

Contents

**Lifetime Income Disclosures
 Required for Participants** 1

**Understanding Qualified Domestic Relation Orders
 (QDROs) Q & A** 2

**Compliance Reminders for 3Q2022:
 For the Calendar Plan Year 2022** 2

FUTUREPLAN'S SPECIALTY PRACTICES

ESOP Distribution Policy Considerations..... 4

Lifetime Income Disclosures Required for Participants

The Setting Every Community Up for Retirement Enhancement (SECURE) Act of 2019 imposed a new disclosure requirement for most ERISA-covered defined contribution “individual account plans,” such as 401(k) plans. (This requirement does not apply to one participant, owner-only defined contribution plans.) To give a more helpful, realistic picture of the amount of retirement savings that will be available to participants, plan sponsors must soon disclose the hypothetical monthly payment that a participant’s current balance would provide. This information—which can be sent along with regular participant statements—is meant to give participants a better idea of whether or not they are saving enough for retirement. It does not, however, mean that the plan sponsor must provide an annuity distribution option. The disclosure is merely an illustration of the monthly amount that the participant’s balance would generate under certain assumptions. Plan sponsors must also provide this information to alternate payees and beneficiaries who have their own individual account under the plan.

The Department of Labor (DOL) has released [guidance](#) on when this annual disclosure must be given—and on what it must contain. For participant-directed plans, this information should be delivered in July 2022. For plans with no participant investment direction, the due date coincides



with a plan’s Form 5500 filing deadline, plus extensions. So, for calendar-year plans where the employer directs the investments, participants should receive the disclosure by October 15, 2022.

The DOL has tried to make the income disclosure relatively straightforward.

- The disclosure must contain two illustrations that convert the participant’s balance: one illustration must convert it into a single life annuity (SLA) and the other must convert it into a qualified joint and 100 percent survivor annuity (QJSA).
- Plan sponsors should calculate the monthly payments assuming that the participant will begin receiving payments on the last day of the pension benefit statement period (for example, December 31 for a benefit statement covering the fourth quarter).
- The projection must assume that participants are 100 percent vested in their accounts and that any loans have been repaid.
- Plan administrators should assume that payments begin at age 67 and that the interest rate and mortality tables adhere to DOL guidelines.

continued on page 2

BENEFITS ADVANTAGE

continued from page 1

The disclosure must explain the estimated annuity payments in plain language. Fortunately, the DOL has provided sample text for employers to use. For example, the model text explains that the annuity payment amounts are merely estimates—and that there is no guarantee that participants will actually receive the estimated payments.

Plan sponsors who typically have their statements prepared by their investment provider should contact them for more information. If FuturePlan usually prepares the participant statements, contact your FuturePlan Consultant regarding lifetime income disclosures. ■

Understanding Qualified Domestic Relation Orders (QDROs) Q & A

What is a Qualified Domestic Relation Order (QDRO)?

A QDRO begins as a state domestic relations order (DRO), judgment, or decree, which is generally issued by a court of law in connection with the payment of child support, alimony, or the division of marital property from a qualified retirement plan, 403(b) plan, or governmental 457(b) plan assets. (The DRO does not apply to IRAs.) The DRO directs a plan administrator to divide the participant's benefit among the participant and the participant's former (or legally separated) spouse or dependents. The affected spouse, former spouse, child, and other dependents, are referred to as "alternate payees." A QDRO allows payment of all or a portion of a participant's benefit to an alternate payee.

Who is responsible for determining the status of a DRO?

Under most plans, the plan administrator must determine whether a DRO constitutes a QDRO under the relevant plan provisions. This determination generally will require the assistance of an attorney.

What information needs to be contained in a QDRO?

Generally, a QDRO should specify:

- the alternate payee's right to a benefit under the plan (including names and addresses of the plans and parties involved);
- the amount or percentage of benefits assigned under the order;
- the number of payments to be made or the period of time over which the order is enforceable (i.e., when payments should commence and terminate); and
- the plans to which the order relates.

The court order may also indicate the form of payout to be made. The order may not, however, require a form of payout not otherwise permitted under the plan.

What are the tax consequences of distributions to alternate payees?

Any distribution of benefits made to an alternate payee who is a spouse or former spouse is taxable to the alternate payee, rather than the participant. QDRO payments made to an ex-spouse generally qualify as eligible rollover distributions and may be rolled over to an IRA or to another qualified plan. As with payments to participants, [eligible rollover distributions](#) that are taken but not directly rolled over are subject to a mandatory 20 percent withholding, but only to the extent the amount distributed can be included in gross income. Other QDRO payments (e.g., payments made to a child) are taxable to the participant. QDRO payments are not subject to the 10 percent early distribution penalty tax.

What rights does an alternate payee have under a QDRO?

The rights of an alternate payee will vary from plan to plan. ERISA Sec. 206(d)(3) provides that an alternate payee is considered a beneficiary under the plan for purposes of ERISA. The beneficiary's specific rights will be spelled out in the plan document. Some plans grant alternate payees the rights of a participant (e.g., self-direction, naming a beneficiary). The Department of Labor (DOL) states that until such time as an alternate payee begins receiving benefits, the alternate payee must receive, upon written request, copies of the latest summary plan description, the latest annual report, any final annual report, trust agreement, contract, or other instrument under which the plan is operated. Once payments begin, according to the DOL, the alternate payee must automatically receive the summary plan description, summaries of material plan changes, and the plan's summary annual report.

Please contact your FuturePlan Consultant if you have questions about QDROs. ■

Compliance Reminders for 3Q2022: For the Calendar Plan Year 2022

The following list highlights important, but not all, compliance dates for retirement plan administrators. Due to the existence of pending federal legislation, changes

continued on page 3

BENEFITS ADVANTAGE

continued from page 2

may occur. Please contact your FuturePlan Consultant with questions about compliance dates for your retirement plan.

July 2022

15 – Minimum funding requirements for defined benefit, money purchase, and target benefit plan years that ended October 31, 2021 must be met by July 15 in order to avoid excise taxes or operational failures. An electronic transfer must be completed or a check mailed by this date.

15 – Retirement plan employer contributions are due in order to be deducted on employer tax returns due to be filed July 15, 2022.

15 – Form 5500 Series/8955-SSA – Forms that are on extension are due for the plan year that ended September 30, 2021.

15 – Deadline for defined benefit pension plans, with a funding deficiency for the preceding plan year, to make their second quarterly funding contribution for the 2022 calendar plan year.

31 – Deadline for qualified defined contribution retirement plan documents (such as profit sharing, 401(k), and money purchase pension plans) to be amended for Cycle 3 document restatements. Please contact your FuturePlan Consultant with questions.

August 2022

1 – Form 5500 Series/8955-SSA – Forms are due for the 2021 calendar plan year that aren't on extension.

1 – Form 5558 – IRS Extension form for the Form 5500 series for 2021 calendar plan years, which will extend their Form 5500 series return until October 17, 2022.

14 – Section 401(k) and other participant investment directed retirement plan accounts should provide benefit statements to participants within 45 days after the end of the preceding quarter.

15 – Minimum funding requirements for defined benefit, money purchase, and target benefit pension plan years that ended November 30, 2021 must be met by August 15 in order to avoid excise taxes or operational failures. An electronic transfer must be completed or a check mailed by this date.

15 – Retirement plan employer contributions are due in order to be deducted on employer tax returns due to be filed August 15, 2022.

15 – Form 5500 Series/8955-SSA – Forms that are on extension are due for the plan year ending October 31, 2021.

31 – Form 5500 Series/8955-SSA – Forms that aren't on extension are due for the plan year ending January 31, 2022.

September 2022

15 – Minimum funding requirements for defined benefit, money purchase, and target benefit pension plan years that ended December 31, 2021 must be met by September 15 to avoid excise taxes or operational failures. An electronic transfer must be completed or a check mailed by this date.

15 – June 30, 2022 plan year 401(k) plans must process corrective distributions for failed nondiscrimination tests to avoid a 10% penalty tax.

15 – Retirement plan employer contributions are due to be deducted on employer tax returns due to be filed September 15, 2022.

15 – Elect or change standing election to use credit balances to offset 2021 minimum required contributions.

15 – Form 5500 Series/8955-SSA – Forms that are on extension are due for the plan year ending November 30, 2021.

15 – Under the SECURE Act, certain calendar year employers (S-Corporations and partnerships) now have until the due date of their income tax return, as extended, to establish a stock bonus, pension, profit sharing, or annuity plan for the *prior* year. Please note, one cannot retroactively establish a 401(k) feature of a profit-sharing plan. Thus, a 401(k) feature must be established before the first elective 401(k) deferral is made. Other employer entity types have their own deadlines to retroactively establish a qualified retirement plan. Please contact your FuturePlan Consultant with questions.

30 – Deadline for the pension plan's enrolled actuary to prepare the funding adequacy related to the 2022 adjusted funding target attainment percentage (AFTAP) calculation for a calendar year end to avoid certain plan level restrictions.

30 – Form 5500 Series/8955-SSA – Forms are due for the plan year ending February 28, 2022 that aren't on extension. ■

FUTUREPLAN'S SPECIALTY PRACTICES

ESOP Distribution Policy Considerations

Designing a written distribution policy for an Employee Stock Ownership Plan (ESOP) takes time and thoughtful consideration of many factors. Each decision has a consequence that must be weighed with the corporate objectives and the company's ability to have the cash required to meet the ESOP's repurchase obligations. This article provides a high-level explanation of distribution policies and major considerations to keep in mind.

The distribution policy is an important part of ESOP administration. An ESOP distribution policy has three basic elements: timing, method, and form.

- 1. Timing** indicates when the distribution(s) will begin. The Internal Revenue Code defines the latest date at which benefits must begin. Benefits associated with death, disability, and normal retirement (as defined by the plan document) must commence no later than one year following the year of the event. For benefits associated with other terminations, the benefit must commence no later than six years following the year of the event. For example, if a participant retires (attains the normal retirement age) in 2022, the distribution(s) must commence in 2023. However, if the participant terminates for a reason other than death, disability, or normal retirement, the distribution can be delayed until 2028.

Many ESOP companies may want to pay terminated employees as quickly as possible to keep those employees from sharing in future gains in stock value and minimize the repurchase costs. It's important to keep in mind that distributions without delays generally create erratic benefit levels, may encourage participants to quit to access their funds once vested balances become significant, and can increase repurchase obligations overall due to recycling shares at a more frequent or faster pace. Note: A [repurchase obligation study](#) is a helpful tool for verifying long-term forecasts of future repurchase obligations.

- 2. Method** determines the manner, such as lump sum or installments, in which the balances will be



paid. Lump sum payouts will prevent terminated employees from sharing in future stock appreciation as well as sharing in any dividends or S-Distributions. Lump sums also promote the ESOP culture by having only active employees as participants. Alternatively, installments can help lengthen the distribution funding timeline and makes it easier to maintain more consistent benefit levels.

The policy can use a combination of the two methods. A policy may state that vested balances under a certain threshold (e.g., \$20,000 or \$50,000) will be paid in a lump sum and vested balances in excess of the threshold will be paid in installments.

- 3. Form** indicates whether the distribution will be paid in cash, stock, or a combination of the two. Cash distributions will result in the shares associated with the accounts of terminated participants to be recycled to other participants in the plan (the shares stay in the ESOP). Stock distributions are generally redeemed by the corporation and the shares can be retired as Treasury stock, releveraged via a new ESOP loan, or contributed back to the ESOP as employer contributions.

(Note: C-Corporation ESOPs must allow distributions in stock unless the charter or bylaws restrict ownership of substantially all outstanding stock to employees or the ESOP. If the Corporation is an S-Corporation, it may distribute stock that is

continued on page 5

BENEFITS ADVANTAGE

continued from page 4

generally required to be immediately sold back to the company or the plan.)

Additional features that should be included in the distribution policy include:

- **Small balances** – small balances, as defined by the plan (up to \$1,000 or \$5,000 with automatic rollover provisions), may be forced from the plan even if the participant does not complete and return a distribution election form. The policy should describe the circumstances that would trigger these automatic payments and how they will be paid and must follow the plan provisions.
- **Qualified Domestic Relations Orders (QDROs)** – a separate procedure for handling QDROs most likely exists, but it can be helpful if the distribution policy provides a brief description.
- **Segregations/Conversion of terminated participant accounts (if applicable to your plan)** – the policy provides a notice to the participants that the stock held in their accounts may/will be liquidated and converted to non-company stock investments. Also, if this conversion is limited to the cash available in the plan, the policy should clearly state what will occur if there isn't enough cash to fully segregate the accounts (e.g., liquidate accounts in the order of oldest termination dates, etc.).

- **Diversifications, in-service, and Required Minimum Distributions (RMDs)** – although the plan document provides specific instructions on how these benefits will be distributed, it is beneficial to the participants to include the processes in the distribution policy. There may be situations when a participant is eligible for both a distribution (e.g., in-service) and diversification. Accordingly, the policy should specify whether both amounts will be distributed (if elected) or if only the larger of the two amounts will be eligible for distribution.

Finally, the creation or modification of a distribution policy may require revisions to the existing ESOP distribution election forms. It is important to make sure the distribution election forms conform with the current distribution policy.

We recommend involving ESOP advisors (ERISA attorney, third-party administrator, trustee, etc.), the executive management team, and human resources in the development or revision of the distribution policy.

If you don't currently have an ESOP and would like to learn more about them, we encourage you to talk with your tax professional, financial advisor, visit futureplan.com/plans/esops, or reach out to Doug Cannon at doug.cannon@futureplan.com or 215-508-7711. ■

Sales



 futureplan.com

 sales@futureplan.com

 866-929-2525

FuturePlan by Ascensus provides plan design, administration, and compliance services and is not a broker-dealer or an investment advisor. Copyright ©2022. All rights reserved. Ascensus, LLC. 838503-FUT-838504 (06/22)