



News & Types: Employment, Labor & Benefits Update

# Advisory Council on Employee Welfare and Pension Benefits Provides Report on Plan Notices and Disclosures

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Practices: Employment, Labor & Benefits

In November 2017, the Advisory Council on Employee Welfare and Pension Benefit Plans (the “Council”) issued a report to the Department of Labor (the “DOL”) on its study of the effectiveness of retirement plan notices and disclosures. Although the report, “Mandated Disclosure for Retirement Plans — Enhancing Effectiveness for Participants and Sponsors,” was submitted to the DOL in November, it was only recently made available to the public along with a companion report relating to welfare plan disclosures, “Reducing the Burden and Increasing the Effectiveness of Mandated Disclosures with Respect to Employment-Based Health Benefit Plans in the Private Sector.” This article will discuss the Council’s report relating to retirement plans.

As background, the Council is established pursuant to Section 512 of ERISA and consists of 15 members appointed by the Secretary of Labor. Its members include a broad array of experts in employee benefits from the private sector. The duties of the Council are to advise the Secretary and submit recommendations regarding matters relating to welfare and pension benefit plans. The findings of the Council do not represent the opinion of the DOL, but the recommendations are considered by the Secretary in formulating policy and rulemaking.

Sponsors of welfare or pension benefit plans (including 401(k) plans), are well aware of the numerous notices and disclosures that must be provided to participants and beneficiaries under ERISA and the burden on plan sponsors associated with complying with the requirements. Although most recordkeepers provide valuable assistance in fulfilling these obligations, key questions still persist. Are the notices effective – are they understandable and useful to participants? Is the timing, method of delivery and the content accomplishing the objectives of the required disclosures and notices? The Council focused its study on these issues and studied how to streamline the content and how to make the delivery and availability of mandatory retirement disclosures more practical and effective.

It is worthwhile noting an observation of the Council at the outset of the report. That is, the Council noted that there was generally consistent agreement among the witnesses that “...*the goal of providing disclosures that are understood and utilized by participants has not been fully achieved by current mandatory disclosures. Contrary to the intended purpose of the disclosures to inform participants about the plan(s) and to facilitate the monitoring of plan operations, the overwhelming number and content of the disclosures being provided defeat the stated purpose.*”

The Council limited its comments to the Summary Plan Description (“SPD”) and Summary of Material Modification (“SMM”), the single employer annual funding notice for defined benefit plans and the Summary Annual Report (“SAR”) for defined contribution plans in the interest of providing actionable recommendations to the DOL. However, they noted that the principles used to improve the disclosures mentioned in the report could potentially be applied to other current and future mandated disclosures.

In summary, the Council recommended simplification and streamlining the communications. The Council recommended that the DOL:

1. Provide plan sponsors and administrators with the option to comply with the SPD and SMM requirements by distributing annually a “Quick Reference Guide,” which would constitute the introductory portion of the SPD. This alternative method of compliance would not eliminate the requirements to update the complete SPD as legally required and to provide the complete SPD upon initial eligibility and upon request at any time.
2. Simplify the Single Employer Model Annual Funding Notice to provide basic introductory information regarding funded status and key metrics, with all other information contained in an appendix to the notice.
3. Create an alternative means for compliance with the current requirement to distribute a SAR to defined contribution plan participants by allowing plans to notify participants about the availability of the annual Form 5500, including instructions for how to access that filing. The alternative disclosure could be provided as a stand-alone notification, or be included as a part of other mandatory disclosure(s), including the proposed Quick Reference Guide, which is a part of the SPD.
4. Explore further the utility and effectiveness of electronic delivery mechanisms. With respect to this final recommendation, the Council made this recommendation because witness testimony suggested that permitting electronic delivery options may reduce the burden on plan sponsors while helping many participants better navigate and understand their benefits.

The recommendations were accompanied by sample disclosures for the DOL’s consideration. The Council stated that it believed that the recommended modifications to the notices referenced in the report could be implemented by the DOL without statutory changes or legislative action.

The Council concluded its report noting the need to strike a balance between providing too little information and providing too much information and stated that it believed that the changes recommended by the Council will both simplify and streamline the disclosures without sacrificing the quality of information that participants receive.

In our opinion, the recommendations of the Council are extremely worthwhile. We hope the DOL considers them, not simply to relieve some of the administrative burden on plan sponsors but, more importantly, to improve the quality and delivery of the communications from the participant’s perspective.