

Federal Legislative & Regulatory Report



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January 2007

NOTE: You can find a quick-read version of this report online at nrsforu.com.

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I. Washington Update

This month, Congress resumed work under new Democratic leadership. They are expected to focus on increased oversight of several retirement plan issues, including the fees and charges associated with administration and management of participant-directed retirement plans.

Both the House and Senate are likely to review how the Pension Protection Act affects employer-sponsored retirement plans and individual retirement arrangements (IRAs). It is uncertain if 2007 legislative priorities will include a technical corrections bill to address certain issues from the PPA, such as investment advice.

Hearings on Plan Fees and Transparency

Representative George Miller (D-California), Chair of the House Education and Workforce Committee, has announced that his committee will hold hearings on investment and plan fees and disclosures that affect participants, and the Department of Labor's (DoL) efforts to

effectively monitor them. As Nationwide's [December 2006 Federal Legislative and Regulatory Report](#) detailed, the Government Accountability Office (GAO) released late last year a report that is critical of how fees are disclosed and explained to participants and plan sponsors.

In its report, the GAO recommended:

“Congress should consider amending ERISA to require sponsors to disclose fee information on each 401(k) investment option in the plan to participants and to require that 401(k) service providers disclose to plan sponsors the compensation providers receive from other service providers. In addition, GAO recommends that Labor require plan sponsors to report a summary of all fees paid out of plan assets or by participants. Labor generally agreed with the findings and conclusions of our report.” Source: www.gao.gov/cgi-bin/getrpt?GAO-07-21

The House Education and Workforce Committee hearings are expected to help identify whether legislation is necessary or if the DoL can accomplish the GAO's recommendations through increased oversight and perhaps new regulation.

[New Proposal for Individual Personal Retirement Accounts](#)

Senator Jeff Sessions (R-Alabama) recently announced through an [op/ed piece published by The Washington Post](#) (posted on his Web site) that he expects to introduce legislation soon that would create new individual personal retirement accounts — called Portable, Lifelong, Universal Savings Accounts (PLUS Accounts). These accounts would be established for every American at birth with a \$1,000 contribution from the federal government. Parents and grandparents would be allowed to contribute up to \$5,000 annually to these accounts.

Under this proposal, beginning in 2009 workers would be required to automatically contribute 1% of pay (for the first \$100,000 of annual earnings) to their PLUS account on a pre-tax basis. Employers would be required to match this 1% contribution and these contributions would be tax-deductible. Workers would not be able to access any funds in these accounts until they reach age 65.

Representative Sessions stated that his proposal is designed as a supplement, not as a replacement, to the current Social Security system. Furthermore, it would not alter the Social Security system in any way.

II. IRS Issues Guidance on Several PPA Provisions

On January 10, 2007, the Internal Revenue Service released [Notice 2007-7](#), which provides guidance on several provisions of the Pension Protection Act of 2006 (PPA) that are already in effect.

The following table highlights the significant provisions from Notice 2007-7 that may be of interest to governmental plan sponsors and their participants. This table is designed to provide a quick overview of what Notice 2007-7 appears to say.

Nationwide will provide an in-depth analysis of this guidance in next month's *Federal Legislative and Regulatory Report*. In addition, Nationwide will host a Webcast — *Pension Protection Act: Guidance, Options and Opportunities* — at 2 p.m. Eastern on Wednesday, February 7, 2007.

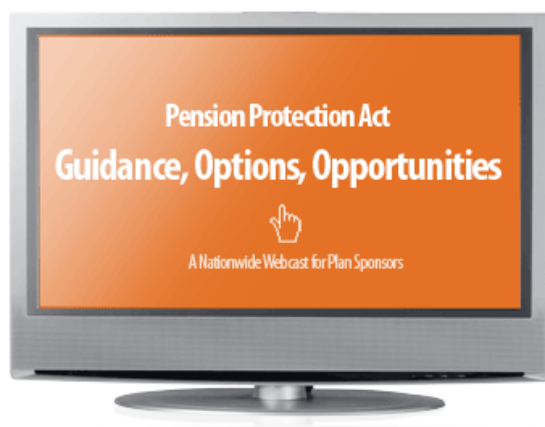
PPA Guidance Impacting Governmental Plans

Provision	Required or Optional	Clarification under Notice 2007-7
Hardship and Unforeseeable distributions to participants because of plan beneficiary's financial hardship	Optional	<p>401(k) and 403(b) Hardship Distributions — Expands hardship distributions to include participant's primary beneficiary under the plan who is not the participant's spouse or dependent.</p> <p>457 and 409A Unforeseeable Emergency Distributions — Plan may treat the participant's beneficiary under the plan the same as the participant's spouse or dependent for determining if the participant has an unforeseeable financial emergency.</p>
Waiver of 10% early distribution tax for qualifying distribution from a governmental defined benefit plan to qualified public safety employees	Required	<p>Waiver applies:</p> <p>During or after the calendar year the participant attains age 50 only if the participant has terminated employment from the employer maintaining the plan and the distribution is from a governmental defined benefit plan</p> <p>Waiver does not apply:</p> <p>If participant rolls the distributed amount from the defined benefit plan into a defined contribution plan or IRA and then takes a distribution from the defined contribution plan or IRA before age 59½.</p>
Direct rollovers to IRA for non-spousal beneficiaries	Optional	Plan is not required to offer this option to non-spousal beneficiaries. If the plan does offer this provision, it will affect beneficiaries who take required minimum distribution payments from the plan and the IRA.
Exclusion of up to \$3,000 annually for certain distributions from governmental plans used to pay	Optional	<p>This provision is available only to "public safety officers" who have separated from service as a public safety officer after attainment of the plan's "normal retirement age" or for a disability.</p> <p>Definition: A "public safety officer" is defined as an individual</p>

Provision	Required or Optional	Clarification under Notice 2007-7
health or long term care insurance premiums		<p>serving in a public agency in an official capacity, with or without compensation, such as a law enforcement officer, firefighter, chaplain, or member of a rescue squad or ambulance crew.</p> <p>This exclusion is available only when an eligible retired “public safety officer” elects to have an amount subtracted from his or her governmental plan distribution to pay qualified health insurance premiums.</p> <p>Applies to distributions from governmental plans under Section 401(a), 403(a), 403(b), or 457(b) in taxable years beginning after December 31, 2006.</p> <p>Payments cannot be made to a self-insured plan and must be for insurance issued by an insurance company regulated by a state.</p> <p>The exclusion does not apply to payments made to surviving spouse or dependents.</p>
IRA distributions made directly to qualified charitable organizations excluded from gross income	Only applies to IRAs and deemed IRAs	<p>This exclusion for qualified charitable distributions is available only for distributions from IRAs that are made directly to qualified charitable organizations, after the IRA owner turns 70½.</p> <p>NOTE: Nationwide will discuss this provision in much more detail in the February 2007 edition of the <i>Federal Legislative and Regulatory Report</i>.</p>

A copy of Notice 2007-07 can be found at
www.ustreas.gov/press/releases/reports/notice20077.end.pdf

This table is designed to provide a quick overview of what Notice 2007-7 appears to say. Nationwide will provide an in-depth analysis of this guidance in next month’s *Federal Legislative and Regulatory Report*. You’re invited to a Web cast prepared by Nationwide, especially for governmental defined contribution plan sponsors.



Wednesday, February 7, 2007

Live: 2:00 – 3:30 p.m.
Eastern Standard Time

Available online for replays.

For more information

Watch your mail from Nationwide and visit the *Plan Sponsor Corner* on the home page of www.nrsforu.com.

III. Participant Benefit Statements for ERISA Plans

Although governmental plans are not subject to the participant benefit statement requirements of the Pension Protection Act of 2006 (PPA), the following information and future guidance from the Department of Labor on participant benefit statements may be helpful for public sector plan sponsors.

The Pension Protection Act of 2006 (PPA) made a number of significant changes to improve participant benefit statements for ERISA defined contribution and defined benefit plans. The PPA requires plan administrators to automatically provide periodic statements. These statements will have to provide benefit or account information and a participant's vested status. Statements for participant-directed plans will have to include investment diversification information and a link to a Department of Labor website for investing information. These new PPA statement requirements are effective for plan years beginning after December 31, 2006, with a delayed effective date for collectively bargained plans.

The DoL has not yet issued regulations or other guidance to address the PPA participant benefit statement requirements. Therefore, ERISA plan administrators must apply a good faith interpretation of these requirements. The DoL recently issued [Field Assistance Bulletin 2006-3](#) (FAB 2006-3) to help plan administrators arrive at this good faith interpretation.

An easily printed three-page [table outlining the basic requirements](#) for good faith compliance under the FAB 2006-3 begins on the next page.

Basic requirements for good faith compliance under the FAB 2006-3

Topic	Requirement for good faith compliance	Examples and Comments
Due dates for periodic pension benefit statements to participants and beneficiaries in non collectively bargained ERISA plans	<p>Unless noted elsewhere, for plan years beginning after December 31, 2006 participant and beneficiary pension statements must be provided as follows:</p> <p>Defined Contribution Plans</p> <p><i>Participant-directed plans</i> — Statements must be provided at least once each calendar quarter. A calendar year plan would have to issue the required statements for the calendar quarter ending March 31, 2007.</p> <p><i>Plans that are not participant-directed</i> — Statements must be provided at least once each calendar year.</p> <p>Defined Benefit plans</p> <p>Participant statements must be provided at least once every three calendar years.</p>	<p>Defined Contribution Fiscal Year Plans</p> <ul style="list-style-type: none"> Participant-directed plans with a plan year beginning on July 1, 2007 for example, would have to meet this requirement by September 30, 2007. Non-participant-directed plans would need to provide benefit statements for the calendar year ending December 31, 2007. <p>Defined Benefit Plans</p> <p>The first pension statement would be due for the 2009 plan year if the plan does not elect to comply with alternative notice requirements.</p> <p>Under the alternative notice method, plan administrators must notify participants at least once each year of the availability of the pension benefit statement and how they may obtain it. The initial required notice must be furnished no later than December 31, 2007.</p>
Exception for initial benefit statements	<p>Pending further guidance, good faith compliance for initial participant statements permits statements to be provided no later than 45 days following the end of the calendar quarter or calendar year.</p>	<p>Defined Contribution Plans</p> <p><i>Calendar year participant-directed plans</i> — first statements will be due May 15, 2007.</p> <p><i>Plans that are not participant-directed</i> — first statements will be due Feb. 14, 2008.</p> <p>Defined Benefit Plans</p> <p>The first statement will be due Feb. 14, 2010.</p>
Multiple sources for pension benefit information	<p>Until further guidance is issued, the DoL considers the use of multiple documents to be good faith compliance if participants and beneficiaries have received notice before statements are provided that explains how and when statements will be available or distributed.</p>	<p>The DoL acknowledges that it may be impractical to compile all the required information in a single document in the short term.</p> <p>Example: A plan administrator may have vesting information and the plan record keeper or brokerage firm may have the investment related account information. This information must be included on participant statements.</p>

Topic	Requirement for good faith compliance	Examples and Comments
Benefit statement notification requirements	<p>Notification should be sent to participants prior to the date that benefit statements are first required to be available or distributed and then annually thereafter.</p> <p>Notifications should be understandable to the average participant and may be provided in the same form as the benefit statement.</p>	
Options for providing participant statements	<p>Statements may be delivered in written, electronic or other appropriate form provided that such delivery method is reasonably accessible to participants and/or beneficiaries.</p>	<p>DoL good faith compliance provides three ways electronic statements may be provided:</p> <ol style="list-style-type: none"> 1. DoL guidelines for electronic communications to participants and beneficiaries require that the electronic system for furnishing statements <ul style="list-style-type: none"> • Is “reasonably” accessible to participants at work and an integral part of participant’s work • Results in actual receipt of the statements (e.g. using return-receipt or notice of undelivered electronic mail features). • Ensures confidentiality of the participant’s personal information • Informs participants (in electronic or non electronic form) of the importance of the electronic document and the right to receive a paper version of the statement at no charge. 2. IRS regulations under 1.401(a) (21) contain both the E-SIGN requirements and a simpler alternative method which would require that participants be able to “effectively access” the statements (November, 2006 edition of this report) or receive a paper version of the statement. 3. Statements may also be provided on a continuous /on demand basis through one or more secure websites. Participants and beneficiaries must receive a notice of the website’s availability, how to access it and their right to receive a paper version of the statement.

Topic	Requirement for good faith compliance	Examples and Comments
Definition of a participant-directed plan	Pending future DoL guidance, a participant loan feature in a defined contribution plan, in and of itself, will not make the plan a participant-directed plan and will not give participants the right to direct their investments.	<p>Comment: More guidance is needed to clarify this provision.</p> <p>Example: A plan could specify that only deferral accounts would be participant directed and the employer, plan trustee or investment manger would direct the employer contribution accounts.</p> <p>This scenario could result in two statement deadlines, one for the participant-directed accounts and the other for non-participant-directed accounts which could confuse participants and unnecessarily increase plan costs.</p>
Disclosure of the limitations or restrictions on the right to direct investment	Participant-directed plan benefit statements are required to include an explanation of any limitations or restrictions on any right of a participant or beneficiary to direct investments under the plan. Example: A plan might permit participants to direct only their deferral accounts, but not their employer contribution accounts.	For now, the DoL does not require participant statements to include investment limitations and restrictions or limitations imposed by state or federal security laws.
Explanation of the importance of a diversified portfolio	Participant directed plan statements must include an explanation of the importance of a well balanced diversified portfolio for long term retirement investing to achieve favorable returns and minimize risk. The benefit statement must also explain that holding more than 20% of the portfolio in the security of one company (such as employer securities) or industry may not be adequately diversified.	<p>Until the DoL issues a model statement the sample statement language included in the FAB will constitute good faith compliance.</p> <p>This sample language does not indicate if holding more than 20% in an ETF (exchange trade fund) or a sector mutual fund that is diversified across a particular industry — such as the financial services or transportation industry — would or would not be an adequately diversified investment or why 20% would be the appropriate diversification benchmark for all participants.</p>
DoL website for investment information	Participant-directed plan statements must include a notice directing participants and beneficiaries to the DOL Internet web site for sources of information on individual investing and diversification.	The website for investing information is: www.dol.gov/ebsa/investing/html

Nationwide Comment — Members of the ERISA benefit plans community are already loudly protesting benefit statement deadlines. For non-ERISA plan sponsors, this FAB should probably not be the last word in how and when to provide timely and meaningful participant statements.

IV. GASB Proposes Changes for Defined Benefit Plans

On December 15, 2006, the GASB issued an Exposure Draft — in a layperson's terms, a proposal for public comment — setting forth a proposed Statement on note disclosures and RSI (required supplement information) disclosures by pension plans and employers that provide defined benefit plans.

The Exposure Draft would amend Statement 25, *Reporting for Defined Benefit plans and Note Disclosures for Defined Contribution Plans*, and Statement 27, *Accounting for Pensions by State and Local Governmental Employers* to include additional notes and RSI disclosures.

The proposal is designed to enhance accountability and improve the usefulness of financial information that is provided to decision makers. The GASB's stated purpose for additional notes disclosure to Statements 25 and 27 is to:

- Conform Statements 25 and 27 more closely with the accounting and reporting requirements for Statements 43 and 45, which are used for accounting and reporting *Postemployment Benefits Other Than Pensions (OPEBs)*, and
- Improve the transparency and usefulness of information that state and local governmental plans and employers report.

GASB is the acronym for the *Governmental Accounting Standards Board*, an independent not-for-profit organization. The GASB is responsible for developing standards of state and local governmental accounting and financial reporting that will (a) result in useful information for users of financial reports and (b) guide and educate the public, including issuers, auditors, and users of those financial reports.

The additional note and RSI requirements for Statements 25 and 27 would require governmental plans and employers to include:

- Disclosure of the funded status of the plan (applies to both defined benefit and defined contribution plans) as of the most recent valuation date. Defined benefit plans would include the actuarial value of the assets and accrued liability, the total unfunded actuarial accrued liability (funded ratio) the annual covered payroll, and the ratio of the unfunded actuarial liability to annual covered payroll.

Plans using aggregate actuarial cost method to determine the employer's annual required contribution (ARC) would disclose the funded status of the plan in the notes. The multi-year funding progress would be included as required supplemental information (RSI), using the *entry age cost method* to approximate the funded status and funding progress of the plan. Although the *aggregate actuarial cost method* provides a strong funding methodology — if the employer consistently makes the ARC — it does not calculate actuarial accrued liabilities. The aggregate method cannot be used to generate a funding progress schedule or a note disclosure of the

funded status which the GASB deems to be essential information. The entry age cost method separately calculates actuarial accrued liabilities for approximating the funding status and funding progress.

- A narrative description of the actuarial measurement process and a reference linking the funded status disclosure to required schedule of funding progress in the RSI. The narrative would include the actuarial cost method used, the methods(s) used to determine the actuarial value of plan assets, assumptions used for inflation rates, investment returns, projected salary increases, and postretirement benefit increases
- A description of how the fair value of investments is determined if fair value is not based on quoted market prices. This description must include the method(s) and the significant assumptions used to estimate the fair value. Defined contribution plans would also be required to include a similar description for valuing plan assets that are not based on quoted market prices.
- The applicable legal or contractual maximum contribution rates and the exclusion of any relevant rates in the calculation of projected benefits (benefits payable at the plan's normal retirement age).
- Disclosure of initial and ultimate rates if they differ in subsequent years.

For cost-sharing plans, Statement 25 notes would list all of the required contribution rates of the employer(s) in dollars and the percentage of that amount contributed for the current and previous two years. These plans would also indicate if employer contributions are determined by statute, contract, actuarially determined or if the plan is funded on pay-as-you-go basis.

Accordingly, Statement 27 would require cost sharing employer(s) to make similar disclosures in the notes. If the plan does not prepare a publicly available stand-alone financial report that meets the requirements of Statement 25, as amended, and the plan is not included in the financial report of a public employee retirement system or other entity, employers would have to provide schedules of funding progress and employer contributions to the plan as an RSI.

Public Comment Period

Prior to finalizing the proposals outlined in the Exposure Draft, the GASB is accepting written comments until February 28, 2007. Commentators are invited to submit their views on any aspect of the draft, both positive and negative and the reasons for their views and to include any alternatives GASB should to consider.

Comments may be sent by electronically to: Director@GASB.org or by mail to:

Director of Research and Technical activities, Project No. 31
401 Merritt 7
PO Box 51162
Norwalk, CT 06856-5116

Effective Date and Transition

The proposed statement would be effective for periods beginning after June 15, 2007. The earliest period these requirements would be effective is for plan or employer financial reporting periods beginning July, 2007 and ending June 30, 2008.

The Exposure Draft for Pension Disclosures and information about other GASB projects are available at www.gasb.org. Select “Project 31” for the Exposure draft for Pension Disclosures.

Nationwide Comment — The GASB may not finish with governmental defined benefit plans until FASB (the Financial Accounting Standards Board) has completed its fine-tuning of the reporting and accounting rules for private sector defined benefit plans. The GASB has taken several cues from FASB such as the reporting and accounting for retiree health care benefits on balance sheets and now expanded defined benefit pension plan reporting and accounting requirements.

Those interested in what the future might hold for state and local retirement plans may want to review the latest from FASB — FAS158, entitled “Fair Value Measurements,” which is available at: www.fasb.org/pdf/fas157.pdf

V. IRS News and Other Regulatory Highlights

IRS Web Pages for the PPA

The IRS has just launched a [PPA section of its website](#) where the Service has consolidated:

- All of its guidance published so far for the Pension Protection Act of 2006 (PPA)
- The entire text of the Act
- A checklist of PPA effective dates
- Related news articles distributed by the IRS
- Links to Department of Labor websites for its PPA information
- Changes to the 5500 information filing forms for private sector employers.

The address for the PPA section of the IRS website is www.irs.gov/retirement/article/0,,id=165131,00.html

In-service Distributions from Pension Plans

Section 905 of the Pension Protection Act of 2006 (PPA) permits defined benefit and money purchase plans to make distributions to participants age 62 who have not separated from employment at the time distributions are made, effective for plan years beginning after December 31, 2006. Generally, qualified pension plans — those subject to 401(a) of the Code — cannot pay benefits before retirement.

Through [Notice 2007-8](#), the Service requests public comment on receiving in-service distributions and defined benefit plans. The IRS is particularly interested to receive comments related to:

- Permitting distributions of only unsubsidized benefits at age 62. *Unsubsidized benefits are those that have been reduced because they were provided before the plan's normal retirement age.*
- Characterizing subsidized benefit distributions at age 62 for purpose of IRC 411 (applies only to ERISA plans) and treating them as early retirement benefits even though the participant has not yet retired.
- Treating subsidized benefits as part of the participant's accrued benefit or treating them as something else for Section 411 purposes.
- Issuing final phased retirement regulations — first proposed in 2004 for in-service distributions at age 59½ with reduced working hours — since plans may now permit in-service distributions at age 62.

You may access IRS Notice 2007-8 from www.irs.gov/pub/irs-drop/n-07-08.pdf.

VI. Keeping watch

You can find the most recent information on issues affecting governmental defined contribution plans, plan sponsors and plan participants on the Employer page of our plan Web site, NRSforu.com. In addition, we report guidance on legislative and regulatory activity relevant to government sector defined contribution plans through:

- *Plan Sponsor Voice* quarterly newsletter, available online on the Hot Topics / News page of NRSforu.com.
- *Federal Legislative and Regulatory Report* — distributed monthly and posted on the Legislative / Regulatory tab on the Employer section of NRSforu.com. It's available online and for download.
- *Plan Sponsor Alerts* — published as needed to announce breaking news, and distributed by e-mail and posted in the Plan Sponsor Corner of NRSforu.com.

About this report

JOANN ALBRECHT, CPC, QPA, Plan Technical Consultant, our resident expert on legislative and regulatory issues, prepares this report. As a leading member of the Nationwide Legislative Task Force, She identifies how federal actions may affect your plan and its participants.

Albrecht is a member of American Society of Pension Professionals and Actuaries (ASPPA), currently serving on its Government Affairs Committee and is immediate past chair of its Tax Exempt and Government Plans Subcommittee. She also is a member of the National Association of Governmental Defined Contribution Administrators.

BOB BEASLEY, CRC, CIC, Communications Consultant, edits it. Beasley brings 17 years of financial services communications experience to your plan. He helped prepare the *457 Guidebook* and *Fiduciary Fundamentals*, edited countless newsletters and plan sponsor communications, and in 2001 authored "What you should know about the Economic Growth and Tax Relief Reconciliation Act of 2001."

Beasley serves on the Education and Communication Committee for the Profit Sharing / 401(k) Council of America and is a member of the National Association of Governmental Defined Contribution Administrators.

MARY WILLETT, President of Willett Consulting, lends plan sponsor perspective to this report. Willett served 14 years as Director of the Wisconsin Deferred Compensation Plan and was 2001/2002 President of the National Association of Government Defined Contribution Administrators (NAGDCA). She serves on the Board of Standards for the International Foundation for Retirement Education (InFRE).

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This information is of a general and informational nature and is NOT INTENDED TO CONSTITUTE LEGAL OR INVESTMENT ADVICE. Rather, it is provided as a means to inform you of current information about legislative, regulatory changes and other information of interest. Plan Sponsors are urged to consult their own counsel regarding this information.

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