

2005 ERISA Advisory Council
Working Group on Communications to Retirement Plan Participants:
ERISA Requirements, Plans' Compliance, Participants' Utility

The Profit Sharing / 401k Council of America (PSCA) is a non-profit national association of employers who sponsor defined contribution retirement plans for their workers. For over fifty-five years, PSCA has identified and shared best practices with its members, represented their interests in Washington, and provided analysis and reportage on the latest regulatory changes. PSCA members range in size from very small independent businesses to firms with hundreds of thousands of employees. Our members believe that profit sharing, 401(k), and related savings and incentive programs strengthen the free-enterprise system, empower and motivate the workforce, improve domestic and international competitiveness, and provide a vital source of retirement income.

It is critical that employees eligible for qualified retirement plan participation understand their plan benefits; how those benefits are determined; how their plan operates and who to contact with their questions. This understanding permits eligible employees to utilize their plan to the fullest, prevents mistakes and provides the information necessary for planning their retirement future. It also benefits plan sponsors because informed employees have a greater appreciation of the plan's value which helps sponsors attract, retain and motivate the high quality workers they need to be successful in today's extremely competitive business environment.

As we consider government required disclosures, it is important to put this discussion in context. For the last 15 years employers, supported by plan providers, have been improving the quantity and quality of information provided to employees about their defined contribution plans. Today, nearly all defined contribution plan participants receive more information than required by law.

Further, it is important to recognize that plan sponsor resources are limited and that complying with regulatory requirements is expensive and discourages plan formation. Therefore, disclosures required by law should be as limited as possible. Required government disclosures are not effective employee communications and can and do limit the development of better ways to deliver information. Regulations defining any required disclosures should provide flexibility of format and delivery so that eligible employees will actually use and understand what is being communicated.

Today's defined contribution participants need and receive a description of how their plan operates; periodic statements reporting their personal account information; notice of events that could affect their decision-making (i.e. a blackout periods); and announcements of meaningful changes in the plan's benefits. Employers are continuously developing better and more effective ways to communicate this information to employees. It is imperative that the Department of Labor recognize and encourage this process.

- 1. What information should be required in a retirement plan SPD so that participants and beneficiaries understand the terms of the plan, their rights under the plan, the plan's level of benefits, the conditions under which benefits can be reduced, and the PBGC's role with respect to the plan? Is there information currently required in the SPD that isn't necessary?**

The SPD should be written in a style intended to be easily read by the average person and to accurately explain plan provisions and participant rights. While the SPD usually achieves these objectives, the format of most SPD's still does not present the material in the way participants need to access the information, limiting their understanding of how the plan operates.

Participants need to know what the plan provides as events occur during their careers and lifetimes. Unfortunately, the SPD is often structured like an executive summary of the legal plan document. What is needed are: a reference checklist of life events indicating the plan provisions and eligibility for benefits that apply (i.e. loans, employment termination and retirement); definitions that help participants understand how the plan operates (i.e. a standard glossary of terms could be developed that can be included in the SPD for all plans) rather than definitions that satisfy legal requirements; and a list of frequently asked questions with answers tailored for the plan. Fortunately sponsors have come up with alternative approaches so that even if the SPD is not effective employees are getting what they need.

Providing access to information 24/7 is an enormous improvement over the old paper based approach. The above suggestions can be implemented using links and search engines accessed electronically. Futuristically, this approach could lead to an integrated system that would link the SPD, participant data and planning software.

- 2. Presuming that the Form 5500 would be modified as necessary, is there a better format for the SAR that would provide participants and beneficiaries adequate and appropriate information regarding the financial status of the plan? Should other plan information be required on Form 5500 and the SAR?**

PSCA testified before the Council in 2004 advocating changes to the Form 5500. Further, PSCA supports the Form 5500 changes recommended by the Council in its 2004 report to the Secretary of Labor. These changes would affect the SAR in a positive way.

However, the SAR was developed primarily as an annual disclosure to participants of the financial status of a defined benefit plan. With little thought, the same required financial reporting was imposed on defined contribution plans. Specifically, the financial data required to be reported is not meaningful to a defined contribution plan participant. In addition, for both defined benefit and defined contribution plan participants the financial information provided is not timely and can be misleading as the required presentation cannot be reasonably understood or interpreted by the average participant.

However, the non-financial information in the SAR is relevant to defined contribution plan participants and should continue to be disclosed. Specifically, this is the disclosure that specific additional information is available on the Form 5500 and the disclosure that participants have a right to review it.

Because the financial information required to be disclosed on the SAR is not useful to defined contribution plan participants but the non-financial information is, it might be beneficial to restructure the SAR with separate approaches for defined benefit and defined contribution plans.

3. If we had a blank slate with respect to required disclosures to retirement plan participants, what would you suggest?

For the most part, market pressures require plan sponsors to provide extensive information to their plan participants – far in excess of any legal requirements. Other than concerns we raised before this Council in 2004 regarding plan fees, there is little or no improvement needed. Additionally, there is every reason to be confident that disclosure of plan information will evolve to meet future needs without additional government intervention.

The purpose of any plan disclosure is to provide usable information to participants and beneficiaries. Because the required disclosures are in a format that is unusable by most participants, defined contribution plan sponsors are effectively delivering the information participants need separately from the required disclosures. At a minimum all required disclosures should be required to meet the same understandability standards that are required for the SPD.

The financial information needed by defined contribution plan participants is their account balance, reflecting both earnings and contributions, and the fees and expenses they pay. Currently it is required that an annual benefits statement be provided upon request from the participant. Section 404(c) requires that a description of the annual operating expenses of each designated investment be provided upon request. Participants must also be informed of any commissions or sales charges that will affect their account balances as the result of their investment choice. In our 2004 testimony, we recommended that any changes in investment costs be automatically provided to participants on an annual basis.

Those in participant directed programs need a simplified prospectus or fact sheet describing each of the plan's fund choices when they join the plan. As we noted in our testimony last year, and as the Council included in its report, this should not be limited to mutual funds. Participants should also receive a simplified prospectus or fact sheet as changes are made in the offered investment vehicles or the vehicles themselves are substantively altered.

4. Can the average participant or beneficiary in your retirement plan describe the major features of the plan?

Participants understand the features that affect their paycheck. For example, they know about their contributions, employer contributions and the plan loan program. They also know how their plan assets are invested. Employers have invested billions of dollars and given up millions of work hours to educate their employees about their defined contribution plans and how to utilize them effectively. Progress is being made, but plan sponsors have inherited a workforce with little or no financial knowledge. The DOL should continue to partner with employers in this effort to advance the financial literacy of America's workforce.

5. Is it feasible to combine any of the required disclosures?

See earlier comments.

6. Does electronic disclosure really work? Are there limitations that can be alleviated without burdening participants or beneficiaries?

According to PSCA's 47th Annual Survey of Profit Sharing and 401(k) Plans, information for 92.6% of the defined contribution plans in the survey was accessible through the internet at the end of 2003. A sizeable portion of the remaining 7.4% was accessible through a company intranet. Electronic access to the most up-to-date plan related information, 24/7, is a substantial improvement over the paper only systems of the past. The Department of labor should continue to foster the growth and effectiveness of electronic disclosure.

7. Is there plan information that participants and beneficiaries routinely request that isn't already required to be disclosed?

Information routinely requested is available.