

## Comments on PPA Benefit Statement Requirements

June 5, 2007

Robert Doyle  
Director, Office of Regulations & Interpretations  
U.S. Department of Labor  
200 Constitution Avenue, NW, Suite N-5669  
Washington, DC 20210

Dear Mr. Doyle:

The American Society of Pension Professionals & Actuaries (ASPPA) understands that the U.S. Department of Labor (DOL) is planning to draft regulations with respect to the requirements for benefit statements under §508(a) of the Pension Protection Act of 2006 (PPA). ASPPA appreciates the opportunity to provide comments with respect to the forthcoming benefit statement guidance.

This comment letter supplements the February 15, 2007, comments provided by ASPPA, SBCA, the U.S. Chamber of Commerce and the NFIB to the DOL on the application of interim benefit statement guidance interpreting PPA §508(a) (Field Assistance Bulletin 2006-03) to *trustee-directed* defined contribution plans.

ASPPA is a national organization of over 6,000 retirement plan professionals who provide consulting and administrative services for qualified retirement plans covering millions of American workers. ASPPA members are retirement professionals of all disciplines, including consultants, investment professionals, administrators, actuaries, accountants and attorneys. Our large and broad-based membership gives ASPPA unique insight into current practical applications of ERISA and qualified retirement plans, with a particular focus on the issues faced by small- to medium-sized employers. ASPPA's membership is diverse but united by a common dedication to the employer-sponsored retirement plan system.

### Summary of Recommendations

The following is a summary of ASPPA's recommendations. These are described in greater detail in the Discussion of Issues section.

- A. The PPA's vesting disclosure requirement should be satisfied by either referencing the summary plan description (SPD) for the plan or providing a description of the plan's vesting schedule, by itself, without specific participant data such as date of hire, years of service, or hours of service.
- B. Underlying investments in pooled investments and collective trusts should not have to be disclosed on benefit statements (disclosure should instead be made similar to the disclosure of mutual fund shares).

- C. Only defined benefit plans should be required to provide disclosure on benefit statements regarding the use of permitted disparity in determining benefits. ASPPA also recommends that plans be allowed to reference on benefit statements the SPD's description of permitted disparity in full satisfaction of the pension benefit statement requirements. Alternatively, if the DOL does not exempt defined contribution plans from permitted disparity disclosure on benefit statements, then ASPPA recommends that the DOL clarify that a defined contribution plan that utilizes permitted disparity in calculating contributions or allocations, but has no contribution for a specific plan year, is not required to provide permitted disparity disclosure for that plan year.

## Discussion of Issues

### Background

Section 508(a) of the PPA requires plans to provide benefit statements to participants and beneficiaries. These statements generally must be provided: (i) quarterly for participant-directed defined contribution plans; (ii) annually for all other defined contribution plans; and (iii) once every three years for defined benefit plans.

Statements for participant-directed defined contribution plans must generally disclose:

- the total benefits accrued (based on the latest available information);
- the participant's vested benefits, if any, or the earliest date on which benefits will become vested (based on the latest available information);
- an explanation of any permitted disparity or floor-offset arrangement used by the plan;
- the value of "each investment to which assets in the individual account have been allocated, determined as of the most recent valuation date under the plan";
- an explanation of any limitations or restrictions on the right to direct investments;
- an explanation of the importance of diversification; and
- information about the Department's website.

In Field Assistance Bulletin 2006-03 (FAB), the Department stated that plans must provide benefit statements within 45 days after the end of the relevant period to constitute good faith compliance.<sup>1</sup>

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<sup>1</sup> The February 15, 2007 comments submitted by ASPPA, SBCA, the Chamber of Commerce, and NFIB addressed the application of the 45-day safe harbor to trustee-directed defined contribution plans.

## A. Calculating Years of Service for Vesting Purposes

The PPA requires benefit statements for defined contribution plans to disclose “on the basis of the latest available information— ... (II) the nonforfeitable pension benefits, if any, which have accrued, or the earliest date on which benefits will become nonforfeitable....”<sup>2</sup>

In order to provide this information, plans that require 1,000 hours of service for a participant to be credited with a year of vesting service will need to analyze the hours of service worked by employees and then determine whether each employee satisfied the year of service requirement. To provide accurate vesting benefit statement information, third party administrators (TPAs) would need to obtain and analyze information regarding participants’ hours of service within 45 days after the end of a period. It is particularly difficult for small plan sponsors to provide the required contribution information on a timely basis to TPAs, due to the fact that certain financial reporting must first be completed. Accordingly, there would be significant challenges and costs associated with meeting the 45-day deadline.

Based on informal conversations with DOL officials, ASPPA understands that the DOL is considering allowing this information to be disclosed through a reference to the summary plan description or by providing information about the vesting schedule, rather than the participant’s actual vested percentage. ASPPA strongly supports this approach, and notes that PPA’s statutory language also supports this approach. Specifically, the PPA includes ERISA §105(a)(2)(C), which provides that “the requirements of subparagraph (A)(i)(II) [related to vesting notice] are met if, at least annually and in accordance with requirements of the Secretary, the plan— (i) updates the information described in such paragraph which is provided in the pension benefit statement, *or* (ii) *provides in a separate statement such information as is necessary to enable a participant or beneficiary to determine their nonforfeitable vested benefits.*”<sup>3</sup>

ASPPA also asks DOL to confirm that providing a separate annual description of a plan’s vesting schedule, by itself, would be sufficient “information as is necessary to enable a participant or beneficiary to determine their nonforfeitable vested benefits.” Specifically, ASPPA asks DOL to confirm that participant data, such as date of hire or years of service, would also not be necessary on the annual statement. For the same reasons described above, gathering data (such as hours of service) from plan sponsors to report to participants for their use in calculating their own vesting percentages within 45 days after the end of a period would be difficult. In addition, participants should generally have information regarding their own dates of hire, years of service, and approximate hours of service under the plan each year, because they likely know or can reasonably determine, for example, whether they have worked more or less than 1000 hours for a particular employer in that year.

**ASPPA recommends** that the Department issue guidance that states that the PPA’s vesting disclosure requirement may be satisfied by either referencing the summary plan description for the plan or providing a description of the plan’s vesting schedule, by itself, without specific participant data such as date of hire, years of service, or hours of service.

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<sup>2</sup> PPA §508(a)(1).

<sup>3</sup> PPA §508(a)(1) (emphasis added).

## B. Disclosure of Investment Information

The PPA requires benefit statements for participant-directed defined contribution plans to disclose the value of each investment in which the assets in a participant's account have been allocated. For investments like mutual funds, this requirement should be relatively simple to meet, and easy for participants to understand.

For plans that invest in pooled investments or collective trusts, the participant's account would typically reflect the investment in the pooled investment or collective trust (referred to herein as the "entity"), rather than the underlying investments held by the entity. It is not clear whether the PPA would require disclosure of the units of ownership in, and the value of each unit of, the entity, or instead would require disclosure of all of the underlying investments and their value within the entity.

Disclosing the allocation of the underlying investments in these entities on participants' benefit statements would be extremely time consuming, and would add little value for participants. For example, for a pooled investment fund that seeks to mimic the holdings of the S&P 500 index, a list of each participant's share of each of the underlying assets of the fund could be incredibly voluminous, and may not provide participants with relevant or comprehensible information regarding the relative risk or investment strategy of the pooled investment fund. That information could be misleading, as well, because participants in pooled investments generally do not have a separate ownership interest in the specific underlying assets of the fund, but instead have an undivided interest in all of the fund assets collectively, represented by the participant's units of ownership in the fund. If the assets underlying the pooled investment units are listed separately on a statement, participants could be led to believe that they own those underlying assets separately and can trade them separately, when they cannot.

Furthermore, information about the underlying assets should be available to participants interested in additional information about the investment strategy or relative risk of the pooled investment fund. Those participants could be directed to the plan administrator or investment manager for additional information, such as a collective trust document or list of assets. Indeed, for any plan seeking to comply with ERISA §404(c), the plan would be required to provide that information upon request to maintain compliance with §404(c).<sup>4</sup>

*ASPPA recommends* that the Department issue guidance that indicates that the underlying investments in pooled investments and collective trusts do not need to be disclosed on benefit statements (*i.e.*, that pooled investments and collective trusts are disclosed in the same manner as shares of mutual funds will be reflected on statements).

## C. Disclosure of Permitted Disparity Information

The PPA requires a pension benefit statement to include "an explanation of any permitted disparity under section 401(l) of [the Code] or any floor-offset arrangement that may be applied in determining any accrued benefits." Applying this language literally, it appears that defined contribution plans, as well as defined benefit plans, may be required to include this

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<sup>4</sup> 29 C.F.R. §2550.404c-1(b)(2)(i)(B)(2)(iii).

disclosure on pension benefit statements to the extent that permitted disparity is included as a plan feature.

However, it is unclear whether the use of permitted disparity in determining how contributions are *allocated* among plan participants directly affects the determination of any accrued benefits under a defined contribution plan. In addition, a defined contribution plan's use of permitted disparity in allocating plan contributions is already required to be disclosed in plain English as part of the plan's summary plan description.

Because permitted disparity arrangements only clearly affect the *determination of any accrued benefits* under a defined benefit plan, ASPPA believes the requirement that this information be included on pension benefit statements should be limited to defined benefit plans. Additionally, because a plan's use of permitted disparity is already required to be disclosed in plain English in the plan's SPD, it would be most efficient if plans and service providers could reference on the benefit statement the SPD's description of permitted disparity in satisfaction of the pension benefit statement requirements. Allowing a simple cross reference to the SPD for more detail on the plan's use of permitted disparity will highlight that issue for affected participants, without requiring oversimplification on a benefit statement of the often complex application of permitted disparity under a plan.

Alternatively, ASPPA believes that where a defined contribution plan allows use of permitted disparity in calculating or allocating contributions, but has no contribution for a particular plan year, the defined contribution plan should be exempt from any requirement to include permitted disparity language on pension benefit statements for that year. Such disclosure could be particularly confusing to plan participants in a year when no contribution is being made.

**ASPPA recommends** that only defined benefit plans should be required to provide disclosure on benefit statements regarding the use of permitted disparity in determining benefits. ASPPA also recommends that all plans should be allowed to reference on benefit statements the SPD's description of permitted disparity in full satisfaction of the pension benefit statement requirements. Alternatively, if the DOL determines that defined contribution plans are not exempt from this disclosure requirement, then ASPPA recommends that a defined contribution plan that allows permitted disparity in calculating contributions or allocations, but has no contribution for a plan year, not be required to provide permitted disparity disclosure for that plan year.



These comments were primarily authored by the ASPPA DOL Subcommittee of the Government Affairs Committee, and were primarily authored by Stephanie Napier, APM, Chair. Please contact us if you have any comments or questions regarding the matters discussed above. Thank you for your consideration of these comments.

Sincerely,

/s/

Brian H. Graff, Esq., APM  
Executive Director

/s/

Teresa T. Bloom, Esq., APM  
Chief of Government Affairs

/s/

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