

BLACKOUT NOTICE EXPLANATION

DEFINITION OF A BLACKOUT PERIOD

A blackout period is defined by the Department of Labor as a period of more than three consecutive business days during which participants will not be able to direct or diversify their investments, obtain a loan or take a distribution. The new law says that written notice must be given to participants and beneficiaries at least 30 days before the blackout period begins and not more than 60 days before. Failure to issue notification of a blackout period may result in severe penalties.

WHAT INFORMATION SHOULD BE IN THE NOTICE?

The written or electronic notice must be sent to all affected participants and beneficiaries and should include:

- Reason for the blackout period
- Explanation of what specifically will be affected
- The expected beginning date and end date of the blackout period
- Who to contact if there are any questions
- A statement advising participants to review their current portfolio allocations in light of their inability to direct or diversify their assets during the blackout period

HOW DO YOU DELIVER THE INFORMATION TO PARTICIPANTS?

Notices must be sent by either U.S. Mail, private services or by electronic delivery, such as e-mail. If you send the notice by first class mail, the date the notice was mailed will be considered day one of the notification. If you use a private delivery service, day one is the date of electronic transmission.

WHAT IF THERE ARE CHANGES AFTER THE BLACKOUT PERIOD BEGINS?

If there are any changes once the blackout period begins, including the length of the blackout, the plan administrator must send a new notice to all affected participants and beneficiaries as soon as possible explaining the reasons for the change.

ARE THERE ANY EXCEPTIONS TO THE 30-DAY RULE?

The 30-day notification rule does not apply in the following circumstances:

- Delaying the blackout period for the 30-day notice would violate the fiduciary's duty to act for the exclusive benefit of plan participants, or to act with care, skill, prudence and diligence with respect to the current circumstances
- The blackout period happens due to events that were unforeseeable or circumstances that were beyond the control of the plan administrator
- The blackout period applies only to participants whose plan status is

affected by merger, acquisition, divestiture, or similar transaction involving the plan or plan sponsor and occurs solely in connection with becoming or ceasing to be a participant or beneficiary under the plan by reason of such a merger, acquisition, divestiture, or similar transaction

However, you are still required to notify all affected participants and beneficiaries of any blackout as soon as reasonably possible. If you are concerned about whether the above circumstances apply to your plan, make sure you consult your legal advisor for clarification.

WHAT ARE THE PENALTIES IF WE DON'T NOTIFY PARTICIPANTS IN TIME?

Penalties may be up to \$100 per day per participant. Each participant or beneficiary affected will be counted as a separated violation under Section 101(i) of the Employee Retirement Security Act of 1974 (ERISA). If there is more than one person responsible for administration, then each person will be deemed responsible for the failure to provide the required blackout notice. This means that each person who is responsible is personally liable for the payment of penalties assessed. Penalties cannot be paid out of plan assets.



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