

# FAQs about Retirement Plans and ERISA



U.S. Department of Labor  
Employee Benefits Security Administration

## What is ERISA?

The Employee Retirement Income Security Act of 1974, or ERISA, protects the assets of millions of Americans so that funds placed in retirement plans during their working lives will be there when they retire.

ERISA is a federal law that sets minimum standards for retirement plans in private industry. For example, if your employer maintains a retirement plan, ERISA specifies when you must be allowed to become a participant, how long you have to work before you have a non-forfeitable interest in your benefit, how long you can be away from your job before it might affect your benefit, and whether your spouse has a right to part of your benefit in the event of your death. Most of the provisions of ERISA are effective for plan years beginning on or after January 1, 1975.

ERISA does not require any employer to establish a retirement plan. It only requires that those who establish plans must meet certain minimum standards. The law generally does not specify how much money a participant must be paid as a benefit.

ERISA does the following:

- Requires plans to provide participants with information about the plan including important information about plan features and funding. The plan must furnish some information regularly and automatically. Some is available free of charge, some is not.
- Sets minimum standards for participation, vesting, benefit accrual and funding. The law defines how long a person may be required to work before becoming eligible to participate in a plan, to accumulate benefits, and to have a non-forfeitable right to those benefits. The law also establishes detailed funding rules that require plan sponsors to provide adequate funding for your plan.
- Requires accountability of plan fiduciaries. ERISA generally defines a fiduciary as anyone who exercises discretionary authority or control over a plan's management or assets, including anyone who provides investment advice to the plan. Fiduciaries who do not follow the principles of conduct may be held responsible for restoring losses to the plan.
- Gives participants the right to sue for benefits and breaches of fiduciary duty.
- Guarantees payment of certain benefits if a defined plan is terminated, through a federally chartered corporation, known as the Pension Benefit Guaranty Corporation.

## What is a defined benefit plan?

A defined benefit plan, funded by the employer, promises you a specific monthly benefit at retirement. The plan may state this promised benefit as an exact dollar amount, such as \$100 per month at retirement. Or, more often, it may calculate your benefit through a formula that includes factors such as your salary, your age, and the number of years you worked at the company. For example, your pension benefit might be equal to 1 percent of your average salary for the last 5 years of employment times your total years of service.

## **What is a defined contribution plan?**

A defined contribution plan, on the other hand, does not promise you a specific benefit amount at retirement. Instead, you and/or your employer contribute money to your individual account in the plan. In many cases, you are responsible for choosing how these contributions are invested, and deciding how much to contribute from your paycheck through pretax deductions. Your employer may add to your account, in some cases by matching a certain percentage of your contributions. The value of your account depends on how much is contributed and how well the investments perform. At retirement, you receive the balance in your account, reflecting the contributions, investment gains or losses, and any fees charged against your account. The 401(k) plan is a popular type of defined contribution plan. There are four types of 401(k) plans: traditional 401(k), safe harbor 401(k), SIMPLE 401(k), and automatic enrollment 401(k) plans. The SIMPLE IRA plan, SEP, employee stock ownership plan (ESOP), and profit sharing plan are other examples of defined contribution plans.

## **What are simplified employee retirement plans (SEPs)?**

Simplified Employee Pension Plan (SEP) – A plan in which the employer makes contributions on a tax-favored basis to individual retirement accounts (IRAs) owned by the employees. If certain conditions are met, the employer is not subject to the reporting and disclosure requirements of most retirement plans. Under a SEP, an IRA is set up by or for an employee to accept the employer's contributions.

## **What are 401(k) plans?**

401(k) Plan – In this type of defined contribution plan, the employee can make contributions from his or her paycheck before taxes are taken out. The contributions go into a 401(k) account, with the employee often choosing the investments based on options provided under the plan. In some plans, the employer also makes contributions, matching the employee's contributions up to a certain percentage. SIMPLE and safe harbor 401(k) plans have additional employer contribution and vesting requirements.

## **What are profit sharing plans or stock bonus plans?**

Profit Sharing Plan – A profit sharing plan allows the employer each year to determine how much to contribute to the plan (out of profits or otherwise) in cash or employer stock. The plan contains a formula for allocating the annual contribution among the participants.

## **What are employee stock ownership plans (ESOPs)?**

Employee Stock Ownership Plan (ESOP) – A type of defined contribution plan that is invested primarily in employer stock.

## **Who can participate in your employer's retirement plan?**

Once you have learned what type of retirement plan your employer offers, you need to find out when you can participate in the plan and begin to earn benefits. Plan rules can vary as long as they meet the requirements under Federal law. You need to check with your plan or review the plan booklet (called the Summary Plan Description) to learn your plan's rules and requirements. Your plan may require you to work for the company for a period of time before you may participate in the plan. In addition, there typically is a time frame for when you begin to accumulate benefits and earn the right to them (sometimes referred to as "vesting").

Find out if you are within the group of employees covered by your employer's retirement plan. Federal law allows employers to include certain groups of employees and exclude others from a retirement plan. For example, your employer may sponsor one plan for salaried employees and another for union employees. Part-time employees may be eligible if they work at least 1,000 hours per year, which is about 20 hours per week. So if you work part-time, find out if you are covered.

### **When can your participation begin?**

Once you know you are covered, you need to find out when you can begin to participate in the plan. You can find this information in your plan's Summary Plan Description. Federal law sets minimum requirements, but a plan may be more generous. Generally, a plan may require an employee to be at least 21 years old and to have a year of service with the company before the employee can participate in a plan. However, plans may allow employees to begin participation before reaching age 21 or completing one year of service. For administrative reasons, your participation may be delayed up to 6 months after you meet these age and service criteria, or until the start of the next plan year, whichever is sooner. The plan year is the calendar year, or an alternative 12-month period, that a retirement plan uses for plan administration. Because the rules can vary, it is important that you learn the rules for your plan.

Employers have some flexibility to require additional years of service in some circumstances. For example, if your plan allows you to vest (discussed in detail later) immediately upon participating in the plan, it may require that you work for the company for two years before you may participate in the plan.

Federal law also imposes other participation rules for certain circumstances. For example, if you were an older worker when you were hired, you cannot be excluded from participating in the plan just because you are close to retirement age.

Some 401(k) and SIMPLE IRA plans enroll employees automatically. This means that you will automatically become a participant in the plan unless you choose to opt out. The plan will deduct a set contribution level from your paycheck and put it into a predetermined investment. If your employer has an automatic enrollment plan, you should receive a notice describing the automatic contribution process, when your participation begins, your opportunity to opt out of the plan or change your contribution level, and where your automatic contributions are invested. If you are in a 401(k), the notice will also describe your right to change investments, or if you are in a SIMPLE IRA plan, your right to change the financial institution where your contributions are invested.

### **When do you begin to accumulate benefits?**

Once you begin to participate in a retirement plan, you need to understand how you accrue or earn benefits. Your accrued benefit is the amount of retirement benefits that you have accumulated or that have been allocated to you under the plan at any particular point in time.

Defined benefit plans often count your years of service in order to determine whether you have earned a benefit and also to calculate how much you will receive in benefits at retirement. Employees in the plan who work part-time, but who work 1,000 hours or more each year, must be credited with a portion of the benefit in proportion to what they would have earned if they were employed full time. In a defined contribution plan, your benefit accrual is the amount of contributions and earnings that have accumulated in your 401(k) or other retirement plan account, minus any fees charged to your account by your plan.

Special rules for when you begin to accumulate benefits may apply to certain types of retirement plans. For example, in a Simplified Employee Pension Plan (SEP), all participants who earn at least \$600 a year from their employers are entitled to receive a contribution.

## Can a plan reduce promised benefits?

Defined benefit plans may change the rate at which you earn future benefits but cannot reduce the amount of benefits you have already accumulated. For example, a plan that accrues benefits at the rate of \$5 a month for years of service through 2016 may be amended to provide that for years of service beginning in 2017 benefits will be credited at the rate of \$4 per month. Plans that make a significant reduction in the rate at which benefits accumulate must provide you with written notice generally at least 45 days before the change goes into effect.

Also, in most situations, if a company terminates a defined benefit plan that does not have enough funding to pay all of the promised benefits, the Pension Benefit Guaranty Corporation (PBGC) will pay plan participants and beneficiaries some retirement benefits, but possibly less than the level of benefits promised. (For more information, see the PBGC's Website at [pbgc.gov](http://pbgc.gov).)

In a defined contribution plan, the employer may change the amount of employer contributions in the future. Depending on the plan terms, the employer may also be able to stop making contributions for a few years or indefinitely.

An employer may terminate a defined benefit or a defined contribution plan, but may not reduce the benefit you have already accrued in the plan.

## How soon do you have a right to your accumulated benefits?

You immediately vest in your own contributions and the earnings on them. This means you have earned the right to these amounts without the risk of forfeiting them. But note – there are restrictions on actually taking them out of the plan.

However, you do not necessarily have an immediate right to any contributions made by your employer. Federal law provides a maximum number of years a company may require employees to work to earn the vested right to all or some of these benefits.

In a defined benefit plan, an employer can require that employees have 5 years of service in order to become 100 percent vested in the employer funded benefits (called cliff vesting). Employers also can choose a graduated vesting schedule, which requires an employee to work 7 years in order to be 100 percent vested, but provides at least 20 percent vesting after 3 years, 40 percent after 4 years, 60 percent after 5 years, and 80 percent after 6 years of service. Plans may provide a different schedule as long as it is more generous than these vesting schedules. (Unlike most defined benefit plans, in a cash balance plan, employees vest in employer contributions after 3 years.)

In a defined contribution plan such as a 401(k) plan, you are always 100 percent vested in your own contributions to a plan, and in any subsequent earnings from your contributions. However, in most defined contribution plans you may have to work several years before you are vested in the employer's matching contributions. (There are exceptions, such as the SIMPLE 401(k) and the safe harbor 401(k), in which you are immediately vested in all required employer contributions. You also vest immediately in the SIMPLE IRA and the SEP.)

Currently, employers have a choice of two different vesting schedules for employer matching 401(k) contributions. Your employer may use a schedule in which employees are 100 percent vested in employer contributions after 3 years of service (cliff vesting). Under graduated vesting, an employee must be at least 20 percent vested after 2 years, 40 percent after 3 years, 60 percent after 4 years, 80 percent after 5

years, and 100 percent after 6 years. If your automatic enrollment 401(k) plan requires employer contributions, you vest in those contributions after 2 years. Automatic enrollment 401(k) plans with optional matching contributions follow one of the vesting schedules noted above.

Employers making other contributions to defined contribution plans, such as a 401(k) plan, also can choose between two vesting schedules. For those contributions made since 2007, they can choose between the graduated and cliff vesting schedules. For contributions made prior to 2007, they can choose between schedules.

You may lose some of the employer-provided benefits you have earned if you leave your job before you have worked long enough to be vested. However, once vested, you have the right to receive the vested portion of your benefits even if you leave your job before retirement. But even though you have the right to certain benefits, your defined contribution plan account value could decrease after you leave your job as a result of investment performance.

**Note:** If you leave your company and return, you may be able to count your earlier period of employment towards the years of service needed for vesting in the employer-provided benefits. Unless your break in service with the company was 5 years or a time equal to the length of your pre-break employment, whichever is greater, you likely can count that time prior to your break. Because these rules are very specific, you should read your plan document carefully if you are contemplating a short-term break from your employer, and then discuss it with your plan administrator. If you left employment prior to January 1, 1985, different rules apply. For more information, contact the Department of Labor toll free at 1-866-444-3272.

For Reserve and National Guard units called to active duty, the Uniformed Services Employment and Reemployment Rights Act (USERRA) requires that the period of military duty be counted as covered service with the employer for eligibility, vesting, and benefit accrual purposes. Returning service members are treated as if they had been continuously employed regardless of the type of retirement plan the employer has adopted. However, a person who is reemployed is entitled to accrued benefits resulting from employee contributions only to the extent that he or she actually makes the contributions to the plan.

### **Information Provided By the Retirement Plan**

Each retirement plan is required to have a formal, written plan document that details how it operates and its requirements. As noted previously, there is also a booklet that describes the key plan rules, called the Summary Plan Description (SPD), which should be much easier to read and understand. The SPD also should include a summary of any material changes to the plan or to the information required to be in the SPD. In many cases, you can start with the SPD and then look at the plan document if you still have questions.

In addition, plans must provide you with a number of notices.

For example, defined contribution plans, such as 401(k) plans, generally are required to provide advance notice to employees when a "blackout period" occurs. A blackout period is when a participant's right to direct investments, take loans, or obtain distributions is suspended for a period of at least three consecutive business days. Blackout periods can often occur when plans change recordkeepers or investment options.

Some plan information, such as the Summary Plan Description, must be provided to you automatically and without charge at the time periods indicated below. You may request a Summary Plan Description at other times, but your employer might charge you a copying fee. You must ask the plan if you want other

information, such as a copy of the written plan document or the plan's Form 5500 annual financial report, and you may have to pay a copying fee. Many employers provide benefit information on a Website.

In some cases, plans provide information more frequently than required by Federal law. For instance, some plans allow participants to check their statements online or by telephone.

The plan's annual financial report (Form 5500) is available by using the Department's on line search ([efast.dol.gov/portal/app/disseminatePublic?execution=e3s1](http://efast.dol.gov/portal/app/disseminatePublic?execution=e3s1)), and is also available (there is a copying fee if over 100 pages) by contacting the U.S. Department of Labor, EBSA Public Disclosure Facility, Room N-1513, 200 Constitution Avenue, NW, Washington, D.C. 20210, Tel: 202.693.8673. For annual reports for 2009 and later years, you can also find the report online at [efast.dol.gov](http://efast.dol.gov). In addition, if your plan administrator does not provide you, as a participant covered under the plan, with a copy of the Summary Plan Description automatically or after you request it, you may contact the Department of Labor toll free at 1-866-444-3272 for help.

### What plan information should you review regularly?

If you are in a defined benefit plan, you will receive an individual benefit statement once every 3 years. Review its description of the total benefits you have earned and whether you are vested in those benefits. Also check to make sure your date of birth, date of hire, and the other information included is correct. You will also receive an annual notice of the plan's funding status.

Defined contribution plans, including 401(k) plans, also must send participants individual benefit statements either quarterly, if participants direct investments of their accounts, or annually, if they do not. When you receive a statement, check it to make sure all of the information is accurate. This information may include:

- Salary level
- Amounts that you and your employer have contributed
- Years of service with the employer
- Home address
- Social Security number
- Beneficiary designation
- Marital status
- The performance of your investments (defined contribution plan participants)
- Fees paid by the plan and/or charged to participants. (For more information, see the Department of Labor brochure *A Look at 401(k) Plan Fees* at [dol.gov/agencies/ebsa](http://dol.gov/agencies/ebsa) or call the Department of Labor toll free at 1-866-444-3272.) Check with your plan to see if this information is included in materials on your investment options, the benefit statement, the Summary Plan Description or the plan's Annual Report (Form 5500).

### When can you begin to receive retirement benefits?

There are several points to keep in mind in determining when you can receive benefits:

1. Federal law provides guidelines for when plans must start paying retirement benefits. Under Federal law, your plan must allow you to begin receiving benefits
  - the later of - Reaching age 65 or the age your plan considers to be normal retirement age (if earlier)
  - Or - 10 years of service
  - Or - Terminating your service with the employer
2. Plans can choose to start paying benefits sooner. The plan documents will state when you may begin receiving payments from your plan.
3. You must file a claim for benefits for your payments to begin. This takes some time for administrative reasons.

For administrative reasons, benefits do not begin immediately after meeting these conditions. At a minimum, your plan must provide that you will start receiving benefits within 60 days after the end of the plan year in which you satisfy the conditions. Also, you need to file a claim under your plan's procedures.

Under certain circumstances, your benefit payments may be suspended if you continue to work beyond normal retirement age. The plan must notify you of the suspension during the first calendar month or payroll period in which payments are withheld. This information should also be included in the Summary Plan Description. A plan also must advise you of its procedures for requesting an advance determination of whether a particular type of reemployment would result in a suspension of benefit payments. If you are a retiree and are considering taking a job, you may wish to write to your plan administrator and ask if your benefits would be suspended.

Listed below are some permitted variations:

- Although defined benefit plans and money purchase plans generally allow you to receive benefits only when you reach the plan's retirement age, some have provisions for early retirement.
- 401(k) plans often allow you to receive your account balance when you leave your job.
- 401(k) plans may allow for distributions while still employed if you have reached age 59½ or if you suffer a hardship.
- Profit sharing plans may permit you to receive your vested benefit after a specific number of years or whenever you leave your job.
- A phased retirement option allows employees at or near retirement age to reduce their work hours to part time, receive benefits, and continue to earn additional funds.
- ESOPs do not have to pay out any benefits until 1 year after the plan year in which you retire, or as many as 6 years if you leave for reasons other than retirement, death, or disability.

### **Warning**

1. You may owe current income taxes – and possibly tax penalties -- on your distribution if you take money out before age 59½, unless you transfer it to an IRA or another tax-qualified retirement plan.
2. Taking all or a portion of your funds out of your account before retirement age will mean you have less in retirement benefits.

### **When is the latest you may begin to take payment of your benefits?**

Federal law sets a mandatory date by which you must start receiving your retirement benefits, even if you would like to wait longer. This mandatory start date generally is set to begin on April 1 following the calendar year in which you turn 70½ or, if later, when you retire. However, your plan may require you to begin receiving distributions even if you have not retired by age 70½.

### **In what form will your benefits be paid?**

If you are in a defined benefit or money purchase plan, the plan must offer you a benefit in the form of a life annuity, which means that you will receive equal, periodic payments, often as a monthly benefit, which will continue for the rest of your life. Defined benefit and money purchase plans may also offer other payment options, so check with the plan. If you are in a defined contribution plan (other than a money purchase plan), the plan may pay your benefits in a single lump sum payment as well as offer other options, including payments over a set period of time (such as 5 or 10 years) or an annuity with monthly lifetime payments.

### **Can a benefit continue for your spouse should you die first?**

In a defined benefit or money purchase plan, unless you and your spouse choose otherwise, the form of payment will include a survivor's benefit. This survivor's benefit, called a qualified joint and survivor annuity (QJSA), will provide payments over your lifetime and your spouse's lifetime. The benefit payment that your surviving spouse receives must be at least half of the benefit payment you received during your joint lives. If you choose not to receive the survivor's benefit, both you and your spouse must receive a written explanation of the QJSA and, within certain time limits, you must make a written waiver and your spouse must sign a written consent to the alternative payment form without a survivor's benefit. Your spouse's signature must be witnessed by a notary or plan representative.

In most 401(k) plans and other defined contribution plans, the plan is written so different protections apply for surviving spouses. In general, in most defined contribution plans, if you should die before you receive your benefits, your surviving spouse will automatically receive them. If you wish to select a different beneficiary, your spouse must consent by signing a waiver, witnessed by a notary or plan representative.

If you were single when you enrolled in the plan and subsequently married, it is important that you notify your employer and/or plan administrator and change your status under the plan. If you do not have a spouse, it is important to name a beneficiary.

If you or your spouse left employment prior to January 1, 1985, different rules apply. For more information on these rules, contact the Department of Labor toll free at [1-866-444-3272](tel:1-866-444-3272).

### **Can you borrow from your 401(k) plan account?**

401(k) plans are permitted to – but not required to – offer loans to participants. The loans must charge a reasonable rate of interest and be adequately secured. The plan must include a procedure for applying for the loans and the plan's policy for granting them. Loan amounts are limited to the lesser of 50 percent of your account balance or \$50,000 and must be repaid within 5 years (unless the loan is used to purchase a principal residence).

### **Can you get a distribution from your plan if you are not yet 65 or your plan's normal retirement age but are facing a significant financial hardship?**

Again, defined contribution plans are permitted to – but not required to – provide distributions in case of hardship. Check your plan booklet to see if it does permit them and what circumstances are included as hardships.

If you are in a defined benefit plan (other than a cash balance plan), you most likely will be required to leave the benefits with the retirement plan until you become eligible to receive them. As a result, it is very important that you update your personal information with the plan administrator regularly and keep current on any changes in your former employer's ownership or address.

If you are in a cash balance plan, you probably will have the option of transferring at least a portion of your account balance to an individual retirement account or to a new employer's plan.

If you leave your employer before retirement age and you are in a defined contribution plan (such as a 401(k) plan), in most cases you will be able to transfer your account balance out of your employer's plan.

## What choices do you have for taking your defined contribution benefits?

- **A lump sum** – you can choose to receive your benefits as a single payment from your plan, effectively cashing out your account. You may need to pay income taxes on the amount you receive, and possibly a penalty.
- **A rollover to another retirement plan** – you can ask your employer to transfer your account balance directly to your new employer's plan if it accepts such transfers.
- **A rollover to an IRA** – you can ask your employer to transfer your account balance directly to an individual retirement account (IRA).
- If your account balance is less than \$5,000 when you leave the employer, the plan can make an immediate distribution without your consent. If this distribution is more than \$1,000, the plan must automatically roll the funds into an IRA it selects, unless you elect to receive a lump sum payment or to roll it over into an IRA you choose. The plan must first send you a notice allowing you to make other arrangements, and it must follow rules regarding what type of IRA can be used (i.e., it cannot combine the distribution with savings you have deposited directly in an IRA). Rollovers must be made to an entity that is qualified to offer individual retirement plans. Also, the rollover IRA must have investments designed to preserve principal. The IRA provider may not charge more in fees and expenses for such plans than it would to its other individual retirement plan customers.

**Please note:** If you elect a lump sum payment and do not transfer the money to another retirement account (employer plan or IRA other than a Roth IRA), you will owe a tax penalty if you are under age 59½ and do not meet certain exceptions. In addition, you may have less to live on during your retirement. Transferring your retirement plan account balance to another plan or an IRA when you leave your job will protect the tax advantages of your account and preserve the benefits for retirement.

## What happens if you leave a job and later return?

If you leave an employer for whom you have worked for several years and later return, you may be able to count those earlier years toward vesting. Generally, a plan must preserve the service credit you have accumulated if you leave your employer and then return within five years. Service credit refers to the years of service that count towards vesting. Because these rules are very specific, you should read your plan document carefully if you are contemplating a short-term break from your employer, and then discuss it with your plan administrator. If you left employment prior to January 1, 1985, different rules apply.

If you retire and later go back to work for a former employer, you must be allowed to continue to accrue additional benefits, subject to a plan limit on the total years of service credited under the plan.

## How do you make a claim for benefits?

Federal retirement law requires all plans to have a reasonable written procedure for processing your benefits claim and appeal if your claim is denied. The Summary Plan Description (SPD) should include your plan's claims procedures. Usually, you fill out the required paperwork and submit it to the plan administrator, who then can tell you what your benefits will be and when they will start.

If there is a problem or a dispute about whether you qualify for benefits or what amount you should receive, check your plan's claims procedure. Federal law outlines the following claims procedures requirements:

- Once your claim is filed, the plan can take up to 90 days to reach a decision, or 180 days if it notifies you that it needs an extension.
- If your claim is denied, you must receive a written notice, including specific information about why your claim was denied and how to file an appeal.
- You have 60 days to request a full and fair review of your denied claim, using your plan's appeals procedure.
- The plan can take up to 60 days to review your appeal, as well as an additional 60 days if it notifies you of the need for an extension. The plan must then send a written notice telling you whether the appeal was granted or denied.
- If the appeal is denied, the written notice must tell you the reason, describe any additional appeal levels, and give you a statement regarding your rights to seek judicial review of the plan's decision.

If you believe the plan failed to follow ERISA's requirements, you may decide to seek legal advice if the plan denies your appeal. You also can contact the Department of Labor concerning your rights under ERISA by calling toll free [1-866-444-3272](tel:1-866-444-3272).

For more information on claims procedures, see the Department of Labor publication *Filing a Claim for Your Retirement Benefits* at [dol.gov/agencies/ebsa](http://dol.gov/agencies/ebsa) or call toll free [1-866-444-3272](tel:1-866-444-3272).

### **Does your plan have to identify those responsible for operating the plan?**

In every retirement plan, there are individuals or groups of people who use their own judgment or discretion in administering and managing the plan or who have the power to or actually control the plan's assets. These individuals or groups are called plan fiduciaries. Fiduciary status is based on the functions that the person performs for the plan, not just the person's title.

A plan must name at least one fiduciary in the written plan document, or through a process described in the plan, as having control over the plan's operations. This fiduciary can be identified by office or by name. For some plans, it may be an administrative committee or the company's board of directors. Usually, a plan's fiduciaries will include the trustee, investment managers, and the plan administrator. The plan administrator is usually the best starting point for questions you might have about the plan.

### **What are the responsibilities of plan fiduciaries?**

Fiduciaries have important responsibilities and are subject to certain standards of conduct because they act on behalf of the participants in the plan. These responsibilities include:

- Acting solely in the interest of plan participants and their beneficiaries, with the exclusive purpose of providing benefits to them;
- Carrying out their duties with skill, prudence, and diligence;
- Following the plan documents (unless inconsistent with ERISA);
- Diversifying plan investments;
- Paying only reasonable expenses of administering the plan and investing its assets; and
- Avoiding conflicts of interest.

The fiduciary also is responsible for selecting the investment providers and the investment options, and for monitoring their performance. Some plans, such as most 401(k) or profit sharing plans, can be set up to permit participants to choose the investments in their accounts (within certain investment options provided by the plan). If the plan is properly set up to give participants control over their investments, then the fiduciary is not liable for losses resulting from the participant's investment decisions. Department of Labor rules provide guidance designed to make sure participants have sufficient information on the specifics of their investment options so they can make informed decisions. This information includes:

- A description of each investment option, including the investment goals, risk, and return characteristics;
- Information about any designated investment managers;
- An explanation of when and how to request changes in investments, plus any restrictions on when you can change investments;
- A statement of the fees that may be charged to your account when you change investment options or buy and sell investments; and
- The name, address, and telephone number of the plan fiduciary or other person designated to provide certain additional information on request.

A statement that the plan is intended to follow the Department of Labor rules and that the fiduciaries may be relieved of liability for losses that are the direct and necessary result of a participant's investment instructions also must be included.

For an automatic enrollment plan, such as a 401(k), the plan fiduciary selects the investments for employees' automatic contributions if the employees do not provide direction. If the plan is properly set up, using certain default investments that generally minimize the risk of large losses and provide long term growth, and providing notice of the plan's automatic enrollment process, then the fiduciary may be relieved of liability for losses resulting from investing in these default alternatives for participants. The plan also must provide a broad range of investments for participants to choose from and information on the plan's investments so participants can make informed decisions. Department of Labor rules provide guidance on the default investment alternatives that can be used and the notice and information to be provided to participants.

### **What if a plan fiduciary fails to carry out its responsibilities?**

Fiduciaries that do not follow the required standards of conduct may be personally liable. If the plan lost money because of a breach of their duties, fiduciaries would have to restore those losses, or any profits received through their improper actions. For example, if an employer did not forward participants' 401(k) contributions to the plan, they would have to pay back the contributions to the plan as well as any lost earnings, and return any profits they improperly received. Fiduciaries also can be removed from their positions as fiduciaries if they fail to follow the standards of conduct.

### **When does the employer need to deposit employee contributions in the plan?**

If you contribute to your retirement plan through deductions from your paycheck, then the employer must follow certain rules to make sure that it deposits the contributions in a timely manner. The law says that the employer must deposit participant contributions as soon as it is reasonably possible to separate them from the company's assets, but no later than the 15th business day of the month following the payday. For small plans (those with fewer than 100 participants), salary reduction contributions deposited with the plan no later than the 7th business day following withholding by the employer will be considered contributed in compliance with the law. In the Annual Report (Form 5500), the plan administrator is required to include information on whether deposits of contributions were made on a timely basis. For more information, see the Department of Labor's ["Ten Warnings Signs That Your 401\(k\)](#)

Contributions Are Being Misused” at [dol.gov/agencies/ebsa](https://dol.gov/agencies/ebsa) for indicators of possible delays in depositing contributions.

### **What are the plan fiduciaries' obligations regarding the fees and expenses paid by the plan? Can the plan charge my defined contribution plan account for fees?**

Plan fiduciaries have a specific obligation to consider the fees and expenses paid by your plan for its operations. ERISA's fiduciary standards, discussed above, mean that fiduciaries must establish a prudent process for selecting investment alternatives and service providers to the plan; ensure that fees paid to service providers and other expenses of the plan are reasonable in light of the level and quality of services provided; select investment alternatives that are prudent and adequately diversified; and monitor investment alternatives and service providers once selected to see that they continue to be appropriate choices.

The plan may deduct fees from your defined contribution plan account. Plan administration fees and investment fees can be deducted from your account either as a direct charge or indirectly as a reduction of your account's investment returns. Fees for individual services, such as for processing a loan from the plan or a Qualified Domestic Relations Order, also may be charged to your account.

For more information, see the Department of Labor brochure *A Look at 401(k) Plan Fees* at [dol.gov/agencies/ebsa](https://dol.gov/agencies/ebsa) or call the Department of Labor toll free at 1-866-444-3272.

### **What happens when a plan is terminated?**

Federal law provides some measures to protect employees who participated in plans that are terminated, both defined benefit and defined contribution. When a plan is terminated, the current employees must become 100 percent vested in their accrued benefits. This means you have a right to all the benefits that you have earned at the time of the plan termination, even benefits in which you were not vested and would have lost if you had left the employer. If there is a partial termination of a plan, (for example, if your employer closes a particular plant or division that results in the end of employment of a substantial percentage of plan participants) the affected employees must be immediately 100 percent vested to the extent the plan is funded.

### **What if your terminated defined benefit plan does not have enough money to pay the benefits?**

The Federal government, through the Pension Benefit Guaranty Corporation (PBGC), insures most private defined benefit plans. For terminated defined benefit plans with insufficient money to pay all of the benefits, the PBGC will guarantee the payment of your vested pension benefits up to the limits set by law. For further information on plan termination guarantees, contact the Pension Benefit Guaranty Corporation toll free at 1-800-400-7242 or visit PBGC's Website at [pbgc.gov](https://pbgc.gov).

### **What happens if a defined contribution plan is terminated?**

The PBGC does not guarantee benefits for defined contribution plans. If you are in a defined contribution plan that is in the process of terminating, the plan fiduciaries and trustees should take actions to maintain the plan until they terminate it and pay out the assets.

### **Is your accrued benefit protected if your plan merges with another plan?**

Your plan rules and investment choices are likely to change if your company merges with another. Your employer may choose to merge your plan with another plan. If your plan is terminated as a result of the merger, the benefits that you have accrued cannot be reduced. You must receive a benefit that is at least

equal to the benefit you were entitled to before the merger. In a defined contribution plan, the value of your account may still fluctuate after the merger based on the performance of the investments.

Special rules apply to mergers of multiemployer defined benefit plans, which generally are under the jurisdiction of the PBGC. Contact the PBGC for further information.

### **What if your employer goes bankrupt?**

Generally, your retirement assets should not be at risk if your employer declares bankruptcy. Federal law requires that retirement plans fund promised benefits adequately and keep plan assets separate from the employer's business assets. The funds must be held in trust or invested in an insurance contract. The employers' creditors cannot make a claim on retirement plan funds. However, it is a good idea to confirm that any contributions your employer deducts from your paycheck are forwarded to the plan's trust or insurance contract in a timely manner.

Significant business events such as bankruptcies, mergers, and acquisitions can result in employers abandoning their individual account plans (e.g., 401(k) plans), leaving no plan fiduciary to manage it. In this situation, participants often have great difficulty in accessing the benefits they have earned and have no one to contact with questions. Custodians such as banks, insurers, and mutual fund companies are left holding the assets of these plans but do not have the authority to terminate the plans and distribute the assets. In response, the Department of Labor issued rules to create a voluntary process for the custodian to wind up the plan's business so that benefit distributions can be made and the plan terminated. Information about this program can be found on the Department of Labor's Website at [dol.gov/agencies/ebsa](http://dol.gov/agencies/ebsa).

### **Can other people make claims against your benefit (divorce)?**

In general, your retirement plan is safe from claims by other people. Creditors to whom you owe money cannot make a claim against funds that you have in a retirement plan. For example, if you leave your employer and transfer your 401(k) account into an individual retirement account (IRA), creditors generally cannot get access to those IRA funds even if you declare bankruptcy.

Federal law does make an exception for family support and the division of property at divorce. A state court can award part or all of a participant's retirement benefit to the spouse, former spouse, child, or other dependent. The recipient named in the order is called the alternate payee. The court issues a specific court order, called a domestic relations order, which can be in the form of a state court judgment, decree or order, or court approval of a property settlement agreement. The order must relate to child support, alimony, or marital property rights, and must be made under state domestic relations law. The plan administrator determines if the order is a qualified domestic relations order (QDRO) under the plan's procedures and then notifies the participant and the alternate payee. If the participant is still employed, a QDRO can require payment to the alternate payee to begin on or after the participant's earliest possible retirement age available under the plan. These rules apply to both defined benefit and defined contribution plans. For additional information, see EBSA's publication, *QDROs – The Division of Retirement Benefits Through Qualified Domestic Relations Orders*, available by calling toll free 1-866-444-3272 or on the Website at [dol.gov/agencies/ebsa](http://dol.gov/agencies/ebsa).

If you are involved in a divorce, you should discuss these issues with your plan administrator and your attorney.

## What do you do if you have a problem?

Sometimes, retirement plan administrators, managers, and others involved with the plan make mistakes. Some examples include:

- Your 401(k) or individual account statement is consistently late or comes at irregular intervals;
- Your account balance does not appear to be accurate;
- Your employer fails to transmit your contribution to the plan on a timely basis;
- Your plan administrator does not give or send you a copy of the Summary Plan Description; or
- Your benefit is calculated incorrectly.

It is important for you to know that you can follow up on any possible mistakes without fear of retribution. Employers are prohibited by law from firing or disciplining employees to avoid paying a benefit, as a reprisal for exercising any of the rights provided under a plan or Federal retirement law (ERISA), or for giving information or testimony in any inquiry or proceeding related to ERISA.

### Start with your employer and/or plan administrator

If you find an error or have a question, in most cases, you can start by looking for information in your Summary Plan Description. In addition, you can contact your employer and/or the plan administrator and ask them to explain what has happened and/or make a correction.

### Is it possible to sue under ERISA?

Yes, you have a right to sue your plan and its fiduciaries to enforce or clarify your rights under ERISA and your plan in the following situations:

- To appeal a denied claim for benefits after exhausting your plan's claims review process;
- To recover benefits due you;
- To clarify your right to future benefits;
- To obtain plan documents that you previously requested in writing but did not receive;
- To address a breach of a plan fiduciary's duties; or
- To stop the plan from continuing any act or practice that violates the terms of the plan or ERISA.

### What is the role of the Labor Department?

The U.S. Department of Labor's Employee Benefits Security Administration (EBSA) is the agency responsible for enforcing the provisions of ERISA that govern the conduct of plan fiduciaries, the investment and protection of plan assets, the reporting and disclosure of plan information, and participants' benefit rights and responsibilities.

However, not all retirement plans are covered by ERISA. For example, Federal, state, or local government plans and some church plans are not covered.

The Department of Labor enforces the law by informally resolving benefit disputes, conducting investigations, and seeking correction of violations of the law, including bringing lawsuits when necessary.

The Department has benefits advisors committed to providing individual assistance to participants and beneficiaries. Participants will receive information on their rights and responsibilities under the law and help in obtaining benefits to which they are entitled.

Contact a benefits advisor by calling toll free at [1-866-444-3272](tel:1-866-444-3272) or electronically at [askebsa.dol.gov](http://askebsa.dol.gov).

### **What other Federal agencies can assist participants and beneficiaries?**

The Pension Benefit Guaranty Corporation (PBGC) is a Federally created corporation that guarantees payment of certain pension benefits under most private defined benefit plans when they are terminated with insufficient money to pay benefits.

You may contact the PBGC at:

**Pension Benefit Guaranty Corporation**

1200 K Street, NW

Washington, DC 20005-4026

Tel: 202-326-4000

Toll free: 1-800-400-PBGC (7242)

The Treasury Department's Internal Revenue Service is responsible for the rules that allow tax benefits for both employees and employers related to retirement plans, including vesting and distribution requirements. The IRS maintains a taxpayer assistance line for retirement plans at: [1-877-829-5500](tel:1-877-829-5500) (toll-free number). The call center is open Monday through Friday.