

Employee Benefits ◀ ◀

A publication of Retirement Plan Advantage, LLC

Failure To Provide Requested Documents

As a recent U.S. district court case* illustrates, failing to provide a retirement plan participant with certain documents in a timely manner when asked can be costly for the plan and its sponsor. To avoid similar consequences, you may want to review your plan's procedures for providing plan documents and notices to participants.

The Case

Dr. C worked for Dr. T and participated in T's retirement plan. During her employment, Dr. C never received any written information about the plan. When Dr. C decided against purchasing T's practice, he terminated her. Later, she learned that several of Dr. T's former staff had received benefit distribution information from T's plan. Dr. C and her attorney requested similar information.

Dr. T eventually informed Dr. C that she did not have any vested interest in the plan when, in fact, she was 100% vested. Dr. C sued. Four and a half years later, Dr. T provided her with a vesting schedule. At that time, Dr. T offered to pay her plan benefits, but only if she agreed to sign a general and complete release of all claims. Dr. C declined.

The court found that Dr. T's failure to provide Dr. C with either vesting information or any required disclosures, such as a summary plan description, prevented Dr. C from determining whether or not she had vested benefits. The court imposed the maximum fine of \$110 per day on Dr. T (a total of \$179,960), awarded Dr. C reasonable attorney's fees, and held that she was entitled to a full distribution of her account.

Dr. C's case was extreme. Employers are more likely to inadvertently or unknowingly fail to provide required information. To make sure you don't make such a mistake, here's a review of the requirements.

The Summary Plan Description

Some information, such as the Summary Plan Description (SPD), must be provided automatically. With new plans, an SPD must be distributed to all plan participants and beneficiaries within 120 days after the plan becomes effective.

For ongoing plans, new participants have to receive an SPD within 90 days of joining the plan.

An updated SPD, which incorporates all interim plan amendments, must be furnished no later than 210 days after the end of the fifth plan year after the previous SPD. If the plan hasn't changed, a new copy of the SPD must be distributed every 10 years.

**"You must . . .
provide participants
and beneficiaries
with . . . plan
documents"**

Other Documents

You must also automatically provide participants and beneficiaries with the following plan documents:

Summary of Material Modification (SMM) has to be provided within 210 days after the end of a plan year in which modifications were adopted.

Summary Annual Report (SAR) must be furnished within nine months after the end of each plan year.

Notification of changes in vesting schedules must be sent to participants with three or more years of service.

Rollover notice must be given to any employee receiving an eligible rollover distribution within a reasonable time before making the distribution from the

* *Cromer-Tyler v. Teitel*, DC-AL, 2007

A Tax Credit for Retirement Savers

Did you know that some of your employees may be eligible for a federal tax credit for making contributions to your retirement plan? More importantly, do your employees know? The "saver's tax credit" essentially repays a percentage of the contributions that eligible employees make to their 401(k) or other retirement savings plan accounts.

For those who qualify, the saver's tax credit is "free money." It also could be just the thing to persuade nonparticipating employees to join your plan — and motivate employees who already participate to increase their contributions.

Credit Amounts Vary

The credit is a percentage — 50%, 20%, or 10% — of up to \$2,000 in contributions. The percentage depends on the employee's adjusted gross income (AGI) and filing status. The credit can increase an employee's refund or reduce the amount of tax owed to the IRS.

Here's an example: Carter, a single employee, earns \$17,000 in 2008 and contributes \$1,000 pretax to his

employer's retirement savings plan. Assuming no additional taxable income or other income adjustments, Carter's AGI is \$16,000. Carter qualifies for a 50% saver's credit (\$500), dropping the actual cost of his \$1,000 contribution to \$500. In addition, if Carter's contribution is eligible for a 50% employer match, the total amount deposited in his account is \$1,500 — three times Carter's actual out-of-pocket cost.

Spread the Word

Sharing information about the value of the saver's tax credit could benefit your employees. It would also provide an opportunity to increase awareness of the benefits your retirement plan offers. ▼

Saver's Credit Amounts for 2008

Employee must be at least age 18, not claimed as a dependent on another person's return, and not a full-time student.

Credit Rate	With Adjusted Gross Income (AGI)		
	Married Joint*	Head of Household	Single
50% of contribution up to \$2,000	Up to \$32,000	Up to \$24,000	Up to \$16,000
20% of contribution up to \$2,000	\$32,001-\$34,500	\$24,001-\$25,875	\$16,001-\$17,250
10% of contribution up to \$2,000	\$34,501-\$53,000	\$25,876-\$39,750	\$17,251-\$26,500

* Each spouse may make a credit-eligible contribution.

No credit is allowed with adjusted gross income of more than: \$53,000 (married joint), \$39,750 (head of household), or \$26,500 (single). Certain retirement plan distributions reduce the contribution amount used to figure the credit.

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Continued from page 1

plan. The notice must explain the tax effects of the distribution, including an explanation of the rollover rules, direct rollovers, the tax treatment of lump-sum distributions, the 20% mandatory withholding, and how distributions from a rollover plan may be different from distributions from the original employer plan.

Blackout notice generally must be sent no later than 30 days before a blackout period begins and must include the reasons for the blackout, the investments and other rights that will be affected, the expected beginning and end of the blackout period, and certain other information.

Benefit statements must be provided quarterly if your 401(k) plan or other defined contribution plan lets employees direct the investment of their accounts. Otherwise, you need to send statements at least once a year. Defined benefit plan participants with vested

benefits generally must receive a statement at least once every three years.

Upon Request

Other documents must be provided on written request. These include the latest updated SPD; a statement of the employee's total accrued benefits; the most recent annual report; and the plan document, trust agreement, collective bargaining agreement, and any other document under which the plan is established or operated.

Available for Inspection

Some documents must be made available to participants for inspection at reasonable times and places, such as the plan administrator's office. These include copies of the plan description, the latest annual report, and documents under which the plan is established or operated. ▼

Quality Plan Audits Equal Peace of Mind

Federal pension law (ERISA) generally requires retirement plans to have an annual audit as part of the Form 5500 return/report process. Independent audits of your plan's financial statements can help you fulfill your reporting obligations and avoid costly penalties.

An Audit's Value

In addition to fulfilling federal reporting requirements, securing a professional audit can help protect your plan's financial integrity and ensure that it will have the funds to pay employees' benefits. An audit can reveal problems your plan may have, and your auditor may suggest ways to improve your plan's controls and operations.

Large Plans Require Audits — Small Plans May Not

Plans with 100 or more participants at the beginning of the plan year — so-called "large plans" — are generally subject to the annual audit requirement. In general, the audit requirement also applies to a plan with fewer than 100 participants — a "small plan" — unless the plan satisfies three waiver conditions:

- ▶ At least 95% of the plan's assets must be "qualifying plan assets." Qualifying plan assets include assets held by certain regulated financial institutions, mutual fund shares, investment and annuity contracts issued by an insurance company, qualifying employer securities, and certain other assets that the regulations define. If the qualifying plan assets are less than 95% of the total, any individual handling nonqualifying assets must be bonded for at least the value of the non-qualifying assets.
- ▶ The plan's Summary Annual Report (SAR) must disclose more information to the plan's participants and beneficiaries than is ordinarily required, such as the identities of the financial institutions holding qualifying plan assets and of the bonding company.
- ▶ Upon request, the plan administrator must provide a participating employee or beneficiary with no-charge copies of statements received from the financial institutions holding or issuing qualifying plan assets and evidence of any required fidelity bonds.

A plan may be able to file Form 5500 as a small plan and qualify for the audit waiver if the number of

participants covered is between 80 and 120 at the start of the plan year *and* the plan filed Form 5500 as a small plan for the prior year.

What Questions Can a Plan Audit Answer?

Auditors look at important aspects of plan finances and operations. Among other issues, an audit addresses:

- ▶ The proper valuation of plan investments
- ▶ Plan obligations
- ▶ Whether contributions have been sent to the right party, received, and credited to the right accounts
- ▶ Issues that may affect the plan's tax status
- ▶ Whether benefit payments were made in accordance with plan terms.

Controls Are Examined, Too

Also, the relevant internal controls within the plan's accounting system are assessed by the CPA. If the employer outsources certain plan-related functions, the review of internal controls includes functions performed by the third party service provider that affect the plan's financial statements. Providers may have their own "SAS 70" reports that the plan's auditor can rely on to some extent. The employer, as plan administrator, is still responsible for monitoring the overall process, despite the fact that professionals may have been hired to handle day-to-day administrative functions, such as distribution calculations.

Limiting the Audit's Scope

Federal law allows the plan sponsor/administrator to limit the scope of the plan's annual audit if banks or insurance companies hold the plan's assets and provide written certifications. We can advise whether limiting the scope of your plan's audit would be appropriate in your situation.

Employers shouldn't overlook the importance of securing a quality plan audit if one is required. Please call our firm if you would like to discuss your plan's auditing needs. ▼

The general information in this publication is not intended to be nor should it be treated as tax, legal, or accounting advice. Additional issues could exist that would affect the tax treatment of a specific transaction and, therefore, taxpayers should seek advice from an independent tax advisor based on their particular circumstances before acting on any information presented. This information is not intended to be nor can it be used by any taxpayer for the purpose of avoiding tax penalties.

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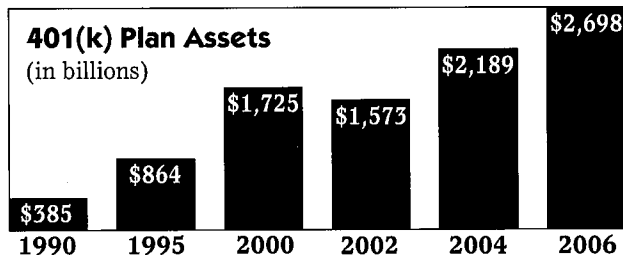
► Benefit Notes

Employee Retention

Employees who participate in an employer-sponsored retirement plan appear to be more likely to stay with that employer. A 2007 survey found that among the surveyed workers, 20% of nonparticipants left their employers in the previous year versus 9% of employees who participated in their employers' plans. A similar study conducted in 2006 found that 25% of nonparticipants left their employers compared to 10% of plan participants.

401(k) Assets

From 1990 through 2006, total 401(k) assets grew from \$385 billion to an estimated \$2.7 trillion, according to information from the Investment Company Institute, U.S. Department of Labor, and Federal Reserve Board. On average, this was an increase of about 13% a year.



Investor Education

A 2007 FINRA survey on investor education found that most investors have a high interest in basic investor education and information that is free and unbiased. Retirement plan sponsors may be able to use some of the survey's specific findings to fine-tune employee education programs.

- ▶ 86% of those surveyed were interested in information about common investment scams and fraud.
- ▶ 83% wanted a checklist of steps they should go through when making investment decisions.
- ▶ 82% wanted a list of questions to ask an investment advisor.
- ▶ 80% were interested in definitions of common investment terms and products. ▼

CAN WE HELP?

Our firm offers a broad range of employee benefit plan services. If we can be of service to you, please call.

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