

DOL Relaxes PPA Diversification Notice Requirement for Certain Plans

Effective for plan years beginning on or after January 1, 2007, the Pension Protection Act (PPA) requires defined contribution plans of public companies that offer employer securities as an investment to offer plan participants new diversification rights with respect to these securities and to provide them with notice of the new rights at least 30 days before the rules first apply to them. The IRS provided guidance on these new requirements in November, which offered transition relief and stated that it would follow the DOL's interpretation that the notice would not have to be provided before January 1, 2007. (See our December 6, 2006 [For Your Information](#).)

Many plan sponsors already provide diversification rights to participants that comply with the new rules and some questioned whether the initial notice requirement should apply to them.

The DOL has just issued [Field Assistance Bulletin 2006-03](#) (FAB 2006-03), which provides guidance on the new requirements under PPA for providing periodic pension benefit statements (e.g., quarterly statements for participant-directed individual account plans).

Importantly, the FAB indicates that individual account plans that provide diversification rights at least equal to those required under PPA prior to January 1, 2007 and that furnish periodic pension benefit statements that meet applicable requirements will be deemed to satisfy the initial notice requirement. In addition, the DOL states that for plans for which the diversification rights will first apply as of January 1, 2007, notices explaining the rights as well as the importance of a diversified portfolio should be provided as soon as possible after January 1, 2007. The November IRS guidance included a model notice, which among other things, states that a portfolio may not be adequately diversified if more than 20% is invested in any one company or industry.

BUCK COMMENT. *This is important and welcome relief from the DOL for those plan sponsors who are in compliance with the new requirements and have not already attempted to meet this notice requirement.*

As noted above, the latest DOL guidance is focused on the periodic pension benefit statement requirements and discusses what will be deemed good compliance with those requirements. We will provide a separate *For Your Information* discussing FAB 2006-03 in more detail.

This Newsflash is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.