

WHAT YOU SHOULD KNOW ABOUT YOUR RETIREMENT



This publication has been developed by the U.S. Department of Labor, Employee Benefits Security Administration (EBSA).

To view this and other publications, visit the agency's Website at **www.dol.gov/ebsa**. To order publications, or to speak with a benefits advisor, contact EBSA electronically at **www.askebsa.dol.gov**. Or call toll free **1-866-444-3272**.

This material will be made available in alternative format to persons with disabilities upon request:

Voice phone: (202) 693-8664
TTY: (202) 501-3911

This booklet constitutes a small entity compliance guide for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

▶ CHAPTER 8: YOUR BENEFIT DURING A PLAN TERMINATION OR COMPANY MERGER

As noted at the beginning of this booklet, employers are not required to offer a retirement plan and plans can be modified and/or terminated.

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 the Website at www.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 www.dol.gov/ebsa.

ACTION ITEMS

- ▶ If your former employer has gone out of business, arrangements should have been made so a plan official remains responsible for the payment of benefits and other plan business. If you are entitled to benefits and are unable to contact the **plan administrator**, contact EBSA electronically at www.askebsa.dol.gov or by calling toll free 1-866-444-3272.
- ▶ Keep a file with information on your plan and company. If the company no longer exists under its former name, you might find some information on the Internet by entering the former name in a search engine. If your plan is abandoned, use the search function on the EBSA Website at www.dol.gov/ebsa to find out if the plan's custodian is terminating the plan and the custodian's contact information.
- ▶ If your plan merges, make sure you read the communications about changes in your plan, including changes in benefits and investment choices.
- ▶ If your retirement benefit remains with a former employer, keep current on any changes your former employer makes, including changes of address, mergers, or employer name.
- ▶ If you move, give the plan your new contact information.