



Written Comments Submitted to the U.S. Department of Labor Advisory Council on Employee Welfare and Pension Benefit Plans

**By
Robert M. Richter, J.D., LL.M.
Vice President, SunGard
on behalf of ASPPA**

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Promoting Retirement Literacy and Security by Streamlining Disclosures to Participants and Beneficiaries

Mr. Chairman and members of the Advisory Council, thank you for this opportunity to testify on the Promotion of Retirement Literacy and Security by Streamlining Disclosures to Participants.

I am Robert Richter, a Vice President with SunGard. SunGard is a global leader in technology and services to more than 25,000 customers worldwide and is a leading provider of software and services to retirement plan professionals in the U.S. SunGard products are used to prepare retirement and health plan documents, including employee communications and disclosure materials. At the center of SunGard's technology solutions are our Relius and Omni platforms that are used by more than 1000 firms who fulfill recordkeeping and administrative functions for more than 50 million participants. These platforms also offer web site tools to provide investment education and information to plan sponsors and participants.

I am speaking today on behalf of the American Society of Pension Professionals and Actuaries (ASPPA). ASPPA is a national organization of more than 6,500 members 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 a 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.

Communication to Participants

ASPPA applauds the Council for examining the participant disclosure requirements. ASPPA believes that a successful private retirement system requires informed and engaged participants.

In many cases, however, current disclosure requirements may actually be overwhelming participants with too much information to the point that they may be paralyzed into inaction. Furthermore, more frequent and lengthy communications increase plan costs, and this burden may be disproportionately felt by sponsors of, and participants in, plans maintained by smaller businesses.

As part of a thorough analysis of the current disclosure requirements, it must be kept in mind that the requirements vary significantly based on the type of plan and its features. The disclosure requirements for a very simple trustee-directed profit sharing plan or defined benefit pension plan may not be viewed as particularly onerous to sponsors or overwhelming to participants (although regulations interpreting the PPA participant benefit statement rules may change that). At the other extreme, a 401(k) plan with automatic enrollment, ADP test safe harbor provisions, participant directed investments, and a qualified default investment alternative (QDIA), must provide several lengthy annual notifications to participants as well as quarterly statements. The popularity of 401(k) plans which permit participant directed investments has spawned the incredible volume of requisite notices.

ASPPA believes that many of the problems under current law in getting participants to read and understand plan communications stem from overlapping requirements in the law (*i.e.*, the Internal Revenue Code, the Employee Retirement Income Security Act, and in some cases, securities laws). This results in a duplication of the information given to participants. The notices can become extremely lengthy with unnecessary or redundant information. In addition, many times the information is meaningless to the participant (*e.g.*, the Summary Annual Report).

Another impediment to the current communication rules is the potential liability associated with any communication. The DOL and the courts tend to understandably interpret communications in a manner that is most favorable to participants. The law provides no relief to a plan sponsor or practitioner that, in good faith, makes an error in a communication to participants. The result is that the law fosters the creation of duplicate and lengthy notices and discourages attempts to summarize information in a more meaningful manner. For example, current IRS regulations require a plan utilizing the ADP test safe harbor provisions to include distribution provisions in an annual notice. Referencing the summary plan description (SPD) for this information is not permitted, and any attempt to shorten the explanation to make it more direct and meaningful to participants is rewarded with the risk of adverse consequences should there be an error. Prudence dictates that one use the exact language from the SPD. This lengthens the notice, obfuscates the primary message that needs to be conveyed, increases costs, and results in participants “tuning out.”

I am not an expert in the science of communication. However, anecdotal reports from ASPPA’s members clearly indicate that face-to-face enrollment meetings are the most effective, albeit inefficient, means of communication with participants. Congressional encouragement of automatic enrollment provides further support to the notion that participants do not take the time to read or act upon written materials. One only needs to spend time at the human resources office after automatic enrollment is first implemented by a plan to see that participants are not reading the material (which is why the law allows plans to provide permissible withdrawals of automatic contributions for the first 90 days after being enrolled). There is an old saying in the health

benefit area: if an individual knows any details about his or her health coverage, it's because he or she either just enrolled in the plan or just had a claim.

Effective and meaningful communication will occur when participants are engaged. The reverse is not true; providing participants with mounds of written materials will not cause them to be engaged. In such a situation, it's only sheer luck if a participant makes it past page one.

ASPPA believes a "life style" approach to communication would be more effective at providing meaningful communication. Under this approach, there would be a single document that contains all relevant information for participants. This document would then be the cornerstone of the disclosure requirements. It does not matter whether this document is referred to as an SPD, Plan Operating Manual (or POM, as ASPPA had suggested in prior testimony), or some other name. The document would be available at all times, preferably electronically (*e.g.*, through an intranet site). In addition, in order to alleviate liability concerns and to foster more uniformity among plans, the DOL could maintain master language that could be used as the basis for this document. When a targeted communication is needed, participants would be referred to the relevant sections of this document for supplementary information. This targeted communication could be provided electronically (*e.g.*, by email) or by regular mail (*e.g.*, by mailing a postcard). An emailed notice could well include a link to facilitate easy access to the summary.

For example, upon enrollment, a participant is provided with a post card. The card would direct the participant to the enrollment information in the summary. It would also direct the participant to the remainder of the summary for other general information. Annually, a notice might be sent out directing the participant to the location of in-service plan events such as hardships, loans, or other in-service distributions. Upon termination of employment, another communication would direct the participant to the distributable events, where to look for information regarding the tax effects of distribution alternatives, and to other information.

An electronic-based system (*e.g.*, using the Internet or an intranet) lends itself ideally to this concept. A participant can obtain relevant information on demand at any time he or she is interested in looking at a particular topic or issue. We recognize that not everyone has Internet access, and telling someone to go to a local library is not the ideal approach. However, we must move forward and devise more effective communications taking advantage of new technologies that can benefit the vast majority of participants. Written material will still be needed, such as at initial enrollment or for those who lack Internet access. However, we must begin to wean ourselves from the dependence on paper as the primary method of disseminating information. ASPPA strongly encourages the DOL to revisit, update, and simplify its electronic communication regulations.

It would appear that additional fee and investment disclosure requirements are coming, whether by regulation or legislation. These new requirements will likely present additional communication burdens and challenges. ASPPA has provided comments to the DOL regarding the content of fee disclosure. These comments reflect ASPPA's view that participant fee disclosure should be kept to the minimum information that is most important to participants. Plan participants need clear and complete information on the investment choices available to them and the other factors that will affect their account balance. In particular, participants who self-

direct their 401(k) investments must be able to view and understand the investment performance and fee information in order to evaluate the investments offered by the plan.

Communication to Contingent Participants

There are situations where communication to non-active participants and non-employees is needed. These include individuals such as beneficiaries, spouses, alternate payees, and prospective alternate payees. The information needs of these different categories of individuals can vary dramatically. For example, where a marriage is being dissolved, specific information is needed in order for a court to issue a qualified domestic relations order (QDRO). This would include information such as the value of a participant's interest in the plan and the timing and forms of distribution permitted by the plan. The information is needed, however, as part of the domestic relations proceeding, not as part of normal ongoing communications to active participants.

ASPPA believes that the current disclosure requirements are adequate with respect to individuals who have only a potentiality of benefiting under the plan. Individuals who only have a contingent right to benefits (such as a prospective alternate payee) are able to obtain information when and only if a court determines it is relevant to the domestic relations proceeding. If a prospective alternate payee needs specific information for a QDRO, then the normal discovery process will yield to the parties the necessary data for the court to consider whether a QDRO is warranted. If the participant is uncooperative, then the court can issue a subpoena to the plan to obtain the information and impose whatever sanctions in the case that might be appropriate. This oversight by the court protects all parties from excessive and unnecessary expenses. There must be a balance between concern for individuals who at some point in the future might have a legal right to plan benefits and concern for the active participants who will be burdened with the additional costs a plan will incur for communications to these contingent beneficiaries. We believe current disclosure requirements are adequate to support the contingent rights these individuals have with respect to plan benefits.

Summary

It is important to recognize that there is a cost to any disclosure, and that cost is most often borne by the plan participants themselves. To incur costs of disclosure of information that will not be relevant to most participants will unnecessarily depress the participants' ability to accumulate retirement savings within their 401(k) plans. Thus, appropriate disclosure must be cost effective, too. The result of mandatory disclosure should be the inclusion of just the information a plan participant needs and will review, and no more. To require otherwise would unjustifiably, through increased costs, reduce participants' retirement savings. Those participants who want to delve further into particular events and topics should have the absolute right to request additional information—it should be readily available on a web site, or upon participant request. This will take care of those participants who feel they need more detailed information. But limiting unrequested information to a manageable level will benefit participants as well as plan sponsors.

ASPPA believes that participant communication can be improved in a manner that does not overwhelm participants or unduly burden the system with excessive costs. The DOL can initiate

improvements to the current communication requirements by reviewing and revising ERISA regulations relating to participant disclosure. This would include, but is not limited to, areas such as the SPD (timing and content), summary annual report, and ERISA §404(c) regulations. Furthermore, drafting more model provisions, in conjunction with private sector input, would help standardization of communication. Long-term, the DOL will need to work with Congress, the IRS, and the SEC to provide a coordinated and uniform communication framework.