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Group on Automated Participant Benefit Statements in
Defined Contribution Plans
On behalf of Sentinel Benefits Group, Inc, ASPPA and CIKR

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Good morning. My name is Adam Pozek, and I am the Vice President of Consulting Services for Sentinel Benefits Group, Inc., an employee benefits consulting firm in Wakefield, Massachusetts.

I am here today to present the views of Sentinel Benefits Group, the American Society of Pension Professionals and Actuaries (ASPPA) and the Council of Independent 401(k) Recordkeepers (CIKR). I am personally a member of ASPPA's Board of Directors and Government Affairs Subcommittee on 401(k) Plans, and Sentinel is one of the founding members of CIKR.

Sentinel Benefits Group, Inc. is a full-service employee benefits outsourcing firm providing consulting, administrative and recordkeeping services for all types of qualified retirement plans and other employer-provided benefits. Sentinel was established in 1986 and now provides services to over 1,400 qualified plans covering more than 35,000 participants and holding in excess of \$2.2 billion in assets.

ASPPA is a national organization of more than 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, 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.

CIKR is a national organization of 401(k) plan service providers. CIKR members are unique in that they are primarily in the business of providing retirement plan services as compared to financial services companies who primarily are in the business of selling investments. As a consequence, the independent members of CIKR offer plan sponsors and participants a wide variety of investment options from various financial services companies without an inherent conflict of interest. By focusing their businesses on efficient retirement plan operations and innovative plan sponsor and participant services, CIKR members are a significant and important segment of the retirement plan service provider marketplace. Collectively, the members of CIKR provide services to approximately 68,000 plans covering 2.8 million participants and holding in excess of \$120 billion in assets.

Summary

Thomas Finnegan gave testimony regarding defined benefit participant statements before this group on July 12, 2007. The focus of my testimony today will be on defined contribution participant statements. Specifically, I will discuss the following topics:

- Underlying investments in pooled accounts and collective trusts
- Multiple documents to provide required information
- Permitted disparity provisions
- Vesting information
- Due date for delivery of statements
- Most recently available information

Background

Prior to the enactment of the Pension Protection Act of 2006 (“PPA”), administrators of qualified plans were required to furnish participant benefit statements upon written request from a participant or beneficiary. Effective January 1, 2007, PPA §508 requires administrators of defined contribution plans to provide benefits statements automatically on a quarterly basis in the case of plans allowing participants to direct the investment of their accounts and annually in the case of non-participant-directed plans. On December 20, 2006, the Department of Labor issued Field Assistance Bulletin 2006-03 providing guidance on “good-faith” compliance with PPA’s requirements.

Content

While it is important for participants to obtain information on their retirement benefits, it is equally as important that such information be timely, understandable and cost-effective to provide. Since there are numerous investment arrangements and options for defined contribution plans, it is important that any DOL guidance consider the inherent cost associated with compiling information and maintain flexibility to furnish such information to participants through multiple documents.

Pooled Accounts and Collective Trusts

The PPA requires participant-directed defined contribution plans to disclose information on each investment to which participant accounts have been allocated. While this is a straight-forward requirement for plans holding only mutual funds or similar registered securities, it can become significantly more complicated for plans holding pooled investments or collective trusts.

For example, a plan holding a pooled investment seeking to mirror the Russell 2000 index would be required to list the value of each underlying security on each participant's statement. Not only would it require a significant amount of time (and, therefore, fees) for the plan's service provider to compile the information, the length of the participants' statements would increase dramatically making them more expensive to produce and more daunting for participants to read.

While this is an extreme example, a colleague in the southeastern region of the country recently described having to compile underlying investment information for a participant-directed plan with a pooled account option. The plan has fewer than 100 participants with normal annual administrative fees of approximately \$4,000. The direct cost to the plan for manually compiling the required information on the 90 underlying investments in the pooled option was almost \$800 and did not include the added production and mailing cost of the four additional pages required to report the information in a legible fashion. Thus, providing the underlying investment information resulted in a 25% fee increase for the plan, which was passed on the participants.

Sentinel, ASPPA and CIKR recommend that the DOL provide that underlying investment information in pooled investments and collective trusts is not required to be disclosed on participant statements. Rather, such information should be available to participants on written request to the plan administrator.

Multiple Sources

Current guidance allows plan sponsors to disclose benefit statement information to participants in multiple documents, as long as an initial explanatory notice is provided. It is essential that such flexibility be maintained.

Many small employers engage large financial institutions, such as insurance companies or mutual fund families, to provide recordkeeping services and local third party administrators to provide compliance services. Neither service provider maintains all of the information that must be furnished on the participant benefit statements. To the extent either provider must compile the information maintained by the other into a single statement, the result will be delayed reporting of information and increased cost to the plan.

Plans that offer various types of investment arrangements also would face increased costs if they are not permitted to provide the required information in multiple documents. An increasing number of plans provide a menu of mutual funds and a self-directed brokerage account held at an outside institution. While the investments in both arrangements are valued daily, the brokerage account is rarely “linked” with the recordkeeper maintaining the mutual fund information. In such arrangements, the recordkeeper provides quarterly statements reflecting the mutual fund information, and the institution holding the brokerage account provides separate monthly statements.

In order to include all account information on a single statement, the recordkeeper would be required to manually compile all transactional information from each participant’s brokerage account, resulting in significant time and expense to the plan.

Sentinel, ASPPA and CIKR recommend that flexibility be maintained to permit the use of multiple source documents for the furnishing of statement information.

Permitted Disparity

Many defined contribution plans, including 401(k) plans, allow for discretionary profit sharing contributions; however, some employers may elect to provide other forms of contributions in a given year such as employer matching contributions, in lieu of a profit sharing contribution.

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.” This language could be interpreted to require that defined contribution plans, as well as defined benefit plans, include this 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. Furthermore, this requirement is duplicative as 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 clearly affect only the *determination of any accrued benefits* under a defined benefit plan, 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, where a defined contribution plan allows the 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.

Sentinel, ASPPA and CIKR recommend that only defined benefit plans should be required to provide disclosure on benefit statements regarding the use of permitted disparity in determining benefits.

Sentinel, ASPPA and CIKR also recommend 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 it is recommended 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.

Vesting

The PPA requires benefit statements for defined contribution plans to disclose (1) the participant's non-forfeitable benefits, (2) the earliest date on which the participant's benefits become non-forfeitable or (3) information allowing the participant to determine his or her non-forfeitable benefits.

To provide this information, plans that require 1,000 hours of service for a participant to be credited with a year of vesting service must analyze employee work records to determine if/when service requirement is met. For statements to accurately reflect vesting, TPAs would need to obtain and analyze employee service records within 45 days after the end of a period. Due to other business obligations and financial reporting requirements, small plan sponsors often are unable to provide the required information to TPAs within this timeframe; therefore, 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. Sentinel, ASPPA and CIKR strongly support this approach, and note 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.*" [PPA §508(a)(1) (emphasis added)]

Sentinel, ASPPA and CIKR also ask the 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, the DOL is asked 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 and result in increased cost. 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 1,000 hours for a particular employer in that year.

Sentinel, ASPPA and CIKR recommend that the DOL issue guidance stating 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.

Timing

Trustee-Directed Plans

There are currently thousands of defined contribution plans in which the investments are not directed by plan participants. Investment decisions are made by the plan trustees, and assets must be valued at least annually. The earnings (or losses) are then allocated to participants' accounts as of the end of the plan year. A substantial portion of these trustee-directed plans are maintained by small businesses for their employees.

Benefit statements for these plans are typically prepared for participants at the same time as the Form 5500 and the Summary Annual Report. There are several reasons why annual benefits statements are not prepared until these two reports are completed.

First, small businesses often do not determine employer contributions until their tax return is completed, and they do not want to provide incomplete statements to participants that do not reflect profit sharing contributions for the year. Second, many plans provide that earnings (or losses) are allocated proportionately on the account balance as of the first day of the plan year plus some or all of the contributions attributable to the year. Thus, there can be no earnings allocation until all contributions are determined, which may be as late as the date the employer's tax return is prepared. Third, many trustee-directed plans invest in assets that are not publicly traded and, therefore, require an annual independent appraisal. A common example would be a limited partnership interest. In many cases, valuation of the limited partnership interest is determined as part of the partnership tax return, due October 15, with extensions, assuming a calendar-year taxpayer.

The factors noted above make it impossible for sponsors of trustee-directed plans to satisfy the 45-day statement requirement (as specified in the FAB) in many circumstances.

To avoid increased cost and to ensure completeness and accuracy of the benefit statements, the deadline for trustee-directed plans should be extended.

Sentinel, ASPPA and CIKR recommend that plans that do not permit participant direction of investments be required to provide annual participant statements by the due date of the plan's Summary Annual Report.

Partially Trustee-Directed Plans

Many plans include both trustee-directed and participant-directed components. Current guidance indicates that a plan that allows participants to direct any portion of their accounts must provide quarterly statements. To the extent such a plan is required to report the trustee-directed portion on a quarterly basis, participants will receive the same information 4 times per year. Not only will this be confusing to participants, it will result in additional fees for no additional information.

Sentinel, ASPPA and CIKR recommend that partially-participant-directed plans only be required to provide quarterly statements for the directed portion of the plan and annual statements for the non-directed portions of the plan.

Most Recently Available Information

Current guidance allows vesting and account information to be provided based on the most recently available information. It is important for any guidance that is issued to maintain this flexibility.

As noted throughout this testimony, there are a number of factors that impact not only the data that is available, but how quickly it can be compiled and presented in an understandable format. These factors include specific plan features, timing for determining contributions, types of investments held and the sophistication of the systems and service-providers tracking participant records. As such, the currency of data that is available to be reported to participants varies based on the relevant facts and circumstances.

Sentinel, ASPPA and CIKR recommend that plans continue to be given the flexibility to provide participant benefit statements based on the most recently available information and that “most recently available” be a good faith determination based on the relevant facts and circumstances.

Closing Remarks

It is important for participants to receive relevant and timely information regarding their employer-provided retirement benefits. However, there must be a balance between the time in which the statements are required to be provided and the associated costs. Any guidance the Department of Labor issues must be sure not to accelerate deadlines beyond the employers’ ability to collect data and the service-providers’ ability to analyze and report it. Further, the guidance should seek to ensure that employers are not required to provide duplicative or irrelevant information that could be confusing to participants and increased costs to the plan.

Biography of Adam C. Pozek, QKA, QPFC, AIF[®], RHU, REBC

Adam C. Pozek is the Vice President of Consulting Services at Sentinel Benefits Group, Inc. and has been in the employee benefits industry since 1990. He works with companies from many varied industries and ranging in size from 2 employees to over 30,000 employees. He also works closely with other professional advisors such as attorneys and accountants who are uniquely situated to understand their clients’ needs.

Adam is a recognized national speaker. He has presented on retirement plan issues for organizations such as ASPPA, AICPA, WEB, SOAR, and Lorman Education Services. He has been published or quoted in numerous industry publications including the *Journal of Financial Services Professionals*, the *ASPPA Journal* and freeERISA.com.

Adam is actively involved with the American Society of Pension Professionals and Actuaries (ASPPA) where he serves on the Board of Directors and Government Affairs Committee. He is a Past President of the ASPPA Benefits Council of Atlanta and a member of the Board of Directors of the ASPPA Benefits Council of New England.

Adam holds the professional designations of Qualified 401(k) Administrator (QKA) and Qualified Plan Financial Consultant, (QPFC) from ASPPA, Registered Health Underwriter (RHU) and Registered Employee Benefits Consultant (REBC) from the American College, Accredited Investment Fiduciary[®] (AIF) from the Center For Fiduciary Studies.