Independent Appraiser satisfactory to the Qualified Independent Fiduciary. The Qualified Independent Fiduciary will determine which method is appropriate for making such adjustment. (The method need not be the same for all periods.)

EXAMPLE 4: RECEIPT OF STOCK RIGHTS BY PLAN FROM SPONSOR³

The Power Corporation, Inc. wishes to raise capital by issuing, to all holders of its stock, Rights which will entitle such stockholders to acquire additional shares. The Power Corporation's profit sharing plan currently owns shares of stock of the Corporation, and, thus, is entitled to acquire these Rights. These are the factors that the Department ordinarily would consider and that should be addressed by the applicants:

1. The Plan's acquisition of the stock rights results from a business decision on behalf of the Plan's sponsor (or its affiliate) in its capacity as issuer of the securities, and not in its capacity as Plan

fiduciary.

2. The Plan is treated in the same manner as any other holder of the affected class of securities.
3. If the Plan provides for individually-directed investment of the assets in each participant's account, all decisions with respect to the Plan's acquisition, holding and control of the rights are made by the individual Plan participants.
4. With respect to Plans other than those providing for individually-directed accounts, a Qualified Independent Fiduciary who is qualified to review and monitor transactions of this type:

(a) Has examined the Plan's overall investment portfolio, considered the Plan's liquidity and diversification requirements, and considered the Plan's investment objectives and policies in light of the receipt of the stock rights; and

(b) Will exercise the authority for all decisions regarding the acquisition, holding and control of the rights, including the decision as to whether the Plan should exercise or sell the rights acquired through the offering.

5. If the receipt of employer securities upon exercise of the stock rights would otherwise violate section 407 of ERISA, the exemption will include additional relief for the receipt and holding of such securities provided that the securities are disposed of by the Plan within an agreed-upon period of time from their receipt by the Plan or another prohibited transaction exemption is obtained. (There is a general prohibition on the acquisition of additional employer securities by a defined benefit plan or welfare plan if the plan already holds qualifying employer securities up to the limit imposed under ERISA.)

EXAMPLE 5: LEASE OF PROPERTY BY PLAN TO A PARTY IN INTEREST OR DISQUALIFIED PERSON

The Gray Company sponsors a defined benefit plan. The Company would like to lease a parcel of land owned by the Plan to use as a parking lot. These are the factors the Department ordinarily would consider and that should be addressed by the applicants:

1. At the time the lease is entered into, the sum of the fair market value of the leased property, plus the amount⁴ of all other Plan loans and leases to such party in interest (or a related entity) does not exceed 25% of the aggregate fair market value of the Plan's assets, such aggregate fair market value to be determined as of the Plan's most recent valuation date (but no more than 12 months before the transaction). This 25% limitation is a continuing requirement that must be met throughout the term of the lease.
2. The fair market rental value of the property to be leased to the party in interest has been appraised by a Qualified Independent Appraiser and reflected in a Qualified Appraisal Report.
3. The exemption request must include a representation that the terms of the lease (rent, duration, allocation of expenses, etc.) are not less favorable to the Plan than those obtainable in an arm's-length transaction between unrelated parties. The exemption request must also set forth the basis for this determination (e.g., comparable to the terms of similar leases between unrelated parties).
4. A Qualified Independent Fiduciary who has the experience necessary to effectively review and monitor leases of this type:

(a) Has reviewed the terms of the lease and compared them with terms of similar leases between unrelated parties;

(b) Has examined the Plan's overall investment portfolio, considered the Plan's liquidity and diversification requirements in light of the proposed transaction, and determined whether the proposed transaction complies with the Plan's investment objectives and policies;

(c) Has stated that he/she believes the proposed transaction is in the best interests of the Plan and its participants and beneficiaries and has explained in detail the reason for such opinion; and

(d) Has agreed to monitor the lease and the conditions of the exemption on behalf of the Plan throughout

the term of the lease, taking all appropriate actions to safeguard the interests of the Plan and has stated that he/she has been or will be given the authority to so act.

5. The lease must provide for periodic adjustments (no less frequently than every year) to the rents payable thereunder, so that the rents will be no less than the fair market rental value of the leased premises at the time of the adjustment. Generally, the initial rent will be the "floor rental" during the term of the lease, even if the fair market rental value has decreased. The adjustment may be made by using the consumer price index, or by retaining a Qualified Independent Appraiser satisfactory to the Qualified Independent Fiduciary. The Qualified Independent Fiduciary will determine which method is appropriate for making such adjustment. (The method need not be the same for all periods.)

APPENDIX

* Exemption Procedures (29 CFR s2570.30 through 2570.52)

* Glossary

* Exemption Procedures

* Glossary

"QUALIFIED INDEPENDENT FIDUCIARY"

1. A "Qualified Independent Fiduciary" is any individual or entity which is qualified (i.e., knowledgeable as to its duties and responsibilities as an ERISA fiduciary and knowledgeable as to the subject transaction) to serve in that capacity and which is independent of the party in interest engaging in the transaction and its affiliates.

Thus, for example, the independent fiduciary cannot be an affiliate of the person engaging in the transaction under the exemption.

2. The Qualified Independent Fiduciary must represent in writing its qualifications to serve in that capacity, and must also detail any relationship it may have with the party in interest engaging in the transaction with the Plan, or its affiliates, in order to determine whether such Fiduciary may be subject to improper influence by a party to the transaction other than the Plan, or whether such Fiduciary has an interest which may conflict with the interests of the Plan for which it acts. In addition, the Qualified Independent Fiduciary must represent that it understands its ERISA duties and responsibilities in acting as a fiduciary with respect to the Plan.

3. The general rule for individual exemption requests involving a financial institution serving as the Qualified Independent Fiduciary is that less than 1% of the financial institution's deposits and less than 1% of its outstanding loans (both in dollar amounts) are attributable to the deposits and loans of the party in interest and its affiliates.

4. If an individual is to serve as the Qualified Independent Fiduciary, less than 1% of his/her annual income (generally measured on the basis of the prior year's income) may be derived from the party in interest and its affiliates. Fixed, non-discretionary retirement income would not be included for purposes of this test.

5. If a firm is to serve as the Qualified Independent Fiduciary, less than 1% of that firm's annual income (generally measured on the basis of the prior year's income) may come from business derived from the party in interest and its affiliates.⁵

DEFINITION OF "QUALIFIED INDEPENDENT APPRAISER"

1. A "Qualified Independent Appraiser" is any individual or entity qualified to serve in that capacity and which is independent of the party in interest engaging in the transaction and its affiliates.
2. The Qualified Independent Appraiser must represent in writing its qualifications to serve in that

- capacity, and must also detail any relationship it may have with the party in interest engaging in the transaction with the Plan, or its affiliates, that could enable the party in interest or its affiliates to control or materially influence the actions of the Appraiser, or vice versa.
3. If the property in question is real property, the appraiser should be an M.A.I., or a member of a similar sanctioning body.
 4. If the property is an asset other than real property, the appraiser must demonstrate that he/she has experience in valuing assets of that type.
 5. If an individual is to serve as the Qualified Independent Appraiser, less than 1% of his/her annual income (generally measured on the basis of the prior year's income, but including amounts received for performing the appraisal) may be derived from the party in interest and its affiliates. Fixed, non-discretionary retirement income would not be included for purposes of this test.
 6. If an entity is to serve as the Qualified Independent Appraiser, less than 1% of that firm's annual income (generally measured on the basis of the prior year's income, but including amounts received for performing the appraisal) may come from business derived from the party in interest and its affiliates.

DEFINITION OF QUALIFIED APPRAISAL REPORT

1. The appraisal must be in writing and set forth the methods used in determining the fair market value and the reasons used for the valuation in light of those methods.
2. The appraisal should be no more than one year old; if an appraisal report older than one year is submitted, there must be a written update by the Qualified Independent Appraiser reaffirming the prior appraisal as of the date of the transaction.
3. The document submitted by the Qualified Independent Appraiser should describe the methodology used to determine the fair market value of the property, and explain why such methodology best represented the fair market value of the property.
4. The appraisal must take into account any special benefit that the party in interest (or its affiliate) may derive from the property such as the fact that it owns an adjacent parcel of property or would gain voting control over a company.

¹ 1In the case of a loan, such amount will be the outstanding principal amount. In the case of a lease, such amount will be the fair market value of the leased property determined by a Qualified Independent Appraiser and reflected in a Qualified Appraisal Report.

² 2In the case of a loan, such amount will be the outstanding principal amount. In the case of a lease, such amount will be the fair market value of the leased property determined by a Qualified Independent Appraiser and reflected in a Qualified Appraisal Report.

³ 3This prohibited transaction involves stock rights, which are not considered qualifying employer securities under ERISA. In these cases, the stock rights are issued to the Plan by reason of its being a holder of stock of the employer, which is a qualifying employer security. When a business decision is made to issue stock rights to all shareholders of the employer, the Plan's acquisition and holding of such rights would be prohibited in the absence of an administrative exemption.

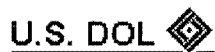
⁴ 4In the case of a loan, such amount will be the outstanding principal amount. In the case of a lease, such amount will be the fair market value of the leased property determined by a Qualified Independent Appraiser and reflected in a Qualified Appraisal Report.

⁵ 5While in certain cases the Department has permitted an independent fiduciary to receive as much as 5% of its annual income from the party in interest and its affiliates, these cases

have involved unusual circumstances, and the general standard of independence remains a 1% test.

---DISCLAIMER---

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Pension and Health Care Coverage... Questions and Answers for Dislocated Workers

Foreword

Message from Secretary of Labor Alexis M. Herman

With the passage in 1988 of two important pieces of legislation concerning dislocated workers, the Department of Labor took the lead to ensure that dislocated workers receive advance notice of plant closings and an opportunity to retrain for new jobs.

The Economic Dislocation and Worker Adjustment Assistance Act authorizes an array of services to assist workers in their transition from old jobs to new jobs. The Worker Adjustment and Retraining Notification Act requires notice from employers when substantial layoffs or plant closing occur.

Our commitment to dislocated workers continues, and today we are looking at new ways to link dislocated workers with additional sources of help available through the Department.

With this booklet, the Department addresses some of the vital health and pension issues affecting the dislocated worker population. Information about how to protect pensions and save for retirement has long been available. But specific issues like *What happens to my pension if I am laid off?* or, more commonly, *What do I do about health care coverage for me and my family?* are paramount in the minds of those who suffer job loss. They deserve answers.

In 1996, President Clinton signed into law the Health Insurance Portability and Accountability Act (HIPAA). This important piece of legislation amends the nation's major employee benefits protection law and is a major step forward in expanding health care coverage for workers who move from one job to another.

The Department of Labor is committed to its goal of protecting American workers' rights and moving those dislocated by economic change back into the workforce.

Introduction

Plant and business closings, downsizings and reductions in hours affect employees in numerous adverse ways. Workers lose income, the security of a steady job and, often, the health and other benefits that go along with working full time. As a dislocated worker, you may have many questions, some of them concerning your health and pension benefits. For instance, *Do I have access to my retirement funds?* *What happens to my health insurance coverage?* *Can I continue health benefits until I get another job?*

You may have rights to certain pension protections and health benefits even if you lose your job. If your company provided a group health insurance plan, you may be entitled to continued health benefits for a period of time. When you find a new job, you may have fewer barriers to health care coverage. And with a change in employment, you should understand how your pension benefits are affected. Knowing your rights can help you protect yourself and your family until you are working full time again.

This booklet addresses some of the common questions dislocated workers ask. In addition, there is a brief guide to additional resources at the back. Together, they can help you in making critical decisions about continued health care coverage and about your pension benefits.

Protecting Your Pension and Health Benefits

The Pension and Welfare Benefits Administration (PWBA) enforces and administers the Employee Retirement Income Security Act of 1974 (ERISA), the nation's major pension law. This piece of legislation provides a number of rights and protections for private-sector pension and health benefit plan participants and their beneficiaries.

There have been a number of amendments to ERISA, expanding the protections available to pension and health benefit plan participants and beneficiaries. One important amendment, the Consolidated Omnibus Budget and Reconciliation Act of 1985 (COBRA), provides some workers with the right to continue their health benefit coverage for a limited time after they lose their jobs.

Another recent amendment to ERISA is the Health Insurance Portability and Accountability Act of 1996 (HIPAA). This piece of legislation includes important new protections for millions of working Americans and their families who have preexisting medical conditions or might otherwise suffer discrimination in health coverage based on factors that relate to an individual's health.

The following questions and answers pertain to these laws and how they may affect you.

COBRA - Health Benefits

One of the first questions dislocated workers ask is: What happens to my health insurance?

While dislocated workers may lose health insurance from their former employer, they may have the right to continue health coverage under certain conditions. Health continuation rules enacted under COBRA (the Consolidated Omnibus Budget Reconciliation Act of 1985) apply to dislocated workers and their families as well as workers who change jobs or workers whose work hours have been reduced, thus causing them to lose eligibility for health insurance. This coverage is temporary, however, and the cost is borne by the employee.

To be eligible for COBRA coverage, you must have been enrolled in your employer's health plan when you worked and the health plan must continue to be in effect for active employees. In addition, you must take steps to enroll for COBRA continuation benefits.

Q Which employers are required to offer COBRA coverage?

A Employers with 20 or more employees are usually required to offer COBRA coverage and to notify their employees of the availability of such coverage. COBRA applies to private-sector employees and to most state and local government workers. In addition, many states have laws similar to smaller companies. You should check with your State Insurance Commissioners's Office to see if such coverage is available in your state.

Q What if the company closed or went bankrupt and there is no health plan?

A If there is no longer a health plan, there is no COBRA coverage available. If, however, there is another plan offered by the company, you **may** be covered under that plan. Union members who are covered by a collective bargaining agreement that provides for a medical plan also may be entitled to continued coverage.

Q How do I find out about COBRA coverage and how do I elect to take it?

A Employers or health plan administrators must provide an initial general notice if you are entitled to COBRA benefits. You probably received the initial notice about COBRA coverage when you were hired.

When you are no longer eligible for health coverage, your employer has to provide you with a specific notice regarding your rights to COBRA continuation benefits. Here is the sequence of events: First, employers must notify their plan administrators **within 30 days** after an employee's termination or after

a reduction in hours that causes an employee to lose health benefits.

Next, the plan administrator must provide notice to individual employees of their right to elect COBRA coverage **within 14 days** after the administrator has received notice from the employer.

Finally, you **must** respond to this notice and elect COBRA coverage **by the 60th day after the written notice is sent or the day health care coverage ceased, whichever is later**. Otherwise, you will lose all rights to COBRA benefits.

Spouses and dependent children covered under your health plan have an independent right to elect COBRA coverage upon your termination or reduction in hours. If, for instance, you have a family member with an illness at the time you are laid off, that person alone can elect coverage.

Q If I elect COBRA, how much do I pay?

A When you were an active employee, your employer may have paid all or part of your group health premiums. Under COBRA, as a former employee no longer receiving benefits, you will usually pay the entire premium amount—that is, the premium that you paid as an active employee **plus** the amount of the contribution made by your employer. In addition, there may be a 2 percent administrative fee.

While COBRA rates may seem high, you will be paying group premium rates, which are usually lower than individual rates.

Since it is likely that there will be a lapse of a month or more between the date of layoff and the time you make the COBRA election decision, you may have to pay health premiums retroactively—from the time of separation from the company. The first premium, for instance, will cover the entire time since your last day of employment with your former employer.

You should also be aware that it is your responsibility to pay for COBRA coverage even if you do not receive a monthly statement.

Although they are not required to do so, some employers may subsidize COBRA coverage.

Q When does COBRA coverage begin?

A Once you elect coverage and pay for it, COBRA coverage begins on the date that health care coverage ceased. It is, essentially, retroactive. In addition, the health care coverage you receive is the same as it is for active employees.

Q How long does COBRA coverage last?

Generally, individuals who qualify initially are covered for a maximum of 18 months, but coverage may end earlier under certain circumstances. Those circumstances include:

Premiums are not paid on time;

Your former employer decides to discontinue a health plan altogether;

You obtain coverage with another employer's group health plan; (There may be some exception if your new employer's health plan excludes or limits benefits for a "preexisting" condition—basically a medical condition present before you enrolled in the plan. Please see the discussion on HIPAA that follows.)

You become entitled to Medicare benefits.

Employers may offer longer periods of COBRA coverage but are only required to do so under special circumstances, such as disability (yours or a family member's), your death or divorce, or when your

child ceases to meet the definition of a dependent child under the health plan.

Q Who can answer other COBRA questions?

A COBRA administration is shared by three federal agencies. The Department of Labor (DOL) handles questions about notification rights under COBRA for private-sector employees. The Department of Health and Human Services (HHS) handles questions relating to state and local government workers. The Internal Revenue Service (IRS), Department of the Treasury, has other COBRA jurisdiction.

More details about COBRA coverage are included in the booklet **Health Benefits under the Consolidated Omnibus Budget Reconciliation Act**. Information on how to obtain a copy and telephone numbers for the DOL office nearest you are located at the back of this booklet. You may obtain telephone numbers for the nearest HHS and IRS offices by calling the Federal Information Center at: **1-800-688-9889**.

HIPAA - Health Insurance Portability

HIPAA—the Health Insurance Portability and Accountability Act of 1996—recently amended the Employee Retirement Income Security Act to provide new rights and protections for participants and beneficiaries in group health plans. Understanding this amendment is important to your decisions about future health coverage. HIPAA contains protections both for health coverage offered in connection with employment ("group health plans") and for individual insurance policies sold by insurance companies ("individual policies").

If you find a new job that offers health coverage, or if you are eligible for coverage under a family member's employment-based plan, HIPAA includes protections for coverage under group health plans that:

- limit exclusions for preexisting conditions;
- prohibit discrimination against employees and dependents based on their health status; and
- allow a special opportunity to enroll in a new plan to individuals in certain circumstances.

If you choose to apply for an individual policy for yourself or your family, HIPAA includes protections for individual policies that:

- guarantee access to individual policies for people who qualify; and
- guarantee renewability of individual policies.

Q What is a "preexisting" condition?

A A "preexisting condition" is a condition present before your enrollment date in any new group health plan.

Under HIPAA, the only preexisting conditions that may be excluded under a preexisting condition exclusion are those for which medical advice, diagnosis, care or treatment was recommended or received within the 6-month period before your enrollment date. (Your enrollment date is your first day of coverage, or if there is a waiting period to get into the plan, the first day of the waiting period.)

If you had a medical condition in the past, but have not received any medical advice, diagnosis, care or treatment within the 6 months prior to your enrollment date in the plan, your old condition is not a "preexisting condition" to which an exclusion can be applied. Moreover, under HIPAA, preexisting condition exclusions cannot be applied to pregnancy, regardless of whether the woman had previous health coverage.

Finally, a preexisting condition exclusion cannot be applied to a newborn, adopted child or child placed for adoption as long as the child enrolls for health coverage with 30 days of the birth, adoption or placement for adoption and provided that the child does not incur a subsequent 63-day break in coverage.

Q I have a preexisting condition that may be excluded under HIPAA. How does my new plan determine the length of my preexisting condition exclusion period?

A The maximum length of a preexisting condition exclusion period is 12 months after your enrollment date (18 months in the case of a "late enrollee"). A late enrollee is an individual who enrolls in a plan other than on the earliest date on which coverage can become effective under the terms of the plan and other than on a "special enrollment date" (see below).

A plan must reduce an individual's preexisting condition exclusion period by the number of days of an individual's "creditable coverage." Most health coverage is creditable coverage, such as coverage under a group health plan (including COBRA continuation coverage), HMO, individual insurance policy, Medicaid or Medicare. However, a plan is not required to take into account any days of creditable coverage that precede a significant break in coverage (generally, a break in coverage of 63 days or more).

A plan generally receives information about an individual's creditable coverage from a certificate furnished by a prior plan or health insurance issuer (e.g., an insurance company or HMO). You should receive a certificate of creditable coverage automatically when you lose coverage under your old plan or when you become entitled to COBRA continuation coverage and when your COBRA continuation coverage ceases. You also have a right to receive a certificate when you request one from your previous plan or issuer within 24 months of when your coverage ceases (including before your coverage ceases).

Q I received my certificate from my former plan. What do I do now?

A You should:

- ensure that the information is accurate; (Contact the plan administrator of your former plan if any information is wrong.)

- keep the certificate in case you need it; (You will need the certificate if you enroll in a new group health plan that applies a preexisting condition exclusion period or if you purchase an individual policy from an insurance company.)

Q What if I have trouble getting a certificate from my former employer's group health plan?

A Under HIPAA, group health plans and health insurance issuers are required to provide documentation that certifies the creditable coverage you have earned. Plans and issuers that fail or refuse to provide such certificates are subject to penalties under HIPAA.

However, if you have trouble obtaining a certificate, your new group health plan is required to accept other evidence of creditable coverage, if you have it. It is important, therefore, to keep accurate records (e.g., pay stubs, copies of premium payments or other evidence of health care coverage) that can be used to establish periods of creditable coverage in the event a certification cannot be obtained.

Q When I enroll in a new group health plan that contains a preexisting condition exclusion period, how does "crediting" for prior coverage work under HIPAA?

A Most plans will use what is known as the "standard method" of crediting coverage. Under this method, you will receive credit for your previous coverage that occurred without a break in coverage of 63 days or more. Any coverage you had prior to a break in coverage of 63 days or more may not be credited against a preexisting condition period. However, if your health coverage is offered through an HMO or an insurance policy issued by an insurance company, you should check with your State

Insurance Commissioner's office to find out if this break in coverage period is longer in your state.

To illustrate: Suppose an individual had health insurance coverage for 2 years followed by a break in coverage of 70 days and then resumed coverage for 8 months. That individual would only receive credit for 8 months of coverage. No credit would be given for the 2 years of coverage prior to the break in coverage of 70 days.

HIPAA also permits an "alternative method" for crediting coverage for all employees. Under the alternative method of calculating creditable coverage, the plan or issuer separately determines the amount of an individual's creditable coverage for any of the five following categories of benefits: mental health, substance abuse treatment, prescription drugs, dental care and vision care. Your new plan must notify you if it is using the alternative method for any of these benefits.

Q What are my new group health plan's obligations with respect to "special enrollment opportunities"?

A A group health plan is required to allow special enrollment for certain individuals to enroll in the plan without having to wait until the plan's next regular enrollment season.

A special enrollment opportunity occurs if an individual with other health insurance loses that coverage. A special enrollment opportunity also occurs if a person has (or becomes) a new dependent through marriage, birth, adoption or placement for adoption. However, you must notify the plan of your request for special enrollment within 30 days after losing your other coverage or within 30 days of having (or becoming) a new dependent.

If you enroll as a special enrollee, you may not be treated as a late enrollee for purposes of any pre-existing condition exclusion period. Therefore, the maximum preexisting condition exclusion period that may be applied is 12 months, reduced by your creditable coverage (rather than 18 months, reduced by creditable coverage).

Q Can I be denied coverage or charged more for coverage by my new group health plan based on my health status?

A No. First, group health plans and health insurance issuers may not establish rules for eligibility (including continued eligibility) of any individual to enroll under the terms of the plan based on "health status-related factors." These factors include: health status, medical condition (physical or mental), claims experience, receipt of health care, medical history, genetic information, evidence of insurability and disability. However, plans may establish limits or restrictions on benefits or coverage for all similarly situated individuals.

Second, plans generally may not require an individual to pay a premium or contribution that is greater than that for a similarly situated individual based on a health status-related factor.

Q What if I am unable to obtain new group health plan coverage?

A You may be able to purchase an individual insurance policy. HIPAA guarantees access to individual policies to "eligible individuals." Eligible individuals are those who:

have had coverage for at least 18 months where the most recent period of coverage was under a group health plan;

did not have their group coverage terminated because of fraud or nonpayment of premiums;

are ineligible for COBRA continuation coverage or have exhausted their COBRA benefits (or continuation coverage under a similar state provision); and

are not eligible for coverage under another group health plan, Medicare or Medicaid or have any

other health insurance coverage.

The chance to buy an individual policy is the same, whether you are laid off, fired or quit your job. However, the type of coverage you are guaranteed may differ across states. Therefore, it is important to check with your State Insurance Commissioner's Office if you are interested in obtaining individual insurance coverage.

In addition, individuals in a family whose income is temporarily reduced (for example, due to loss of a job) may be eligible for low-cost or no-cost health insurance through public programs. For example, in many instances, children will be eligible for low-cost coverage. Eligibility for these programs varies by state and sometime within a state. You can contact state government officials to find out if you are eligible.

ERISA - Pension Benefits

The Employee Retirement Income Security Act of 1974, or ERISA, protects the assets of millions of Americans so that funds placed in retirement plans during their working lives will be there when they retire.

ERISA does not require that pension benefits be disbursed before normal retirement age, usually age 65. By that age an employee is usually "vested" in a retirement plan—that is, the employee has earned the years of service credit required to retire with a pension.

Dislocated workers face two important issues when they leave employment: access to pension funds and the continued safety of their pension benefit investments.

Q Can I get my pension money if I am laid off?

A Generally, if you are enrolled in a 401(k), profit sharing or other type of **defined contribution plan** (a plan in which you have an individual account), your plan may provide for a lump sum distribution of your retirement money when you leave the company.

However, if you are in a **defined benefit plan** (a plan in which you receive a fixed, pre-established benefit) your benefits **begin at retirement age**. These types of plans are less likely to contain a provision that enables you to withdraw money early.

Whether you have a defined contribution or a defined benefit plan, the form of your pension distribution (lump sum, annuity, etc.) and the date your pension money will be available to you depend upon the provisions contained in your plan documents. Some plans do not permit distribution until you reach a specified age. Other plans do not permit distribution until you have been separated from employment for a certain period of time. In addition, some plans process distributions throughout the year and others only process them once a year. You should contact your pension plan administrator regarding the rules that govern the distribution of your pension money.

One of the most important documents you should have is the summary plan description (SPD). It outlines what your benefits are and how they are calculated. A copy of the SPD is available from your employer or pension plan administrator.

In addition to the SPD, your employer also may give you—or you may request—an individual benefit statement showing the value of your pension benefits—the amount you have actually earned to date and your vesting status. These documents contain important information for you, whether you withdraw your money now or later.

Q Is my plan required to give me a lump-sum distribution?

A ERISA does not require pension and profit-sharing plans to provide for lump-sum distributions. Lump-sum distributions are possible only if the plan specifically provides for them and only if you meet

the plan's eligibility requirements.

Q If I withdraw retirement money, are there potential adverse effects?

A Yes. Receiving a lump sum or other distribution from your pension plan may affect your ability to receive unemployment compensation. You should check with your state unemployment office.

In addition, receiving money from your pension plan may result in additional income tax. You can defer these taxes, however, if you keep the money in your plan or if you "roll over" the money into a qualified pension plan or Individual Retirement Account (IRA). There are provisions in the Internal Revenue Code that allow these rollovers.

Generally, your plan is required to withhold 20 percent of an eligible rollover distribution unless you elect to have the distribution paid directly to an eligible retirement plan, including an IRA. This is known as a "direct rollover." If there is no direct rollover, you will have to make up the 20 percent withholding to avoid tax consequences on the full rollover amount. The IRS does not require 20 percent withholding of an eligible rollover distribution that, when added to other rollover distributions made to you during the year, is less than \$200.

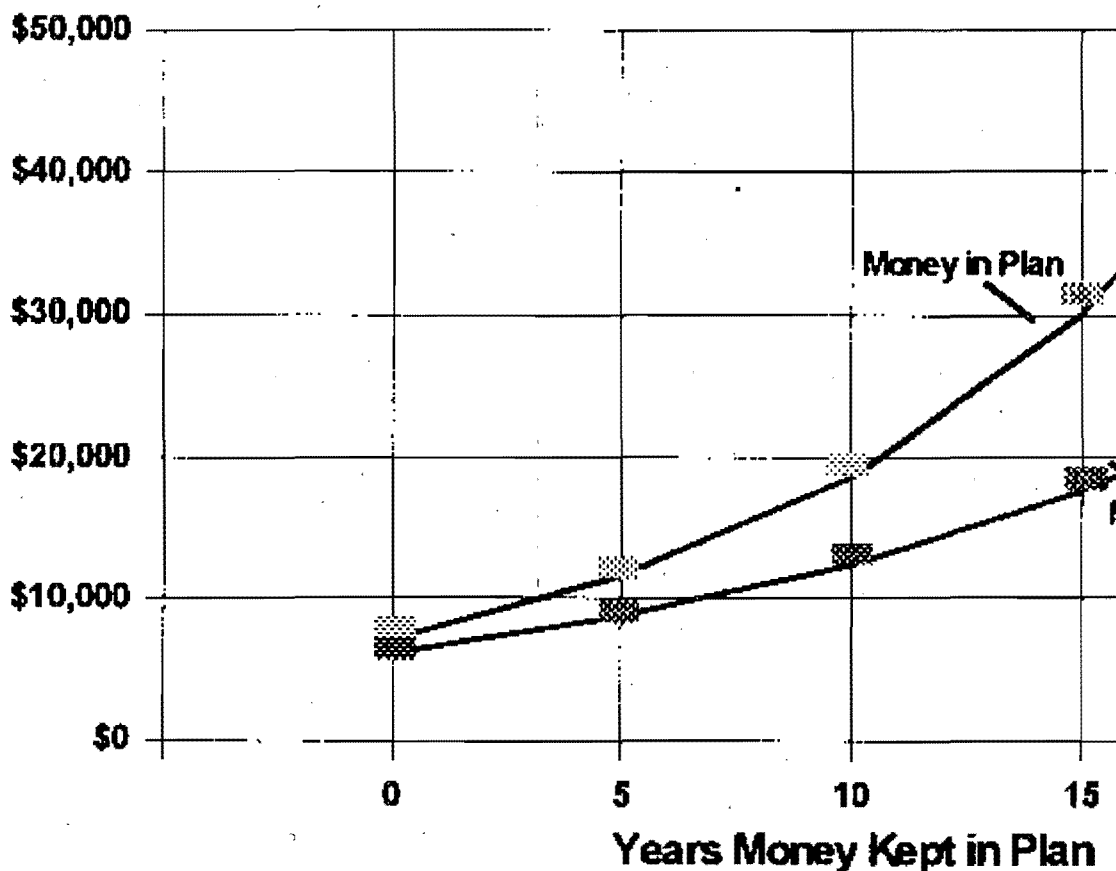
Under IRS rules, and in order to avoid certain tax consequences, you have 60 days to roll over the distribution you received to another qualified plan or IRA if you wish to avoid the tax consequences.

If you have a choice between leaving the money in your current pension plan or depositing it in an IRA, you should carefully evaluate the investments available through each option.

Withdrawing money from your retirement plan also affects the amount of money you will accumulate over time. The graph below shows the consequences of withdrawing money from your pension plan and not depositing it in another qualified plan within the required time limit.

Projected Retirement F

Account Balance = \$10,000 in Year



Note: The retirement funds available are less than account subtraction of taxes.

As the graph shows, your pension keeps the full amount it earns through investments because its earnings are not fully taxed (until you receive a distribution). As a result, pension accounts can grow

faster than comparable taxable accounts (see graph). Let's say, for instance, that you have \$10,000 in a pension account or IRA, and it earns an average return on investment of 10 percent. In 20 years it will grow, with compounding, to \$67,300. If you withdraw this amount after you reach age 59½ (the age at which you can withdraw money without a 10 percent penalty) and pay 28 percent income tax on your withdrawal, you will keep \$48,400.

On the other hand, if you close your pension account before age 59½, taxes will claim a portion of the funds you receive and will reduce your return every year thereafter. As a result, the value of your account after 20 years will be approximately \$24,900, assuming the same rate of return and tax bracket. As shown in the graph, the tax consequences of early withdrawal will cost you 45 percent of your account balance at retirement.

Before you withdraw retirement funds, you may want to talk to your employer, bank, union or a financial advisor for practical advice about the long-term and the tax consequences.

Q If I am laid off, are my retirement funds safe?

A Generally, your pension funds should not be at risk when a plant or business closes. Employers must comply with federal laws when establishing and running pension plans, and the consequences of not prudently managing pension plan assets are serious.

In addition, your pension benefits may be protected by the federal government. Traditional plans (**defined benefit plans**) are insured by the Pension Benefit Guaranty Corporation (PBGC), a federal government corporation. If an employer has financial difficulty and cannot fund the plan, and the plan does not have enough money to pay the promised benefits, the PBGC will assume responsibility as trustee of the plan. The PBGC pays benefits up to a certain maximum guaranteed amount.

Defined contribution plans, on the other hand, are not insured by the PBGC.

To help employees monitor their retirement plans and thus ensure retirement security, PWBA has issued a list of ten warning signs that may indicate your pension plan has financial problems. They are included in the publication **Protect Your Pension**, listed at the end of this booklet.

If, for any reason, you suspect your pension benefits are not safe or are not prudently invested, you should pursue the issue with the PWBA regional office nearest you. The address and telephone number of each regional office are listed at the back of this booklet.

Q What if my company goes out of business and the pension plan terminates?

A In a defined contribution plan, the plan administrator generally gathers certain pension plan and tax-related information and submits it to the IRS. This process may delay plan termination and subsequent payment of any benefits. You should contact your pension plan administrator for information on status and length of time before you receive your money.

In a defined benefit plan, the plan administrator generally files certain documents with the IRS and the PBGC. Once PBGC approves the termination, benefits are generally distributed in a lump sum or as an annuity within 1 year of termination.

Regardless of the type of benefit plan, you should know the name of the plan administrator. This information is contained in the latest copy of your summary plan description. If you can't find the name of your plan administrator, you may wish to contact your company's personnel department, your union representative (if there is a union) or the IRS or PBGC (in the case of most defined benefits plans).

If you do decide to contact one of these agencies, you may need to know your employer's identification number, or EIN, a 9-digit number used for tax purposes. The EIN can be found on last year's wage tax form (Form W-2). A PWBA regional office may be able to help you obtain this information.

Q What if the company declared bankruptcy?

A If an employer declares bankruptcy, there are a number of choices as to what form the bankruptcy takes. A Chapter 11 (reorganization) bankruptcy may not have any effect on your pension plan and the plan may continue to exist. A Chapter 7 (final) bankruptcy, where the employer's company ceases to exist, is a more complicated matter.

Because each bankruptcy is unique, you should contact your pension plan administrator, your union representative or the bankruptcy trustee and request an explanation of the status of your pension plan.

In summary:

Know in advance the plan rules that govern the way your pension assets and health care benefits are treated if you are laid off. The following documents contain valuable information about your health care and pension plans and should be helpful to you as a dislocated worker. You should be able to obtain most of them from your plan administrator, union representative or human resource coordinator.

Summary plan description - A brief description of your pension or health plan;

Summary annual report - A summary of the plan's annual finances; the summary may contain names and addresses you may need to know;

Enrollment forms listing you and/or your family members as participants in a plan;

Earnings and leave statements;

A certificate of creditable coverage (furnished by your former employer) - Informs your new employer that you had health coverage;

Statements showing how much money is in your pension account or the value of your pension benefit.

You should save these documents. In addition, you should save any documents, such as memos or letters from your company, union or bank, that relate to your pension or health plans. They may prove valuable in protecting your pension and health benefit rights.

For More Information

The Pension and Welfare Benefits Administration offers more information on ERISA, COBRA and HIPAA. The following booklets, available from our toll-free number, may be particularly useful:

Health Benefits Under the Consolidated Omnibus Reconciliation Act (COBRA)

Questions and Answers: Recent Changes in Health Care Law

What You Should Know About Your Pension Rights

Protect Your Pension: A Quick Reference Guide

Your Guaranteed Pension (PBGC)

For copies of the above publications, please visit us at our website: <http://www.dol.gov/dol/pwba>

Or call our toll-free number: **1-800-998-7542**

For more information about the impact of HIPAA on COBRA continuation coverage, you may want to see Internal Revenue Notice 98-12. A copy appears on PWBA's website at the above address.

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Simple Retirement Solutions for Small Business

Question:

I'm a small employer with 25 employees. I've considered starting a retirement plan for my workers, but I don't want to do anything complicated. Are there simple options for employers like me?

Starting a small business retirement savings plan can be easier than most business people think. There are a number of retirement options that provide tax advantages to both employers and employees.

By starting a retirement savings plan, you will be helping your employees save for the future. Retirement plans may also help you attract and retain a qualified pool of employees. What's more, you will be joining more than one million small businesses with 100 or fewer employees that offer workplace retirement savings plans.

Why save?

Experts estimate that Americans will need 60 to 80 percent of their pre-retirement income -- lower-income earners may need up to 90 percent to maintain their current standard of living when they stop working. So, now is the time to look into retirement plan options. As an employer, you have an important role to play in helping America's workers save.

A Few Pension Facts

Most private-sector retirement plans are either **defined benefit plans** or **defined contribution plans**. Defined benefit plans promise a specified benefit at retirement, for example, \$100 a month at retirement. The amount of the benefit is often based on a set percentage of pay multiplied by the number of years the employee worked for the employer offering the plan. Employer contributions must be sufficient to fund the promised benefit.

A defined contribution plan, on the other hand, does not promise a specific amount of benefit at retirement. In these plans, employees or their employer (or both) contribute to employees' individual accounts under the plan, sometimes at a set rate (such as 5 percent of salary annually). A 401(k) plan is one type of defined contribution plan. Other types of defined contribution plans include profit-sharing plans, money purchase plans, and employee stock ownership plans.

Small businesses may choose to offer a defined benefit plan or any of these defined contribution plans. Many financial institutions and pension practitioners make available both defined benefit and defined contribution "prototype" plans that have been pre-approved by the IRS.

This brochure focuses on a few of the simpler options — SIMPLE plans, SEPs, 401(k) plans, profit-sharing plans, and payroll deduction IRAs.

All retirement plans have important tax, business and other implications for employers and employees. Therefore, you may want to discuss any retirement savings plan with a tax or financial advisor.

Here's a brief look at some plans that can help you and your employees save.

SIMPLE: Savings Incentive Match Plans for Employees of Small Employers

SIMPLE: Savings Incentive Match Plans for Employees of Small Employers

This savings option for employers of 100 or fewer employees involves a type of individual retirement account (IRA) and is the result of new legislation, the Small Business Job Protection Act of 1996.

A SIMPLE plan allows employees to contribute a percentage of their salary each pay check and to have their employer match their contribution. Under SIMPLE plans, employees can set aside up to \$6,000 each year by payroll deduction. Employers can either match employee contributions dollar for dollar -- up to 3 percent of an employee's wage -- or make a fixed contribution of 2 percent of pay for all eligible employees instead of a matching contribution.

SIMPLE plans are easy to set up -- you fill out a short form, administrative costs are low, and much of the paperwork is done by the financial institution that handles the SIMPLE plan accounts. Employers may choose either to permit employees to select the IRA to which their contributions will be sent, or to send contributions for all employees to one financial institution (which will forward contributions of employees who elect a different IRA). Employees are 100% vested in contributions, get to decide how and where the money will be invested, and keep their IRA accounts even when they change jobs.

SEPs: Simplified Employee Pensions

A SEP allows employers to set up a type of individual retirement account — known as a SEP-IRA — for themselves and their employees. Employers must contribute a uniform percentage of pay for each employee. Employer contributions are limited to the lesser of 15 percent of an employee's annual salary or \$24,000. (Note: this amount is indexed for inflation and will vary). SEPs can be started by most employers, including those who are self-employed.

SEPs have low start-up and operating costs and can be established using a single quarter-page form. Businesses are not locked into making contributions every year. You can decide how much to put into a SEP each year -- offering you some flexibility when business conditions vary.

401(k) and Profit-Sharing Plans

401(k) plans have become a widely-accepted savings vehicle for small businesses. Today, an estimated 25 million American workers are enrolled in 401(k) plans that hold total assets of about \$1 trillion.

Employees contribute a percentage of their pay to the 401(k) plan on a tax-deferred basis through payroll deductions. Employers also may contribute to an employee's 401(k) account by matching employee contributions, usually up to a percentage of an employee's pay. The maximum amount an employee can deposit to a 401(k) is indexed for inflation. In 1997, that amount is \$9,500.

While more complex, 401(k) plans offer higher contribution limits than SIMPLE plans and IRAs, allowing employees to accumulate greater savings.

Employers also may make profit-sharing contributions to a plan that are unrelated to any amounts an employee chooses to contribute. The amount of these contributions is often set as a percentage of employees' pay; however, the employer can change the percentage or amount from year to year. A plan may combine these profit-sharing contributions with 401(k) contributions (and matching contributions).

Payroll Deduction IRAs

Even if an employer does not want to adopt a retirement plan, it can allow its employees to save through payroll deduction, providing a simple and direct way for eligible employees to contribute to an IRA. This type of payroll deduction system is not generally considered a pension plan, provided that the decision of whether to contribute, and when and how much to contribute to the IRA (up to \$2,000) is made by the employee.

Many individuals eligible to contribute to an IRA do not. One reason is that some individuals wait until the end of the year to set aside the money and then find that they do not have sufficient funds to do so. Payroll deductions allow individuals to plan ahead and save smaller amounts each pay period. Payroll deduction contributions are tax-deductible by an individual to the same extent as other IRA contributions.

To Find Out More...

The following two pamphlets and other pension-related publications are available from the Pension and Welfare Benefits Administration:

- Simplified Employee Pensions (SEPs) - What Small Businesses Need to Know
- Savings Incentive Match Plans for Employees of Small Employers (SIMPLE) - A Small

Contact the Publication Hotline or Internet address for copies:

Publication Hotline: **1-800-998-7542**
(also request a list of publications here)

Internet address: **<http://www.dol.gov/dol/pwba>**

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