2018 POPULAR
RETIREMENT PLANS CONFERENCE

POPULAR®

ERISA AND FIDUCIARY FUNDAMENTALS 101

PIETRANTONI MENDEZ & ALVAREZ LLC

Néstor R. Nadal, Esq.
Vivianna Figueroa, Esq.
Pietrantoni Méndez & Alvarez LLC
October 25, 2018

ERISA AND FIDUCIARY FUNDAMENTALS 101

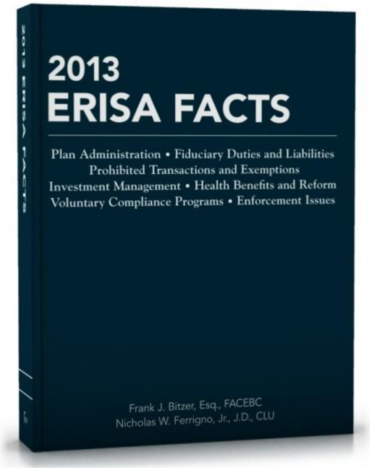
The contents of this presentation have been prepared for education purposes. Its intention is not to, and it does not, constitute legal advice. It is recommended to everyone who reads this presentation to seek advice from an attorney and/or financial advisor before carrying out any transaction described here.

Circular 230: This presentation was not written to be used, is not intended to be used and cannot be used by any taxpayer for purposes of avoiding United States federal income tax penalties that may be imposed. This material is written not to support the promotion or marketing of any transaction. We are providing the foregoing disclaimer to satisfy obligations we have under Circular 230, governing standards of practice before the IRS.

WHAT IS ERISA?

The Employee Retirement Income Security Act of 1974, as amended.

A federal law enacted to regulate the administration and operation of certain benefit plans, including but not limited to retirement plans providing retirement income to employees or providing for deferral of income by employees extending to the termination of covered employment or beyond.



AND DOES ERISA APPLY TO RETIREMENT PLANS IN PUERTO RICO?

Yes, it does!

See, ERISA § 3(10)

In fact, retirement plans intended to be qualified in Puerto Rico must comply with the applicable provisions of ERISA as a requisite for obtaining or maintaining such tax qualified status.

See. Section 1081.01(a)(9) of the Puerto Rico Internal Revenue Code of 2011, as amended.

AND WHAT IS THIS THING ABOUT BEING A "FIDUCIARY" UNDER ERISA?

WHO IS A FIDUCIARY?

Except as otherwise provided, a person is a fiduciary with respect to a plan to the extent:

- He/she exercises any discretionary authority or control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, or

- He/she renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so.

See, ERISA § 3(21)

WHO ARE AUTOMATIC (OR "NAMED") FIDUCIARIES UNDER ERISA?

- Plan Administrators
- Named Fiduciary under the Plans
- Investment Managers
- Trustees

See, ERISA § 3(10)

BUT CAN I BECOME A FIDUCIARY EVEN IF I AM NOT ONE OF THOSE?

Yes, you can!

Some persons become fiduciaries because they exercise discretionary authority or control over plan management, assets, or administration, or because they provide investment advice to the plan.

They are sometimes called "functional fiduciaries", since their fiduciary status arises from the functions they perform.

SO THAT MEANS THAT IF I AM AN ERISA FIDUCIARY, I CAN'T DO MY JOB FOR MY EMPLOYER?

Not so fast!

The 2 hat rule: ERISA allows officers and employees to act as fiduciaries, and also to act as representatives for the employer (or settlor).

In such cases, the person wears "2 hats": the first hat, for the Plan Sponsor or "Settlor Function"; and the second hat, for the Plan "Fiduciary Function".

When the person wears the "Fiduciary Function" hat he/she must act <u>solely</u> for the benefit of plan participants.

They are sometimes called "functional fiduciaries", since their fiduciary status arises from the functions they perform.

WHEN AM I WEARING THE "SETTLOR" HAT?

When the actions relate to the (i) establishment, (ii) amendment, or (iii) termination of an ERISA plan (including decisions related to plan design).

AND WHEN AM I WEARING THE "FIDUCIARY" HAT?

When making decisions with respect to plan investments, plan interpretation, determinations regarding claims and plan implementation (including selection of external providers), among others.

AM I GETTING INTO TROUBLE IF I BECOME A FIDUCIARY UNDER ERISA?

You might!!!

HOW CAN I AVOID GETTING IN TROUBLE?

You must comply with ERISA's standard of fiduciary conduct.

WHAT ARE THOSE?

The first standard is the Exclusive Benefit Rule

- A fiduciary must act in the exclusive interest of participants and beneficiaries to provide benefits or pay reasonable administrative expenses.

See, ERISA § 404(a)(1)(A)

AND THE SECOND?

The Prudent Person Rule – A fiduciary must make decisions regarding the plan with the level of care, skill and diligence of a prudent person familiar with employee benefit plans acting under the same circumstances.

See, ERISA § 404(a)(1)(B)

DOES THAT MEAN THAT I HAVE TO BE AN EXPERT ON ERISA?

No but you should be knowledgeable and seek assistance from experts. More about this later.

WHAT ELSE MUST I DO AS A FIDUCIARY?

The third standard of conduct for a fiduciary is the Diversification Rule which requires that the fiduciary diversify plan investments in order to minimize the risk of large losses.

See, ERISA § 404(a)(1)(C)

ALWAYS?

Unless it is clearly prudent not to do so under the circumstances.

HOW DO I DO THAT?

In the case of a defined contribution plan the fiduciary must select and monitor investment alternatives and participants' allocations.

IS THAT IT?

No. The fourth standard is the duty to Follow the Terms of the Plan.

See, ERISA § 404(a)(1)(D).

ALWAYS?

Almost!

The fiduciary must act in accordance with the terms of the plan unless the plan is in conflict with the provisions of ERISA.

NOW, IS THAT IT?

Yes and no. Although, those are the four standards of conduct, a fiduciary must also:

- Not engage in prohibited transactions (ERISA § 406)

- Use care to prevent co-fiduciaries from committing breaches and rectify the actions of others (ERISA § 405)

- Be bonded (ERISA § 412) (more about this later)

WHAT IF I DO NOT COMPLY WITH THE STANDARDS?

Then you may get in trouble, sometimes BIG trouble.

A fiduciary may be removed from the fiduciary positions and banned from service as a fiduciary in the future.

GOOOOD!!!

I DID NOT WANT TO BE A FIDUCIARY FROM THE BEGINNING

Not so fast. Fiduciaries may be personally liable:

- To restore to the plan any losses resulting from a breach
- To restore any profits made through improper use of the plan's assets
- For DOL civil penalties
- To suffer imprisonment

OK, LAY IT OUT FOR ME FISHER PRICE-MODE. GIVE ME SPECIFIC EXAMPLES OF MY RESPONSIBILITIES AS A FIDUCIARY UNDER ERISA

WHEN ARE CONTRIBUTIONS PAYABLE TO THE PLAN'S TRUST?

An employer must deposit the contributions as soon as it is reasonably possible to segregate them from the company's assets,

BUT

<u>NEVER</u> LATER than the 15^{th} business day of the month following the pay day.

WHAT DO I HAVE TO DO WITH THE PLAN ASSETS?

- Invest them
- Diversify - Minimize risk of large losses
  - DC Plan - Diversification across major asset classes
  - DB Plan - Ensure investment strategy meets long term goals of plan
- Supported by an Investment Policy Statement
- Reviewed by an Investment Committee (if existing)

WHAT IS AN INVESTMENT POLICY STATEMENT?

Outlines general investment goals and objectives and describes strategies that the fiduciary should employ to meet objectives:

- Asset allocation
- Risk tolerance
- Liquidity requirements

PLAN PROVIDERS
WHEN SHOULD I SELECT THEM?

- Hire them when you (acting as fiduciary) have no expertise

- More about on how to select a provider - later

ANY OTHER EXAMPLES OF FIDUCIARY RESPONSIBILITIES?

Compliance with disclosure requirements under ERISA and PR Code

To Participants:

- Summary Plan Description (SPD)
- Summary of Material Modifications (SMM)
- Summary Annual Report (SAR)
- Individual Periodic Statement of Accrued Benefits
- Domestic Relations Orders (DRO) and Qualified DRO Notices
- Notice of Significant Reduction in Benefits Accruals (204(h) Notice)
- Notice of Right to Divest Employer Stock in DC Plan
- Notice of Qualified Change in Investment Options
- Notice of 404(c) Plan's Default Investment Fund
- Notice of Automatic Enrollment
- Notice of Automatic Contribution Arrangement

ANY OTHER EXAMPLES OF FIDUCIARY RESPONSIBILITIES?

Compliance with disclosure requirements under ERISA and PR Code

To Participants:

- Notice of Funding Waiver Application
- Notice of Waiver of Minimum Funding Standard in Event of Business Hardship
- Payment of Pension Benefit Guaranty Corporation (PBGC) Premiums
- Notification of Benefit Determination
- Notice as Tax Consequences and Rollover Option of Eligible Rollover Distribution (U.S. Qualified Plans-Section 402(f) Notice)

HOW DO I GET OUT OF THIS FIDUCIARY RESPONSIBILITY
(OR AT LEAST REDUCE MY RISKS)?

CAN I DELEGATE MY FIDUCIARY DUTIES? YES (AND NO)!

ERISA allows delegation of fiduciary duties <u>IF</u>:

–Plan documents expressly provides procedures for allocating fiduciary responsibilities (<u>other than trustee duties</u>) among named fiduciaries, and

–The named fiduciaries designate other persons to carry out said fiduciary duties.

In such cases, the named fiduciary is not liable for act or omission of the delegated person.

<u>However</u>, the named fiduciary retains the duty to monitor the performance of the delegated persons.

See, ERISA § 405(c)

GIVE ME THE "DO's" AND "DON'Ts" FOR SELECTING AND MONITORING SERVICE PROVIDERS....

IN SELECTING

DO!

Review qualifications

Have alternative quotes (3?)

Assess who will pay (plan or employer?)

DON'T

Select providers that cause conflicts of interest, cause dealing, or create "improper appearance".

Forget that cost is just one component in the selection process.

IN MONITORING

DO!

Compare services with cost.

Examine ongoing fee information.

Ensure compliance of agreed-upon responsibilities by provider.

DON'T!

Be afraid to make the tough questions to the provider. He/she is not (and should self-not be) your friend (when dealing with plan matters)!

Forget the monitoring, is a continuous process

CAN I PAY PROVIDERS FROM THE PLAN ASSETS?

ERISA specifically allows plan fiduciaries to use plan assets for the payment of reasonable administrative expenses. *See,* ERISA § 404(a)(1)(A).

But, the Plan must also allow for such expenses to be paid from plan assets. *See, ERISA § 404(a)(1)(D).*

In any case, the decision as to whether any expense is an "administrative" expense, whether it is "reasonable", and whether it can be "charged" against plan assets is a fiduciary decision.

CAN I GET SOME EXAMPLES? (YOU LAWYERS!)

CAN BE PAID FROM PLAN ASSETS(*)

Recordkeeping fees

Trustee Fees

Plan amendments (legally required)

Accounting and audit fees

Communication fees

ERISA bond

Portfolio Manager fees

Sales charges (loads/commissions)

CANNOT BE PAID FROM PLAN ASSETS(*)

Plan design costs

Plan amendments (not legally required)

Fees to decide whether to terminate the plan

Fiduciary correction fees

(*) If allowed under the Plan.

WHAT ELSE CAN YOU TELL ME TO MAKE SURE I DON'T FAIL MY FIDUCIARY RESPONSIBILITIES IN ADMINISTERING THE PLAN?

THE GOLDEN RULE: FOLLOW PLAN TERMS (*)

(IN PUERTORRICAN: NO "AY BENDITO!")

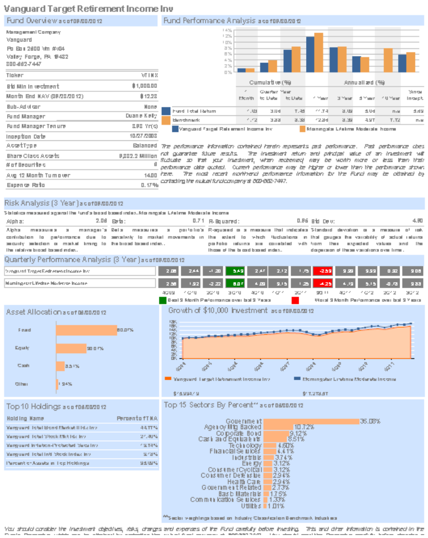
(*) As long as such terms are in accordance with ERISA! See ERISA § 404(a)(1)(D)

WHAT ABOUT THE INVESTMENTS? AM I RESPONSIBLE FOR THE PLAN INVESTMENTS? I HEAR EVERYBODY SUES EVERYBODY?

General Rule:	The applicable fiduciary (employer, committee, or investment manager?) is responsible for investment results. *See, ERISA § 404(a)(1)(C).*
Exception:	The participant/beneficiary, in case of individual account plans that allow participants to exercise "control", and if he/she exercises such "control". *See, ERISA § 404(c)(1).*
Exception to the Exception:	The applicable fiduciary, if the participant/beneficiary does not provide investment instructions and the investment is made in a "default" investment (or otherwise the participant/beneficiary is not deemed to have been able to control said investment).
Exception to the Exception	The participant/beneficiary, if the "default" investment is a qualified default investment alternative. *See, ERISA § 404(c)(5).*

I NEED THOSE QDIAs.
WHAT ARE THEY?

COMMON EXAMPLES OF QDIAS:


Vanguard Target Retirement Income Inv
Fund Overview
Fund Performance Analysis
Risk Analysis (3 Year)
Quarterly Performance Analysis (3 Year)
Asset Allocation
Growth of $10,000 Investment
Top 10 Holdings
Top 15 Sectors By Percent

- Target-retirement date funds.
- Certain "balanced" funds.
- Certain "managed accounts".
- Certain "stable value funds" (but only for the first 120 days after participant elective contributions)

See, DOL Reg. 2550.404c-5(e).

AND WHAT DO I HAVE TO DO TO OFFFER THESE QDIA's IN MY PLAN?

- Make sure you follow plan procedures to add new investments.

- Notify participants of such QDIAs at least 30 days in advance of plan eligibility (for new participants) or 30 days in advance of first investments (for existing participants defaulted to the QDIA).

- Notify thereafter on a yearly basis at least 30 days in advance of every new plan year. That is on or before December 2, 2018 for 2019!

See, DOL Reg. 2550.404c-5(c).

WHAT'S A TRUSTEE?

Generally, the party named as such in the deed of trust with authority or responsibility over plan assets with a legal obligation to administer it solely for the purposes specified.

See, DOL Reg. §2509.75-8 D-3

Bonding and Insurance Requirements

What are Bonding and Insurance Requirements

- A fiduciary who breaches any duty imposed by ERISA shall be personally liable.

- It is unlawful for any plan official to receive, handle, disburse or exercise custody or control of any property of the plan without being bonded.

- Choosing the correct bond is a fiduciary responsibility.

- Public policy dictates that fiduciaries shall not be relieved from liability.

Who is a Plan Official?

Plan officials include the plan administrator who handles plan funds including receipts, safekeeping and disbursements.

- ERISA bonding requirements apply to natural persons who perform the “handling” function.

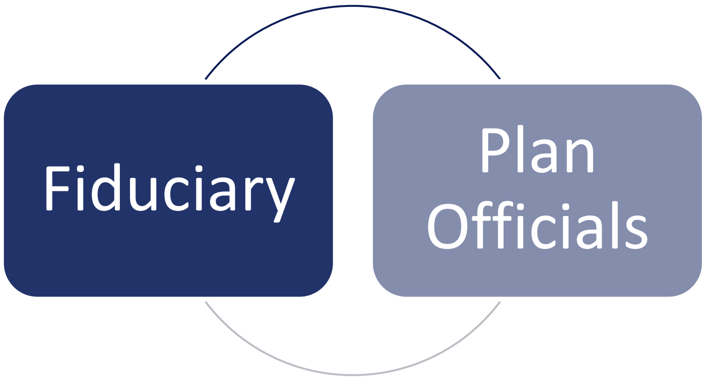
and, What is handling of funds or other property?

- In determining who is handling the key factor is the person’s capacity to cause a loss to the plan through fraud or dishonesty
- Much more than physical contact
- Power to transfer funds or other property
- Disbursement authority
- Authority to sign checks
- Supervisory or decision making responsibility

What are Funds or Other Property?

Funds or property used as a source of payment of benefits to plan participants: e.g. contributions by employer and employees

Who is responsible for making sure that plan officials are bonded pursuant to the law?



What are the Bond Requirements?

- Bonds are required by law and insurance is not.

- Bonds are also known as Fidelity Bonds, Dishonesty policy or Crime policy. And the surety generally has recourse against fiduciaries.

- ERISA section 412 and related regulations require that fiduciaries and every person handling funds or other property of any plan (“plan officials”) shall be bonded. Exceptions: Broker Dealers, Banks, Insurance companies and corporations, if they comply with similar bonding requirements.

- The bond shall provide protection to indemnify the plan for loss caused directly by dishonest act including fraud by plan officials.

- Plan Officials shall be bonded for at least 10% of the amount of funds handled by the person or group the preceding year; a minimum bond of $1,000 per plan and a required maximum of $500,000 (higher maximums may be purchased).

- Plans that hold employee securities shall bond plan officials for $1,000,000.

Are There Other Requirements?

- The form used by the Insurance Company shall be approved by the Secretary of the Department of Labor and must be approved by the Secretary of Treasury for Federal Bonds. See list of Treasury Listed companies at www. fms.treas.gov .

- Is the employer's existing commercial crime policy acceptable?
  - Yes, as long as the minimum requirements of Section 412 are met – 'ERISA rider"
  - Also, a fidelity or crime policy may insure more than one plan, but each plan shall be able to present a claim for the full amount allowed under Section 412

- Exempt from Bonding
  - Some plans may be exempt if there is sufficient evidence of the financial capacity of the plan.

- Conflict of interest (only for the Bond)
  - It is unlawful to procure the bond from any surety or agent if the plan or any party in interest has control or significant financial interest in the surety or agent.

What are Other Requirements?

- Fiduciary Liability Insurance is not required by law but bonds are required by ERISA.

- A fiduciary who breaches any duty imposed by ERISA shall be personally liable for and may be liable for the breach of another fiduciary if:

  - He knew of the act that is a breach, participates or conceals; unless he makes reasonable efforts to remedy the breach.
  - If his breach of duty has enabled another fiduciary to breach his duty.
  - In case of fraud or concealment an action can be commenced 6 years after date of discovery of a breach.

- Any instrument that relieves fiduciary from liability shall be void against public policy except:

  - A Plan can purchase insurance if there is recourse against the offending fiduciary
  - A fiduciary can purchase its own insurance
  - The employer can purchase insurance for the fiduciaries

- In general an insurance policy will not cover matters which are deemed uninsurable pursuant to Law.

What is Fiduciary Liability Insurance?

- Fiduciary Liability Insurance pays, on behalf of the insured, the legal liability arising from claims for alleged failure to prudently act within the meaning of the Pension Reform Act of 1974.

- "Insured" is variously defined as a trust or employee benefit plan, any trustee, officer or employee of the trust or employee benefit plan, employer who is sole sponsor of a plan and any other individual or organization designated as a fiduciary.

Why do I need Fiduciary Liability Insurance?

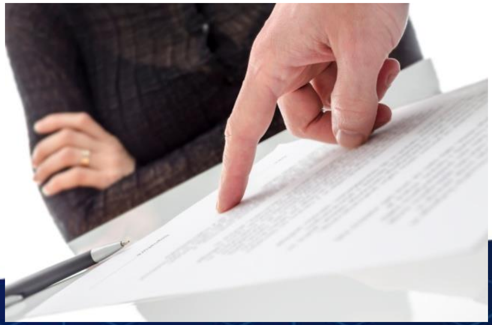
- Under the Employee Retirement Income Security Act of 1974, Fiduciaries can be held personally liable for:
  - losses to a benefit plan
  - or breach of their responsibilities
- Incurred as a result of their alleged errors, omissions, or breach of their fiduciary duties.

Why do I need Fiduciary Liability Insurance?

If you are a fiduciary of a pension and/or welfare plan subject to ERISA your personal assets are at stake.

- Many fiduciaries believe incorrectly that their ERISA fidelity bond protects their personal assets.

- This type of coverage is not included in their D&O policy. Generally D&O policies EXCLUDE fiduciary liability exposures as well as those exposures pertaining to the Employee Retirement Income Security Act (ERISA).



Why do I need Fiduciary Liability Insurance?

- Moreover, designated fiduciaries are not the only targets of such lawsuits; targets can also include the employer and even the plan itself.

- Claims can be brought by plan participants, participants' estates, the Department of Labor, and the Pension Benefit Guaranty Corporation.

What will the Policy Cover?

- Insured – Sponsor, plan, natural person insured or anybody included by endorsement
- Insurer will assume the duty to defend for claims even if groundless, false or fraudulent. (Important due to the attorney's fees)
- Wrongful Acts – violation of any responsibility under ERISA or any claim solely by reason of status as a fiduciary
- And if a natural person is insured, the policy covers the spouse only for claims arising out as spouse
- Loss
- Judgments, settlements and defense costs

What will the Policy Exclude?

- Claims made relating to:
  - Failure to fund the plan in accordance to law on plan instrument (legal cost are covered)
  - Fraud or other criminal acts for each natural insured or gaining in fact of any profit to which the person is not entitled.
  - Discrimination in violation of ERISA
  - Matters uninsurable pursuant to law
  - Acts covered by other policies or prior litigation
  - Civil & criminal fines
  - Punitive or exemplary damages
  - Taxes
  - Bodily injury, emotional distress or destruction of property
  - Release or escape of pollutants
  - Wrongful acts of the spouse

COMPLIANCE CALENDAR

Documents	Applies to	Furnished by	Furnished to	When	Penalty for Noncompliance*
Plan documentation	All plans subject to Title I of ERISA	Plan Administrator	Participants, beneficiaries, DOL upon request	• Plan administrator must make copies available at its principal office and certain other locations • Plan administrator must provide copies within 30 days of receipt of a written request from a participant or DOL	• Court may hold plan administrator who fails to comply within 30 days personally liable for up to $110/day/affected person from date of failure • DOL may impose penalty of up to $152/day for failure to provide to DOL (up to $1,527 per request)
Summary plan description (SPD)	All plans subject to Title I of ERISA	Plan Administrator	Participants, pension plan beneficiaries receiving benefits, and DOL upon request	• New participants: within 90 days of becoming covered by the plan, or in case of pension plan beneficiaries, within 90 days after first receiving benefits • New plans: 120 days after becoming subject to ERISA • Amended plans: updated SPD every 5 years if plan is amended • All others: every 10 years • DOL reg. §2520. 102-4 provides option for different SPDs for different classes of participants	• Court may hold plan administrator who fails to comply within 30 days personally liable for up to $110/day/affected person from date of failure • DOL may impose penalty of up to $152/day for failure to provide to DOL within 30 days (up to $1,527 per request)

COMPLIANCE CALENDAR

Document	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
Summary of material modification (SMM)	Provides description of changes to information required to be in SPD ERISA §§102, 104(b), DOL reg. §2520. 102-2, 2520. 102-3, 2520, 104b-1, 2520. 104b-3, 2520. 104a-8	Plan administrator	Participants, beneficiaries, and DOL upon request	• Within 210 days after the close of the plan year in which the change is adopted • Timely distribution of updated SPD satisfies this requirement	• Court may hold plan administrator who fails to comply within 30 days personally liable for up to $110/day/affected person from date of failure • DOL may impose penalty of up to $152/day for failure to provide to DOL (up to $1,527 per request)
Form 5500 annual report	Provides financial and other information about the plan. Requirements vary according to type of filer (e.g., small plan, large plan) ERISA §§103 104, 4065, DOL reg. §§2520. 103, 2520. 104, IRC §6058 DOL website	Plan administrator	DOL; participants within 30 days of written request. Also DB plan forms published on Internet by DOL and by plan sponsor on company Intranet	• Last day of the 7th month following the end of the plan year (July 31 of the following year for calendar year plans) • Up to 2 ½ month extension can be requested (Form 5558); automatic extension in certain circumstances if plan and sponsor fiscal years coincide	• Up to $2, 140/day for not filing a complete and accurate report • $25/day (up to $15,000) for not filing returns for certain plans of deferred compensation, trusts and annuities, and bond purchase plans • $1,000 for not filing an actuarial statement (Schedule MB [Form 5500] or Schedule SB [Form 5500])

COMPLIANCE CALENDAR

Document	Purpose	Furnished by	Furnished to	When	Penalty for noncompliance*
Summary annual report (SAR)	Provides a narrative summary of Form 5500 using DOL model notices ERIS §104(b)(3), reg. §2520.104b-10	Plan administrator	Participants, pension plan beneficiaries receiving benefits	Within 9 months after and of plan year, or 2 months after due date for filing Form 5500, if extension requested	Court may hold plan administrator who fails to comply within 30 days personally liable for up to $110/day/affected person from date of failure
Form 5558 – Application for extension of time to file certain employee plan returns	• To request an extension of the Form 5500, Form 5500-SF, Form 8955-SSA, or Form 5330 due date • Requests for Form 5330 extensions are subject to approval • Filing of form does not provide extension for payment of tax Form 5558 instructions	Plan administrator	IRS	• No later than 7 months after plan year end	Late filing penalties for affected Form 5500 series forms
Notification of benefit determination (claims notices or explanation of benefits)	All plans subject to Title I of ERISA	Plan administrator	Claimants (participants, beneficiary or authorized claims representatives)	Requirements vary depending on type of plan and type of benefit claim involved	Exhaustion of administrative remedies
Notice of automatic contribution arrangement (ACA)	• Informs employee of rights and obligations under arrangement; right to elect not to have salary deferrals made (or right to elect a different percentage) • Gives employee a reasonable period after notice is received and before initial contribution period to make election • Explains how contributions will be invested in absence of an investment election ERISA 514(e)(3), DOL reg. §2550-404c-5	Employer/plan administrator	Employees enrolled in absence of affirmative election	• At least 30 days in advance of participant's plan eligibility date, or at least 30 days In advance of date any first investment in QDIA is made on behalf of participant or beneficiary • Within reasonable period of time at least 30 days in advance of each subsequent plan year	• DOL may assess civil penalty of not more than $1,693/day/ person for each violation

COMPLIANCE CALENDAR

Document	Purpose	Furnished by	Furnished to	When	Penalty for Noncompliance*
Notice of plan's 404(c) status when offering investment direction	• Advises plan participant that plans is intended to be an ERISA 404(c) plan and that plan fiduciaries may be relieved of liability for any losses that are the direct and necessary result of investment instructions given by such participant or beneficiary • Must include information about plan investments, fees, and expenses (see Disclosure of Plan Investment Options, Fees and Expenses) ERISA §404(c), DOL reg. §2550.404c-1	Plan administrator	Participants and beneficiaries	In sufficient time to give the participant or beneficiary a reasonable opportunity to make Informed decisions about investment options	Fiduciary retains responsibility for prudent investment of participant accounts
Notice of qualified default investment alternative	Advises participants on how and when their assets may be invested in qualified default investment alternative (QDIA) and how to direct investment of assets in accounts into alternative funds ERISA §404(c)(5), DOL reg. §2550.404c-5 DOL Field Assistance Bulletin 2008-03	Plan administrator	Participants and beneficiaries	• At least 30 days in advance of participants plan eligibility date, or at least 30 days in advance of date any first investment in a QDIA is made on behalf of participant or beneficiary • On or before date of plan eligibility provided the participant has opportunity to make a permissible withdrawal • Within a reasonable period of time at least 30 days in advance of each subsequent plan year	Fiduciary retains responsibility for prudent investment of participant accounts

COMPLIANCE CALENDAR

Document	Purpose	Furnished by	Furnished to	When	Penalty for Noncompliance*
Disclosure of service provider fees under section 408(b)(2)	Provides plan fiduciaries with necessary information to assess reasonableness of total compensation, both direct and indirect, received by CSP, identifies potential conflicts of interest ERISA §408(b)(2), DOL reg. §2550.408b-2(c)	Covered service provider (CSP)	Responsible plan fiduciary (RPR)	• Reasonably in advance of the contract date or renewal date • No later than 30 days from acquisition of plan assets • No later than 60 days from date CSP learns of change (annually for certain investment information)	Prohibited transaction Penalties
Notice of covered service providers (CSP) failure to disclose required information	To report failure of a CSP to provide necessary disclosure of compensation received from plan ERISA §408(b)(2), DOL reg. §2550.408b-2(c)	Responsible plan Fiduciary (RPF)	DOL	No later than 30 days following the earlier of the CSP's refusal to provide information or 90 days after written request	Prohibited transaction penalties

COMPLIANCE CALENDAR

Document	Purpose	Furnished by	Furnished to	When	Penalty for Noncompliance*
Disclosure of plan investment options, fees and expenses	Provides annual disclosure of plan- and investment-related information about investment options available through plan and quarterly statement on fees and expenses and description of charges DOL reg. §2550.404a-5, DOL Technical Release No. 2011-03R, DOL Field Assistance Bulletin 2012-02R	Plan administrator	Participants and Beneficiaries	• On or before date on which participant or beneficiary can first direct investments, at least annually thereafter, 30-90 days after a change, upon request • After making an investment (for voting, tender, and certain other rights) • Annual disclosure of "plan-lever" and "investment-level'' information (including associated fees and expenses) within 14 months of prior year's annual notice • Quarterly participant disclosure due no later than 45 days after quarter end	Fiduciary retains responsibility for prudent investment of participant accounts
Notice of availability of investment advice	Informs participants of Fiduciary adviser investment advice services under an eligible investment advice arrangement that is exempt under ERISA prohibited transaction rules ERISA §§408(b)(14), 408(g)(1) IRC §4975(f)(8), DOL reg. §2550. 408g-1	Fiduciary adviser	Participants and Beneficiaries	Before the initial provision of investment advice, annually thereafter, upon request, and when required information changes	Prohibited transaction penalties

COMPLIANCE CALENDAR

Document	Purpose	Furnished by	Furnished to	When	Penalty for Noncompliance*
Notice of qualified changes in investment options	• Advises participants of changes in investment options offered in individual account plan • Provides information comparing existing and new plan investment options available and how they'll be "mapped' to existing investment choices in absence of affirmative investment instructions to the contrary ERISA §404(c)(4)	Plan administrator	Participants and Beneficiaries	At least 30 days and no more than 60 days prior to the effective date of the change	Fiduciary becomes responsible for prudent investment of participant accounts
Notice of blackout period for individual account plans	Provides advance notification of any period of more than 3 consecutive business days when there is a temporary suspension, limitation, or restriction under an individual account plan on directing or diversifying plan assets, or obtaining loans or distributions ERISA §101(i), DOL reg. §2520.101-3	Plan administrator	Participants and Beneficiaries	Generally at least 30 days, but no more than 60 days, advance notice	DOL may assess civil penalty of not more than S 136/day/person for each violation

COMPLIANCE CALENDAR

Document	Purpose	Furnished by	Furnished to	When	Penalty for Noncompliance*
Notice of right to divest employer securities	Advises participants with account balances invested in publicly traded employer stock of right to diversify into alternative investments and importance of diversification ERISA §§101(m), 204(j), IRC §401(a)(35), IRS Notice 2006-107 (includes model notice)	Plan administrator	Participants	No later than 30 days before the date the participant is first eligible to exercise the right of diversification	DOL may assess civil penalty of not more than $136/day/person for each violation
Individual benefit statements (periodic benefit statements)	• Provides statement of total accrued benefits, and if not vested, when vesting will occur • Must describe any permitted disparity or floor offset provision • For individual account plans: value of each investment, limits on investing, importance of diversification, information on DOL's webpage, and statement of value of each investment ERISA §105(A), DOL Field Assistance Bulletins 2006-03 and 2007-03, see also ERISA §209	Plan administrator	Participants and Beneficiaries	• Participant directed individual account plans – quarterly within 45 days • Other individual accounts plans – annually by form 5500 due date • Other plans – every 3 years (for participants with nonforfeitable benefits and employed by employer), or notice of availability of benefit statement annually • Upon request, once a year	• Court may hold plan administrator who fails to comply within 30 days personally liable for up to $110/day/affected person from date of failure • DOL can impose penalty of up to $29/person for failure to report benefit information to participants

COMPLIANCE CALENDAR

Document	Purpose	Furnished by	Furnished to	When	Penalty for Noncompliance*
Form 8955-SSA-annual registration statement identifying separated participants with deferred vested benefits	Reports information about separated participants who have vested benefits remaining in plan IRC §6057(a),	Plan administrator	IRS	• Last day of 7th month following end of plan year (July 31 of following year for calendar year plans) • Up to 2 ½-month extension can be requested (Form 5558); automatic extension in certain circumstances if plan and sponsor fiscal years coincide	$1/day/participant not reported (up to $5,000/plan year) unless due to reasonable cause
Notice to separated participants with deferred vested benefits	Describes participants deferred vested benefits and benefits that are forfeitable if participant dies before a certain date (as reported on the Form 8955-SSA) IRC §6057(e), IRS reg. §301.6057-1, ERISA §§105(c) and 209	Plan administrator	Separated participants	No later than due date for filing Form 8955-SSA-Annual Registration Statement Identifying Separated Participants with Deferred Vested Benefits	$50/willful failure
Domestic relations order (DRO) and qualified domestic relations order (QDRO) notices	Provides notification of receipt of a DRO, plan's procedures for determining qualification, and the determination as to whether DRO is qualified ERISA §206(d)(3); IRC §414(p)	Plan administrator	Participants and alternate payees (i.e., spouse, former spouse, child, or other dependent of a participant named in a DRO as having a right to receive all or a portion of the participants plan benefits)	• Initially upon receipt of the DRO (Including the plan's procedures for determining its qualified status) • Notice on whether the DRO is qualified within a reasonable period of time after receipt of the DRO	Fiduciary may be held liable to alternate payee who brings an action under ERISA's civil enforcement scheme

COMPLIANCE CALENDAR

Document	Purpose	Furnished by	Furnished to	When	Penalty for Noncompliance*
Explanation of rollover and certain income tax withholding options	Informs payee of rules for rollovers, mandatory 20% income tax withholding if not rolled over, right to elect out of income tax withholding on other periodic and nonperiodic payments IRC §§402(f), 3405. IRS reg.. §§1.402(1)-1, 35.3405-1 and -1T, and 31.3405(c)-1	Plan administrator	Participants and beneficiaries who receive an eligible rollover distribution	• Eligible rollover notice: no less than 30 (absent affirmative election) or more than 180 days before date of distribution (or first payment in case of a series) • Periodic payment withholding notice: no earlier than 6 months before first payment and no later than when making first payment; thereafter, once each calendar year • Nonperiodic payment withholding notice: may be provided with benefits application	

COMPLIANCE CALENDAR

Document	Purpose	Furnished by	Furnished to	When	Penalty for Noncompliance*
Explanation of consent to distribution	Informs participant of available distribution options and consequences of failing to defer commencement of benefits to extent permitted IRC §411(a)(11), IRS reg. §§1.411(a)-11, 1.401(a)-20, IRS Notice 2007-7 Q33, IRS prop. reg. §1.411(a)-11(c)(2), ERISA §203(e)	Plan administrator	Participants	No less than 30 or more than 180 days before the annuity starting date (distribution date/date of plan loan), unless there is an affirmative election to distribute	• Duplicate benefits may be payable
Explanation of qualified joint and survivor annuity (QJSA)	Informs participant of terms and conditions of QJSA or the Qualified Optional Survivor Annuity (QOSA), right to waive, right to revoke waiver, spousal consent requirement, and explanation and relative value of other optional benefit forms ERISA §205(c), IRC §417(a)(2), IRS reg. §§1.401(a)-11, 1.401(a)-20, 1.417(a)(3)-1, 1.417(e)-1, IRS Notice 2008-30	Plan administrator	Participants	No less than 30 or more than 180 days before the annuity starting date, unless there is an affirmative election, in which case payment date cannot be sooner than 7 days after notice	• Duplicate benefits may be payable

COMPLIANCE CALENDAR

Document	Purpose	Furnished by	Furnished to	When	Penalty for Noncompliance*
Explanation of qualified preretirement survivor annuity (QPSA)/beneficiary designation	Provides explanation of terms and conditions of QPSA, right to waive, right to revoke waiver, spousal consent requirement ERISA §205(c), IRC §417(a)(2), IRS reg. §§1.401(a)-20, 1.417(a)(3)-1, 1.417(e)-1	Plan administrator	Participants not yet in pay status	• During period from beginning of plan year in which employee turns age 32 to end of plan year in which employee turns age 34 • Special rules for participants who commence participation after age 34 or who separate from service before age 35 • If plan fully subsidizes QPSA and does not follow a participant to waive it or to select a non-spouse beneficiary, notice is not required • Exempt DC plans not subject to age range restriction	• Duplicate benefits maybe payable