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OPINIONS AND ORDERS

STATUTORY AND REGULATORY PROVISIONS

NOTE: There is a separate Sealed Appendix.

OPINION, U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT (DECEMBER 8, 2025)

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-1959

DAVID GASPER,

Plaintiff-Appellant,

v.

EIDP, INC., f/k/a E. I. DUPONT DE NEMOURS & COMPANY; CORTEVA INC.; THE PENSION AND RETIREMENT PLAN; THE BENEFIT PLANS ADMINISTRATIVE COMMITTEE,

Defendants-Appellees.

Appeal from the United States District Court for the Western District of North Carolina, at Charlotte. Frank D. Whitney, Senior District Judge.

Before: BENJAMIN and BERNER, Circuit Judges, and KEENAN, Senior Circuit Judge.

BARBARA MILANO KEENAN, Senior Circuit Judge:

David Gasper filed the present action under the Employee Retirement Income Security Act (ERISA),

29 U.S.C. §§ 1024, 1132, against his former employer and retirement plan administrator. Gasper primarily asserts that his monthly annuity payment improperly was reduced by $385.26 to cover the cost of the "qualified joint survivor annuity" (the surviving spouse annuity),[1] which provides his former spouse with reduced monthly payments upon Gasper's death. According to Gasper, the "qualified domestic relations order" (QDRO) entered after his divorce required that any "cost" of the surviving spouse annuity be deducted from his former spouse's portion of the plan benefit and should not result in a reduction to his portion of the benefit. Gasper also seeks "statutory penalties" based on the plan administrator's purported failure to provide Gasper with certain plan documents in a timely manner. The district court awarded summary judgment in favor of the defendants, and Gasper now appeals.

We conclude that the district court properly applied a de novo standard to review the plan administrator's interpretation of the QDRO, and that the court correctly upheld that interpretation under North Carolina law. The plain language of the QDRO permitted, but did not require, that any cost of the surviving spouse annuity be deducted from Gasper's former spouse's portion of the retirement benefit.

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[1] A surviving spouse annuity, referred to in ERISA as a "QJSA," is the primary mechanism to provide survivor benefits to retiring participants, which is required under ERISA. *Dorn v. Int'l Bhd. of Elec. Workers*, 211 F.3d 938, 942-43 (5th Cir. 2000). A QJSA includes two benefits: (1) an annuity for the life of the participant, and (2) a survivor annuity for the life of the surviving spouse not less than 50% of the participant's annuity. *Id.* at 943. ERISA permits former spouses of plan participants to be deemed surviving spouses. *See id.* at 943 n.5; 29 U.S.C. § 1056(d)(3)(F)(i).

Further, we hold that the district court did not abuse its discretion in concluding that the plan administrator properly calculated Gasper's monthly annuity payment, which included an actuarial adjustment for the surviving spouse annuity that reduced the benefit as a whole. Finally, we hold that Gasper timely received the plan documents to which he was entitled under ERISA. And even assuming, without deciding, that Gasper was entitled to certain historical plan documents that were not timely provided, we hold that the district court did not abuse its discretion in declining to award Gasper allowable statutory penalties. Gasper did not establish that he suffered any prejudice from failing to timely receive those documents, nor did he establish that the plan administrator acted in bad faith in responding to Gasper's requests for documents. We therefore affirm the district court's judgment.

I.

In December 2010, Gasper and his spouse divorced after 25 years of marriage. In their divorce proceedings in a North Carolina family court (the state court), Gasper's employee retirement plan sponsored by his employer EIDP, Inc. (the plan) was deemed a marital asset. The state court entered a domestic relations order (DRO), which adopted an agreement between the parties regarding certain marital property rights. *See* 29 U.S.C. § 1056(d)(3)(B)(ii). In the DRO, Gasper was identified as the plan "Participant,"[2] and his

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[2] ERISA defines a "participant" as any employee or former employee who is or may become eligible to receive a benefit from an employee benefit plan. 29 U.S.C. § 1002(7). ERISA defines an "alternate payee" as "any spouse, former spouse, child, or other

former spouse was identified as the "Alternate Payee." J.A. 634. As set forth in 29 U.S.C. § 1056(d)(3)(B)(i)(1), a DRO "creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan."

Under the terms of the DRO, Gasper would receive a monthly annuity payment upon retirement for his lifetime, and his former spouse would receive a reduced monthly annuity payment during Gasper's lifetime. With regard to the surviving spouse annuity, the DRO stated that Gasper's former spouse "shall be treated as a surviving spouse," who will receive a reduced monthly annuity payment upon Gasper's death for the duration of her life. J.A. 636. And critical to this appeal, the DRO stated that "the Alternate Payee's benefit *may* be reduced as necessary to cover the cost of the [surviving spouse annuity] awarded to Alternate Payee." J.A. 636 (emphasis added).

In April 2013, the plan sponsor appointed Marsha Cauthen-Wilson to review the DRO. After conducting her review, Cauthen-Wilson sent to Gasper a "determination report," stating that the DRO "meets the requirements for a qualified domestic relations order (QDRO)" under ERISA. J.A. 600; *see* 29 U.S.C. § 1056 (d)(3)(D)(i) (explaining in part that a DRO cannot be "qualified" if it requires the plan to provide a type or form of benefit that is not provided under the plan). Accordingly, Cauthen-Wilson stated in the report

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dependent of a participant who is recognized by a [DRO] as having a right to receive . . . benefits payable under a plan with respect to such participant." 29 U.S.C. § 1056(d)(3)(K).

that the plan "will distribute benefits to the alternate payee in accordance with the order and Plan terms." J.A. 600. Cauthen-Wilson also stated in the report that "[a]t the participant's benefit commencement date, the *total monthly benefit* will be reduced to cover the *cost* associated with the [surviving spouse annuity]." J.A. 601 (emphasis added).

Six years later, in June 2019, Gasper became eligible to receive retirement benefits. Prior to receiving benefits, Gasper was required to "sign" and "certify" his benefit choices in a "pension election authorization form." J.A. 536-37. On that form, Gasper was informed that his monthly benefit would be $3,400.

After signing and certifying the form, Gasper contacted the plan administrator and contended that his monthly benefit should be $3,785.26, not $3,400. According to Gasper, this higher figure was required under the terms of the QDRO.

In response, Gasper received a notice from the plan administrator in October 2019 about how his benefit was calculated. The plan administrator explained that the only "cost" of the surviving spouse annuity is the "actuarial adjustment [made] to convert a benefit payable over the participant's lifetime to a benefit payable over the joint lifetimes of both the participant and [the] surviving spouse." J.A. 562. The notice further explained that "the total benefit was actuarially adjusted to reflect the joint life expectancy requirement of the [surviving spouse annuity], and then the portion of the total benefit payable to the alternate payee was deducted." *Id.* Accordingly, the plan administrator stated that "there is no actual 'cost' [of the surviving spouse annuity] that may be assigned to the alternate payee, and no

optional form that would accomplish that result." *Id.* Finally, the plan administrator stated that because "a QDRO may not require a plan to pay a benefit . . . that is not offered under that plan, your court order was qualified disregarding the language addressing 'cost.'" *Id.*

In January 2020, Gasper appealed this decision to the "benefit determination review team," which denied his appeal. In June 2020, Gasper verbally requested from the plan administrator the plan documents, including the "summary plan description," that were in effect when the DRO was "qualified" in April 2013. In response, the plan administrator provided copies of the "current" plan and related documents that were in effect in 2020.

In July 2020, Gasper filed a second administrative appeal, which the plan administrator also denied. In its decision, the plan administrator explained that the QDRO "does not state that the Alternate Payee's benefit *must* be reduced in order to cover the [surviving spouse annuity]. Assigning a portion of the cost [*i.e.*, the actuarial adjustment] to both you and your Alternate Payee does not conflict with the QDRO." J.A. 560.

On July 20, 2020, Gasper submitted to the plan administrator his first written request for plan documents. The written request acknowledged that Gasper previously had received certain plan documents. But Gasper asserted that some of the documents were missing certain pages, and that he had not received historical plan documents that were in effect in April 2013. In response to the written request, the plan administrator again sent to Gasper the plan documents applicable in 2020.

Upon receipt of these documents, Gasper asserted that certain plan appendices were missing and again stated that he was entitled to all historical versions of the plan and "summary plan descriptions" for "the entire time period relating to the QDRO determination in [April] 2013." J.A. 544. Gasper contended that the plan administrator had sent only the July 2013 summary plan description, which was not in effect when the QDRO qualification decision was made, and that pages were missing from the July 2011 plan documents.

In 2023, Gasper filed the present action in federal district court against his employer and plan sponsor, EIDP, Inc., and the plan administrator[3] (the defendants). As relevant to this appeal, Gasper asserted two claims: (1) wrongful denial of benefits under 29 U.S.C. § 1132, and (2) a claim for statutory damages for failure to produce documents as required by 29 U.S.C. §§ 1024, 1132.[4] During discovery, the defendants

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[3] The named plan administrator is The Benefit Plans Administrative Committee. Gasper also named Corteva, Inc. as a defendant, which has "assumed responsibility for the plan;" EIDP, Inc. continues to be the plan sponsor.

[4] Gasper also asserted a claim under 29 U.S.C. § 1132(a)(3) for other relief based on a breach of fiduciary duty, but that claim was dismissed and is not at issue in this appeal. Gasper also sought attorneys' fees under 29 U.S.C. § 1132(g)(1), which the district court denied. Based on our conclusion set forth in this opinion that the district court properly award summary judgment in favor of the defendants, there was no basis on which to award Gasper attorneys' fees. *See Williams v. Metro. Life Ins. Co.*, 609 F.3d 622, 633-34 (4th Cir. 2010) (explaining that in an ERISA case, a district court may in its discretion award reasonable attorneys' fees under Section 1132(g)(1) if the party has had some success on the merits (citation omitted)). We therefore

provided Gasper with the historical plan documents applicable in April 2013, including the previously omitted pages from the 2011 plan and the summary plan description from July 2008.

The parties filed cross-motions for summary judgment. After reviewing the record, the district court granted the defendants' motion for summary judgment. The district court held that: (1) applying a de novo standard of review, the plan administrator correctly interpreted the QDRO and did not abuse her discretion in denying Gasper's claim that he was entitled to a larger monthly payment, and (2) the plan administrator was responsive to Gasper's request for documents, Gasper was not prejudiced in the administrative appeals process, and Gasper was not entitled to statutory penalties. Gasper challenges these conclusions on appeal, and we address them in turn below.

II.

A party is entitled to summary judgment when there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). In considering a motion for summary judgment, the court construes "all facts and reasonable inferences therefrom in the light most favorable to the nonmoving party." *Tekmen v. Reliance Standard Life Ins. Co.*, 55 F.4th 951, 958 (4th Cir. 2022) (citation omitted). As we have explained, even in the ERISA context, "summary judgment is appropriate when the evidence is so one-sided that

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hold that the district court did not abuse its discretion in denying Gasper's request for attorneys' fees.

one party must prevail as a matter of law." *Id.* at 959 (citation omitted).

A.

We begin by addressing Gasper's argument that the district court erred in concluding that the plan administrator properly denied his claim for increased monthly benefits. Before considering the merits of this argument, we first address the applicable standards of review.

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In appeals under ERISA challenging a plan administrator's decision, we have articulated a general rule that the same standard of review applies to cases heard in the district court and in this Court. *Williams v. Metro. Life Ins. Co.*, 609 F.3d 622, 629 (4th Cir. 2010). However, our Circuit has not directly addressed whether courts should review de novo, or apply an abuse of discretion standard to, a plan administrator's interpretation of a QDRO adopting the terms of a DRO entered by a state court.

Here, the district court applied a de novo standard in reviewing the plan administrator's interpretation of the QDRO, and we agree with the district court's choice of analytical framework. As recognized by our two sister circuits addressing this issue, a plan administrator's special expertise in interpreting plan provisions, which warrants application of an abuse of discretion standard in reviewing such decisions, does not extend to the interpretation of a state court order memorializing the parties' agreement. *See Matassarin v. Lynch*, 174 F.3d 549, 563-64 (5th Cir. 1999); *Hullett v. Towers, Perrin, Forster & Crosby, Inc.*, 38 F.3d 107,

114-15 (3d Cir. 1994). Instead, the QDRO is a court-approved contract between the parties and, therefore, is subject to ordinary rules of contract interpretation under state law. *See Myers v. Myers*, 714 S.E.2d 194, 198 (N.C. App. 2011). So, we review de novo the language of the QDRO. And we apply an abuse of discretion standard to the plan administrator's exercise of discretionary authority under the plan to make calculation determinations for plan beneficiaries. *Williams*, 609 F.3d at 629; *Cosey v. Prudential Ins. Co.*, 735 F.3d 161, 165 (4th Cir. 2013) (citing *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 111 (1989)).

ii.

Gasper argues that, under the terms of the QDRO, he and his former spouse agreed that she would bear the cost of the surviving spouse annuity. In making this assertion, Gasper relies on the QDRO language stating that "the Alternate Payee's benefit may be reduced as necessary to cover the cost of the [surviving spouse annuity] awarded to Alternate Payee," Gasper's former spouse. J.A. 636. Gasper contends that use of the word "may" renders the provision ambiguous because, in certain contexts, "may" can be construed as a mandatory term equivalent to "shall." According to Gasper, this ambiguity is resolved by the absence of any reference in the QDRO to a reduction in his portion of the retirement benefit to fund the cost of the surviving spouse annuity. Thus, Gasper maintains that the parties necessarily intended that any cost associated with

the surviving spouse annuity would be borne solely by his former spouse's share of the retirement benefit.[5]

Gasper further asserts that the district court should have examined extrinsic evidence of the parties' intent, namely, Gasper's own declaration setting forth his understanding of the QDRO, to resolve the purported ambiguity. And finally, Gasper contends that the plan administrator abused her discretion in calculating his monthly benefit payment at $3,400, rather than $3,785.26. We disagree with Gasper's arguments.

We begin our analysis by consulting familiar principles of North Carolina contract law, which we apply to interpret the language of the QDRO. In North Carolina, when a court interprets a contract, the court's primary function is to ascertain the parties' intention as expressed in their written instrument. *Lane v. Scarborough*, 200 S.E. 2d 622, 624 (N.C. 1973). If the plain language of a contract is clear, the intention of the parties is inferred from the words of the contract considered as a whole. *State v. Philip Morris USA Inc.*, 685 S.E.2d 85, 90 (N.C. 2009). Only when the terms of a contract are ambiguous are courts authorized to apply rules of construction or to consider extrinsic evidence of the parties' intent. *See*

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[5] We decline to consider Gasper's argument, raised for the first time on appeal, that the plan administrator's interpretation of the QDRO conflicts with requirements in 29 U.S.C. § 1056(d)(3)(C), which requires a DRO to specify the amount or percentage to be paid to the alternate payee. *Hicks v. Ferreyra*, 965 F.3d 302, 310 (4th Cir. 2020) (stating "this court does not consider issues raised for the first time on appeal, absent exceptional circumstances" (citation omitted)).

Root v. Allstate Ins. Co., 158 S.E.2d 829, 835 (N.C. 1968).

Here, the district court concluded that the language of the QDRO was unambiguous, and we agree. Considering the QDRO as a whole, we conclude that the language stating that "the alternate payee's benefit may be reduced as necessary to cover the cost" of the surviving spouse annuity authorizes, but does not require, the plan administrator to allocate the cost of the surviving spouse annuity to the alternate payee's portion of the benefit. J.A. 636.

The QDRO's structure and wording compel this conclusion. Throughout the document, mandatory obligations are denoted by the word "shall." For example, the QDRO states that plan administrator "*shall* distribute benefits to the Alternate Payee in the form of a monthly annuity payable" over Gasper's lifetime, and "*shall* distribute benefits to the Alternate Payee if, as and when the Participant receives a benefit from the Plan, for as long as the Participant lives." J.A. 634-35 (emphasis added). The QDRO further provides that the alternate payee "*shall* be treated as a surviving spouse for a portion of the available" surviving spouse annuity. J.A. 636 (emphasis added).

In contrast, the QDRO does not provide that the alternate payee's benefit "*shall*" be reduced to cover the cost of the surviving spouse annuity. Instead, the QDRO states that her portion of the benefit "*may* be reduced as necessary" to bear that cost. *Id.* (emphasis added). Accordingly, even assuming that "may," in some contexts, can be construed as mandatory, the language of the QDRO as a whole does not support departing from the ordinary, permissive meaning of

the term "may." Moreover, the absence of any express reference in the QDRO to the possibility that the cost might instead be allocated to Gasper's portion of the annuity does not alter the unambiguous, discretionary nature of the cost provision. Therefore, we conclude that the disputed terms in the QDRO are unambiguous.[6]

Accordingly, when Cauthen-Wilson issued her determination report qualifying the DRO and stating that "[a]t the participant's benefit commencement date, *the total monthly benefit* will be reduced to cover the cost associated with the [surviving spouse annuity]," she did not misapply the QDRO's terms. J.A. 601 (emphasis added). As the plan administrator later explained in denying Gasper's administrative appeal, "there is no actual 'cost' [of the surviving spouse annuity] that may be assigned to the alternate payee, and no optional form that would accomplish that result." J.A. 562. The summary plan description confirms this understanding, noting that under the surviving spouse annuity, "the reduction in [the participant's] monthly pension is actuarially determined at the time [the participant] retires and start[s] to receive pension payments." J.A. 389-90. The summary plan description further includes as an example a calculation demonstrating that the actuarial adjustment for the surviving spouse annuity is implemented through a reduction in the participant's monthly pension amount.[7] J.A. 390. The plan administrator's

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[6] Based on this conclusion, we additionally hold that the district court did not err in failing to address Gasper's declaration of his intent underlying the QDRO.

[7] Gasper argues that this example is inapplicable, because it describes a married plan participant, not a divorced plan participant. However, the QDRO plainly states that his former

understanding of the QDRO thus was consistent with both the QDRO's plain language and the plan's terms governing the cost of the surviving spouse annuity.[8]

After reviewing the record, we also do not find any abuse of discretion in the plan administrator's calculation of Gasper's monthly annuity payment. That calculation reflected her correct understanding of the QDRO language and the other relevant plan terms discussed above.[9] Accordingly, we affirm the district court's award of summary judgment in favor of the defendants on Gasper's claim that he was improperly denied benefits under 29 U.S.C. § 1132.

B.

We next address Gasper's argument that he was entitled to "statutory penalties" under 29 U.S.C. § 1132(c)(1), based on the plan administrator's failure

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spouse "shall be treated as a surviving spouse" for the QJSA notwithstanding their divorce. J.A. 636.

[8] We acknowledge that a summary plan description only provides communication about the plan terms, but the record shows that the summary plan description is consistent with the plan language. *See* J.A. 238, 241 ("To provide the monthly payment for the spouse," for the survivor annuity, the "employee's calculated pension will be reduced.").

[9] The district court addressed and correctly applied the relevant factors to determine the reasonableness of the plan administrator's calculation of Gasper's monthly annuity payments. *See Booth v. Wal-Mart Stores, Inc. Assocs. Health & Welfare Plan*, 201 F.3d 335 (4th Cir. 2000). We need not repeat the court's analysis here because Gasper's only arguments on appeal in this regard essentially reassert his arguments regarding the meaning of the QDRO and application of the plan terms addressing cost of the surviving spouse annuity.

to timely provide certain plan documents as required by 29 U.S.C. § 1024(b)(4). According to Gasper, there was no dispute that the plan administrator failed to provide him with several documents reflecting various "amendments to the plan" and summaries of "material modifications" for the plan, as well as the July 2008 summary plan description, which was applicable when the QDRO was qualified in April 2013. Gasper submits that the district court abused its discretion in failing to award statutory penalties because the court did not consider the "number" of omitted documents. We disagree with Gasper's argument.

On written request of a plan participant, a plan administrator must provide a copy of the "latest updated summary plan description," and the latest annual report, contract or "other instruments under which the plan is established or operated." *See Faircloth v. Lundy Packing Co.*, 91 F.3d 648, 652-53 (4th Cir. 1996) (quoting 29 U.S.C. § 1024(b)(4)); *see also Sedlack v. Braswell Servs. Grp., Inc.*, 134 F.3d 219, 225 (4th Cir. 1998). A plan administrator who fails to comply with such a request within 30 days "*may in the court's discretion* be personally liable" to the participant up to $100 per day. 29 U.S.C. § 1132(c)(1) (emphasis added). In exercising its discretion whether to impose a penalty on a plan administrator, a court may evaluate whether the participant was prejudiced by the failure to provide the requested plan documents and may further consider the nature and adequacy of the plan administrator's response to the participant's request. *See Davis v. Featherstone*, 97 F.3d 734, 738 (4th Cir. 1996); *see also Devlin v. Empire Blue Cross & Blue Shield*, 274 F.3d 76, 90 (2d Cir. 2001) (observing that factors to consider include bad faith,

intentional conduct, length of delay, number of requests made and documents withheld, and any prejudice to the participant).

The record before us reflects that the plan administrator initially responded to Gasper's verbal request in June 2020 for the plan documents currently in effect. As the district court correctly noted, 29 U.S.C. § 1024(b)(4) does not obligate a plan administrator to respond to a participant's requests for plan documents unless that request is made in writing. The plan administrator also timely responded to Gasper's two written requests for plan documents, both of which were submitted following his second administrative appeal.

Gasper nonetheless contends that the plan administrator failed to provide him with several plan amendment documents as well as the 2008 summary plan description. But the district court concluded that even assuming these materials fell within the scope of documents required to be provided under 29 U.S.C. § 1024(d)(4), Gasper was not entitled to statutory penalties.

In considering this issue, we observe that Gasper ultimately received all requested documents after filing the present action, and he has not identified any prejudice resulting from his delayed receipt of the identified documents. As the district court noted, Gasper maintained two administrative appeals without these materials and failed to show that omission of the identified documents impaired his ability to present his claims. Moreover, with regard to the plan terms at issue in this case, the 2008 summary plan description language involving the cost of the surviving spouse annuity was materially identical to the 2013 summary

plan description language that Gasper timely received. The record also does not contain any evidence of bad faith or willful misconduct on the part of the plan administrator. We therefore conclude that the district court did not abuse its discretion in declining to impose statutory penalties under 29 U.S.C. § 1132(c)(1). *See Davis*, 97 F.3d at 738; *Devlin*, 274 F.3d at 90.

III.

For these reasons, we affirm the district court's award of summary judgment to the defendants.[10]

AFFIRMED

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[10] We have reviewed Gasper's additional arguments raised in this appeal and conclude that they lack merit.

JUDGMENT, U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT (DECEMBER 8, 2025)

FILED: December 8, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-1959
(3:23-cv-00512-FDW-SCR)

DAVID GASPER,

Plaintiff-Appellant,

v.

EIDP, INC.,
f/k/a E. I. DUPONT DE NEMOURS & COMPANY;
CORTEVA INC.; THE PENSION AND
RETIREMENT PLAN; THE BENEFIT PLANS
ADMINISTRATIVE COMMITTEE,

Defendants-Appellees.

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ Nwamaka Anowi
Clerk

MANDATE, U.S. COURT OF APPEALS FOR THE FOURTH CIRCUIT (DECEMBER 30, 2025)

FILED: December 30, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-1959
(3:23-cv-00512-FDW-SCR)

DAVID GASPER,

Plaintiff-Appellant,

v.

EIDP, INC.,
f/k/a E. I. DUPONT DE NEMOURS & COMPANY;
CORTEVA INC.; THE PENSION AND
RETIREMENT PLAN; THE BENEFIT PLANS
ADMINISTRATIVE COMMITTEE,

Defendants-Appellees.

MANDATE

The judgment of this court, entered December 8, 2025, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

/s/ Nwamaka Anowi, Clerk

ORDER, U.S. DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA (SIGNED AUGUST 27, 2024; FILED AUGUST 28, 2024)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

DAVID GASPER,

Plaintiff,

v.

EIDP, INC., f/k/a E.I. DUPONT DE NEMOURS AND COMPANY; CORTEVA, INC; THE PENSION AND RETIREMENT PLAN; and THE BENEFIT PLANS ADMINISTRATIVE COMMITTEE,

Defendants.

Case No. 3:23-CV-00512-FDW-SCR

Before: Frank D. WHITNEY, United States District Judge

ORDER

THIS MATTER is before the Court on Defendants' Motion to Exclude Plaintiff's Expert Report, (Doc. No. 30), Plaintiff's Motion for Summary Judgment, (Doc. No. 31), and Defendants' Motion for Summary

Judgment, (Doc. No. 29). These matters have been fully briefed, (Doc. Nos. 34, 35, 36, 38, 39, 40), and are ripe for ruling. For the reasons set forth below, Defendants' Motion to Exclude the Expert Report is GRANTED. Plaintiff's Summary Judgment Motion is DENIED. Defendants' Summary Judgment Motion is GRANTED.

I. Background

Plaintiff filed a Complaint against EIDP, Inc., formerly known as E.I. DuPont de Nemours and Company ("DuPont"); Corteva Inc.; the Pension and Retirement Plan; and the Benefit Plans Administrative Committee (collectively "Defendants"). Plaintiff brings three claims against Defendants under the Employee Retirement Income Security Act of 1974 ("ERISA"): (1) denial of benefits claim under 29 U.S.C. § 1132 (a)(1)(B); (2) statutory penalties claim under 29 U.S.C. § 1024(b)(4); and (3) attorneys' fees and costs under 29 U.S.C. § 1132(g).

Plaintiff's claims arise out of his employment with EIDP, Inc. and alleged denial of benefits under the Pension and Retirement Plan ("Plan"). Plaintiff was an employee of DuPont from February 1, 1984, and remains an employee of EIDP, Inc. at present,

Plaintiff was married to his wife from 1985 until their divorce on December 8, 2010. During the twenty-five-year marriage, Plaintiff accrued a pension benefit under the Plan. Pursuant to a Domestic Relations Order ("DRO"), Plaintiff's accrued benefit under the Plan was identified as martial assets for equitable division. (Doc. No. 17, p. 612–15.) The DRO was a "shared interest" Order, indicating the Alternate Payee (i.e., ex-wife) receives her benefit only when the Participant (i.e., Plaintiff) commences his benefit.

(*Id.*) This benefit would then be receivable by the Alternate Payee over Plaintiff's lifetime. (*Id.*) The DRO also indicated the Alternate Payee should be treated as a surviving spouse for the available qualified joint and survivor annuity ("QJSA"). Importantly, the DRO provided, "The Alternate Payee's benefit may be reduced as necessary to cover the cost of the QJSA awarded to Alternate Payee." (*Id.*, p. 614.)

In April 2013, Plaintiff and the Alternate Payee submitted the DRO to the Plan Administrator. The Plan Administrator provided a Determination Report stating the DRO "meets the requirements for a qualified domestic relations order (QDRO)" and the Plan "will distribute benefits to the [A]lternate [P]ayee in accordance with the order and Plan terms." (*Id.*, p. 354–356.)

EIDP announced, effective November 2018, any further accumulation of benefits would cease on account of significant corporate restructuring. (*Id.*, p. 194–95.) As a result, despite still being employed, Plaintiff was able to elect to commence receipt of his retirement benefit under the Plan. On June 1, 2019, Plaintiff commenced his Plan benefit which he elected as $3,400 a month and included a fifty percent spouse benefit option ("SBO"). (*Id.*, p. 393.)

Plaintiff contacted DuPont Connection, now Corteva Connection, after receiving his retirement kit. (*Id.*) Plaintiff sought clarification as to why his benefit was reduced from $3,785.26 (single life annuity benefit amount after the QDRO offset of $1,454.72) to the amount of $3,400. (*Id.*) Plaintiff indicated the Alternate Payee's benefit should be reduced to cover the "cost" of the QJSA benefit. (*Id.*)

The Corteva Pension Team ("the Team"), along with the Pension Actuary ("the Actuary"), reviewed Plaintiff's May 2013 QDRO. (*Id.*) The Team and the Actuary acknowledged the court order's language stating: "the Alternate Payee's benefit may be reduced as necessary to cover the cost of the QJSA." (*Id.*, p. 395.) However, this language was not included in the QDRO Determination Report by DuPont Legal, the team responsible for qualifying orders. (*Id.*) The Pension Team drafted the following response in an Informational Notice to Plaintiff in October 2019:

> We have confirmed the court order does reflect language that indicates that the alternate payee's benefit may be reduced as necessary to reflect the cost of the QJSA awarded to the alternate payee. However, the "cost" of a QJSA benefit is an actuarial adjustment to convert a benefit payable over the participant's lifetime to a benefit payable over the joint lifetimes of both the participant and surviving spouse. As such, there is no actual 'cost' that may be assigned to the alternate payee, and no optional form that would accomplish that result.
>
> Because a QDRO may not require a plan to pay a benefit in an optional form that is not offered under that plan, your court order was qualified disregarding the language addressing "cost." The Determination Report issued by DuPont Legal on May 1, 2013 [ ] states: "At the participant's benefit commencement date, the total monthly benefit will be reduced to cover the cost associated with the QJSA." Therefore, the total benefit

> was actuarially adjusted to reflect the joint life expectancy requirement of the QJSA benefit, and then the portion of the total benefit payable to the alternate payee was deducted.

(*Id.*, p. 394, 419.) The response from the Team also included a calculation of Plaintiff's fifty percent SBO. (*Id.*, p. 420.) In response, Plaintiff submitted a Level 1 Appeal on January 14, 2020, to Corteva Connection regarding his QJSA benefit. (*Id.*) The Corteva Connection Benefit Determination Review Team ("the Determination Review Team") denied Plaintiff's Level 1 Appeal on June 12, 2020. (*Id.*, p. 395.) In doing so, the Determination Review Team referenced page eighty-two of the Summary Plan Description ("SPD") and the Corteva Connection letter sent to Plaintiff in October 2019. (*Id.*)

Plaintiff sent a Level 2 Appeal to Corteva Connection on July 17, 2020. (*Id.*) HR Total Rewards again recognized Plaintiff's QDRO was qualified absent recognition of the Order stating, "the Alternate Payee's benefit may be reduced as necessary to cover the cost of QJSA." (*Id.*) On September 29, 2020, it is communicated to Plaintiff the QJSA cost is an actuarial adjustment and cannot be assigned only to the Alternate Payee under the terms of the Plan. (*Id.*) Therefore, HR Total Rewards recommended the Corteva Benefit Appeals Committee ("Appeals Committee") uphold the Level 1 denial, and affirm Plaintiff's $3,400 monthly benefit. (*Id.*) The Appeals Committee denied Plaintiff's Level 2 Appeal, and informed Plaintiff he exhausted all administrative remedies. (*Id.*, p. 350–51.)

II. Standard of Review

Summary judgment shall be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A factual dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is material only if it might affect the outcome of the suit under governing law. *Id.*

The movant has the "initial responsibility of informing the district court of the basis for its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (internal citations omitted). Once this initial burden is met, the burden shifts to the nonmoving party. The nonmoving party "must set forth specific facts showing that there is a genuine issue for trial." *Id.* at 322 n.3. The nonmoving party may not rely upon mere allegations or denials of allegations in his pleadings to defeat a motion for summary judgment. *Id.* at 324. The nonmoving party must present sufficient evidence from which "a reasonable jury could return a verdict for the nonmoving party." *Anderson*, 477 U.S. at 248; accord *Sylvia Dev. Corp. v. Calvert Cnty., Md.*, 48 F.3d 810, 818 (4th Cir. 1995). Comparatively, when the moving party would bear the burden of proof at trial, the initial burden is satisfied by producing evidence upon which a reasonable jury could return a favorable

verdict. *Brinkley v. Harbour Recreation Club*, 180 F.3d 596, 614, n.10 (4th Cir. 1999). In such circumstances, summary judgment will be granted unless the nonmoving party produces evidence upon which a reasonable jury could return a verdict in their favor. *Thompson v. Potomac Elec. Power Co.*, 312 F.3d 645, 649 (4th Cir. 2002).

When ruling on a summary judgment motion, the Court must view the evidence and any inferences from the evidence in the light most favorable to the nonmoving party. *Anderson*, 477 6 U.S. at 255. "'Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial.'" *Ricci v. DeStefano*, 557 U.S. 557, 586 (2009) (quoting *Matsushita v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." *Anderson*, 477 U.S. at 248. Also, the mere argued existence of a factual dispute does not defeat an otherwise properly supported motion. *Id.* If the evidence is merely colorable, or is not significantly probative, summary judgment is appropriate. *Id.* at 249–50. In the end, the question posed by a summary judgment motion is whether the evidence as applied to the governing legal rules "is so one-sided that one party must prevail as a matter of law." *Id.* at 252.

III. Analysis

A. Motion to Exclude Expert Report

Defendant argues Plaintiff's designation of an expert must be stricken because it was made after

expiration of the deadline to designate experts and not in the administrative record. Plaintiff contends the expert report was disclosed, the expert report is timely, and it is within the Court's discretion to consider the expert report. The Court agrees with Defendant.

1. Disclosure of Expert

Federal Rule of Civil Procedure 26(a)(2)(A) requires a party to disclose "the identity of any person who may be used at trial to present evidence under Rules 702, 703, or 705 of the Federal Rules of Evidence." Federal Rule of Civil Procedure 26(a)(2)(B) requires "this disclosure [to be] accompanied by a written report—prepared and signed by the witness—if the witness is one retained or specially employed to provide expert testimony in the case." A party is required to make expert witness disclosures "at the times and in the sequence that the court orders." Fed. R. Civ. P. 26(a)(2)(D). Absent court orders permitting otherwise, a party must add or fix any information regarding an expert witness' opinion and report at least thirty days before trial. Fed. R. Civ. P. 26(e)(2), (a)(3)(B).

The purpose of Federal Rule of Civil Procedure 26(a) is to permit litigants "to adequately prepare their cases for trial and avoid unfair surprise." *Russell v. Absolute Collection Servs., Inc.*, 763 F.3d 385, 396 (4th Cir. 2014). Consequently, a party who does not comply with the expert witness disclosure requirements is not allowed to "use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless." Fed. R. Civ. P. 37(c)(1). The Advisory Committee Note to Rule 37 indicates "a strong inducement for disclosure of material that the disclosing

party would expect to use as evidence, whether at a trial, at a hearing, or on a motion, such as one under Rule 56" by the deadline. Fed. R. Civ. P. 37 (advisory committee's note to 1993 amendment).

District courts maintain "broad discretion" in considering whether a party's nondisclosure or untimely disclosure of evidence is substantially justified or harmless. *Wilkins v. Montgomery*, 751 F.3d 214, 222 (4th Cir. 2014) (quoting *S. States Rack & Fixture, Inc. v. Sherwin-Williams Co.*, 318 F.3d 592, 597 (4th Cir. 2003)). In determining this, district courts are directed by the following factors:

> (1) the surprise to the party against whom the evidence would be offered; (2) the ability of that party to cure the surprise; (3) the extent to which allowing the evidence would disrupt the trial; (4) the importance of the evidence; and (5) the nondisclosing party's explanation for its failure to disclose the evidence.

Sherwin-Williams Co., 318 F.3d at 597. The first four factors relate to the harmlessness exception, and the last factor pertains to the substantial justification exception. *Id.* The party who fails to disclose information must demonstrate the nondisclosure was substantially justified or harmless. *Wilkins*, 751 F.3d at 222 (citations omitted). Applying these principles, the Court finds Plaintiff's disclosure of expert Steven B. Long[1] is untimely and neither harmless nor substantially justified.

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[1] The Court notes the undersigned is personally acquainted with Mr. Steven B. Long. The Court's familiarity with the proposed expert has not affected the ruling in this matter. The Court is

In considering the surprise to the Defendant, it was not minimal. Plaintiff contends Defendant was put on notice regarding Plaintiff's retention of an expert. Defendant maintains the expert report is untimely. In the "Certification and Report of F.R.C.P. 26(f) Conference and Discovery Plan," ("Report"), Plaintiff indicated "a report from an expert will help explain the valuation process," (Doc. No. 9, p. 4.) This is Plaintiff's only indication an expert would be retained. In the same Report, pursuant to Rule 26(a)(2), the parties mutually agreed any reports from retained experts would be due from both Plaintiff and Defendant by February 8, 2024. (*Id.*) Plaintiff's statement in the Report did not indicate Mr. Long, an attorney, would be retained as an expert to opine on "Allocation of Cost of Alternate Payee's Survivorship Benefit." (*See* Doc. No. 30-2.) Furthermore, the report by Mr. Long was submitted three weeks after the mutually agreed deadline for expert reports.

Thus, because Plaintiff's indicated vaguely what an expert would be used for, and submitted the report three weeks beyond the deadline, the Court "can only conclude" Defendant was surprised. *Duke Energy Carolinas, LLC v. NTE Carolinas II, LLC*, NO. 3:19-CV-00515, 2022 WL 884275, at *7 (W.D.N.C. Mar. 24, 2022) ("Therefore, the Court can only conclude that [plaintiff] was surprised by [defendant's]" late disclosure of lay witness because defendant did not disclose use of lay witness and substance of witness report was not included in defendant's counterclaims.) The first factor does not weigh in favor of finding harmlessness.

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disclosing this social relationship out of an abundance of caution.

However, the surprise was curable. This factor is best understood as the ability to "minimiz[e] the prejudicial effect of any purported surprise . . . or disrupt the trial" *Rhyne v. United States Steel Corp.*, 474 F. Supp. 3d 733, 756 (W.D.N.C. 2020). Said differently, "[the second factor] is best understood as requiring the Court to weigh the magnitude of the effort that would be required to allow the new evidence to be fairly included as part of the case." *Duke Energy Carolinas, LLC*, 2022 WL 884275, at *7. Plaintiff contends the expert report was produced by the discovery deadline and a month ahead of the dispositive motions' deadline; therefore, Defendants' had time to talk with and/or depose Mr. Long. The Court finds Defendants were able to cure the surprise of Plaintiff's expert report because it did not meaningfully impact Defendant's ability to defend its case, as trial was many months away. *See Bresler v. Wilmington Trust Co.*, 855 F.3d 178, 194 (4th Cir. 2017) (concluding plaintiff's untimely disclosure did not impact defendant's ability to conduct its defense in any material respect where defendant had access to the untimely disclosed information two months before trial) (quoting *Rhyne*, 474 F. Supp. 3d at 756). Additionally, in considering the third factor, permitting the expert report would not disrupt the trial from the standpoint of extending it. *See Duke Energy Carolinas*, 2022 WL 884275, at *8 (concluding the use of untimely damages claims through lay witness would create "trials within trials" and therefore, disrupt and "substantially lengthen" the trial.) These factors weigh in favor of finding harmlessness.

Still, considering the fourth factor, the use of the expert report is not "important" evidence. Mr. Long

is presently an attorney at Ward and Smith, P.A. (Doc. No. 30-2, p. 11). Mr. Long's practice focuses on tax, employee benefits, and tax-exempt entities. (Doc. No. 30-2, p. 11.) Plaintiff intends to offer the expert report to "explain the valuation process in accurate and straightforward terms." (Doc. No. 9, p. 4.) Defendant claims the expert report consists of inadmissible legal opinions and conclusions.

Federal Rule of Evidence 704(a) permits expert testimony on "an ultimate issue to be decided by the trier of fact." Fed. R. Evid. 704(a). However, opinion testimony stating a legal standard or conclusion is "generally inadmissible." *United States v. McIver*, 470 F.3d 550, 562 (4th Cir. 2006). The Court bears the ultimate responsibility of advising the finder of fact on the governing law. *See United States v. Savage*, 885 F.3d 212, 222-23 (4th Cir. 2018); *United States v. Miltier*, 882 F.3d 81, 89 (4th Cir. 2018). Testimony in the form of legal conclusions is not beneficial to the finder of fact because it "supplies the [finder of fact] with no information other than the witness's view of how the verdict should read." *United States v. Offill*, 666 F.3d 168, 175 (4th Cir. 2011).

Mr. Long's expert report has been provided to the Court. (*See* Doc. No. 30-2, pp. 4–10.) The expert report goes beyond the permissible bounds of legal testimony. Mr. Long provides the governing law and his ultimate legal conclusion, as applied to Plaintiff's case. Therefore, this report is not "important" evidence; rather, it duplicates the role of Plaintiff's counsel and encroaches on the role of this Court. *Honeywell Int'l Inc. v. Opto Elec. Co., Ltd.*, No. 3:21-CV-00506, 2023 WL 3029264, at *12 (concluding a law professor proffered as an expert witness fails to "assist" the

trier of fact, instead encroaching on the trier of facts' role in the trial "while also duplicating the role of counsel in closing argument"). Ultimately, this factor does not weigh in favor of finding harmlessness.

Finally, the Court considers Plaintiff's explanation for its failure to timely disclose the expert report. Plaintiff fails to provide a sufficient explanation for the delay in disclosing the expert report. In fact, Plaintiff does not provide any reason for the untimely disclosure. Instead, Plaintiff contends the report is timely because it was submitted on the final day of discovery and Defendant had notice. However, Plaintiff's position ignores both the mutually drafted Report indicating a due date for expert reports and relevant case law. *See Duke Energy Carolinas, LLC*, 2022 WL 884275, at *9 (concluding a "'notice' defense . . . cannot serve as independent 'justification' for delayed disclosure"). Therefore, the Plaintiff fails to present a substantial justification for its untimely disclosure of the expert report.

In sum, weighing all relevant factors, the Court finds Plaintiff has failed to carry it burden to prove disclosure of the expert report is either timely, or in the alternative, harmless or substantially justified.

2. ERISA Administrative Record

Even if Plaintiff demonstrated the expert report as timely, or in the alternative, its untimeliness as harmless or substantially justified, the expert report should not be included because it is not in the administrative record.

The Fourth Circuit utilizes an abuse of discretion standard of review of ERISA benefits claims. *Firestone*

Tire & Rubber Co. v. Burch, 489 U.S. 101, 103 (1989). Here, Plaintiff's use of a practicing attorney's legal conclusions as applied to the facts of his case does no more than present cumulative evidence of the legal arguments Plaintiff's attorney should make. *Quesinberry v. Life Ins. Co of North America*, 987 F.2d 1017, 1027 (4th Cir. 1993) ("If the evidence is cumulative of what is presented to the plan administrator, or is simply better evidence than the claimant mustered for the claim review, then its admission is not necessary."). The expert report is not a part of the administrative record and will not be considered by this Court. *See Gallagher v. Reliance Standard Life Ins. Co.*, 305 F.3d 264, 276, n.12 (4th Cir. 2002), as amended (Oct. 24, 2002) (concluding there will be no consideration of a declaration submitted in a support of a motion for summary judgment in ERISA benefit denial case where plaintiff fails to allege exceptional circumstances); *see also Dippel v. Phillips Prod. Inc.*, No. 1:09cv253, 2011 WL 1233705, at *3 (W.D.N.C. Mar. 29, 2011) ("The Court therefore will exclude the matters submitted by the parties which are not contained within the administrative record."). Therefore, the Court will not consider the expert report because it is not within the administrative record.

Therefore, in accordance with Rule 37(c)(1) and ERISA specific case law on a district court's review of the administrative record, the Court grants Defendant's Motion.

B. Summary Judgment

1. Statute of Limitations

The parties agree Plaintiff's final denial of benefits under ERISA occurred on September 29, 2020. However, the parties disagree on the applicable statute of limitations period. State law outlines the limitations period, while federal law defines when an ERISA cause of action accrues. *Heimeshoff v. Hartford Life & Acc. Ins. Co.*, 571 U.S. 99, 105 (2013) ("A participant's cause of action under ERISA accordingly does not accrue until the plan issues a final denial."). Plaintiff contends North Carolina's three-year statute of limitations for breach of contract claims should apply to claims under ERISA §§ 502(a)(1)(B) and (c). Alternatively, Defendant contends Plaintiff's claims under ERISA §§ 502(a)(1)(B) and (c) are untimely pursuant to North Carolina choice of law rules, applying Delaware's one year statute of limitations for breach of contract law. The Court agrees with Plaintiff.

Statute of limitations provide the period during which a claim must be brought. *Heimeshoff*, 571 U.S. at 105. ERISA does not provide a statute of limitations for ERISA §§ 502(a)(1)(B) or (c). Therefore, the Court must examine the most analogous state law statute of limitations. *Dameron v. Sinai Hosp. of Balt., Inc.*, 815 F.2d 975, 981 (4th Cir. 1987).

Here, the Court adopts North Carolina's three-year statute of limitations for breach of contract claims pursuant to N.C. Gen. Stat. § 1-52(1) for Plaintiff's § 502(a)(1)(B) claim. *See Bond v. Marriott Intern., Inc.*, 637 F. App'x 726, 733 (4th Cir. 2016) (adopting Maryland's three-year statute of limitations for contract actions pursuant to ERISA benefits claim); *Singleton*

v. Temporary Disability Benefits Plan, 183 F. App'x 293, 295 n.2 (4th Cir. 2006) (parties agreeing to the application of N.C. Gen. Stat. § 1-52(1) for ERISA benefits claim); *Dameron*, 815 F.2d at 981 (adopting Maryland's three-year statute of limitations for contract actions pursuant to ERISA benefits claim); *Smith v. Genuine Auto Parts Inc.*, No. 3:12-cv-273, 2012 WL 6728279, at *4 (W.D.N.C. 2012) (adopting N.C. Gen. Stat. § 1-52(1) three year statute of limitations for contract claims pursuant to ERISA § 502(a)(1)(B)); *Woody v. Walters*, 54 F. Supp. 2d 574, 578–79 (W.D.N.C. 1999) ("[T]he applicable statute of limitations for § 1132 actions in North Carolina is three years."); *United Food & Com. Workers Local 204 v. Harris Teeter Super Markets Inc.*, 716 F. Supp. 1551, 1560–61 (W.D.N.C. 1989) ("While this matter is not free from doubt, this Court is of the opinion that Plaintiffs' claims [pursuant to 29 U.S.C. § 1132(a)(1)(B)] are most analogous to claims for breach of contract . . . North Carolina has a three year statute of limitations for actions upon contracts.").

Likewise, the Court adopts N.C. Gen. Stat. § 1-52(1) for Plaintiff's ERISA § 502(c), 29 U.S.C. § 1132(c) claim. *See Middleton v. Russell Group, Ltd.*, 924 F. Supp. 48, 51–52 (M.D.N.C. 1996) (agreeing with *United Food*, 716 F. Supp at 1560–61, and applying North Carolina's three-year statute of limitations to 29 U.S.C. § 1132(c) claim).

Accordingly, since the parties agree Plaintiff's final denial occurred on September 29, 2020, Plaintiff's August 14, 2023, claims under ERISA §§ 502(a)(1)(B) and (c) are timely pursuant to N.C. Gen. Stat. § 1-52(1).

2. ERISA Standard of Review

The parties disagree on the appropriate standard of review to apply in evaluating the cross motions for summary judgment. Plaintiff contends the *de novo* standard of review applies because the instant case does not involve interpretation of the Plan terms; rather, Plaintiff argues it involves interpretation of the QDRO which is a state order and contract between the parties. Alternatively, Defendant contends the Plan document and benefits "are reviewed under an abuse of discretion standard or 'arbitrary and capricious' standard of review" because the Plan Administrator was granted discretionary review to construe the terms of the Plan and calculate benefits. (Doc No. 29-1, p. 14.)

In the ERISA context, courts conduct *de novo* review of an administrator's denial of benefits unless the plan grants the administrator discretion to determine a claimant's eligibility for benefits or to construe the terms of the plan, in which case the administrator's decision is reviewed for abuse of discretion. *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 111 (1989); *Cosey v. Prudential Ins. Co. of America*, 735 F.3d 161, 165 (4th Cir. 2013). Comparatively, a Plan Administrator's interpretation of a QDRO is subject to *de novo*, rather than deferential review. *See, e.g., Matassarin v. Lynch*, 174 F.3d 549, 563 (5th Cir.1999) ("The QDRO, unlike the Plan, is a separate, judicially approved contract between Jenkins and Matassarin, which the Plan administrator has no special discretion to interpret."); *Hullett v. Towers, Perrin, Forster & Crosby, Inc.*, 38 F.3d 107, 114 (3d Cir. 1994) ("The district court did not err in holding that it should review *de novo* the plan administrator's construction

of the [QDRO], which involved issues of contract interpretation under the [QDRO] and not the Plan."); *Amron v. Yardain Inc. Pension Plan*, No. 18 Civ. 11336, 2019 WL 6619107, at *3 (S.D.N.Y. Dec. 5, 2019).

Here, Defendants are correct in that the Plan clearly grants the Plan Administrator "final authority and discretion to interpret the Plan, [and] resolve any ambiguities and determine eligibility for benefits." (Doc. No. 17, p. 160, 191.) However, the true tension over the appropriate standard of review seemingly stems from the interpretation of the DRO[2] used to determine it can be construed as a QDRO[3]. The Court will review the Plan Administrator's interpretation of the QDRO *de novo*.

The DRO signed by a North Carolina state court judge reads in pertinent part, "The Alternate Payee's benefit may be reduced as necessary to cover the cost of the QJSA awarded to the Alternate Payee." (Doc. No. 17, p. 614.) Through a Determination Report, the DRO was determined to meet the requirements for a

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[2] A DRO, for purposes of ERISA, is any order relating "to the provision of . . . marital property rights to a spouse . . . and is made pursuant to a State or Tribal domestic relations law. 29 U.S.C. § 1056(d)(3)(B)(ii).

[3] A QDRO is defined in 29 U.S.C. § 1056(d)(3)(B)(i). Prior to 1984, ERISA's provisions failed to clearly delineate the interest of a non-employee spouse in pension benefits of the employee spouse. Under the 1984 amendments to ERISA, if a domestic relations order provides for distribution of part or all of a participant's benefits under a qualified pension plan to an alternate payee and meets the requirements set forth in the statute, then the creation, recognition, or assignment of these benefits to the alternate payee is not considered an assignment or alienation prohibited by ERISA's spendthrift provisions.

QDRO. The Determination Report additionally stated, "At the participant's benefit commencement date, the total monthly benefit will be reduced to cover the cost associated with the QJSA." (Doc. No. 17, p. 355.) Meaning, the Plan Administrator did not allocate the entire "cost" of the QJSA to the Alternate Payee as Plaintiff contends the QDRO required. In addition to the term "cost" being disputed[4], Defendants ultimately argue the interpretation of the QDRO is consistent because the QDRO does not require the "cost" of the QJSA be exclusively borne by the Alternate Payee. This Court looks to North Carolina law to interpret terms of the QDRO. *Parsons v. Bd. of Trustees of Boilermaker-Blacksmith Nat'l Pension Trust*, 487 F. Supp. 3d. 489, 496 (S.D.W.Va. 2020) ("Courts treat QDROs as binding contracts, to be interpreted in accordance with the law of the state where the QDRO was entered.") (citing *Matthews v. E.I. DuPont De Nemours & Co.*, 682 F. App'x 148, 151 (3d Cir. 2017).

Under North Carolina law, "the terms of a contract are to be interpreted according to the expressed intent of the parties unless such intent is contrary to law." *Offis, Inc. v. First Union Nat'l Bank*, 150 N.C. App. 356, 363 (2002); *Lane v. Scarborough*, 284 N.C. 407, 410–11 (1973). "If the plain language of a contract is clear, the intention of the parties is inferred from the words of the contract." *Walton v. City of Raleigh*, 342 N.C. 879, 881 (1996). "When the parties use clear

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[4] According to Corteva, the "cost" of a QJSA benefit is in fact an actuarial adjustment to covert a benefit payable over the participant's lifetime to a benefit payable over the joint lifetimes of both the participant and surviving spouse. Thus, there is no actual "cost" assignable to the alternate payee. (Doc. No. 17, p. 252.)

and unambiguous terms, such contracts can be interpreted by the court as a matter of law." *Robertson v. Hartman*, 90 N.C. App. 250, 252 (1988). In construing a contract, "words are to be given their usual and ordinary meaning and all the terms of the agreement are to be reconciled if possible." *Nationwide Mut. Ins. Co. v. Mabe*, 115 N.C. App. 193, 198 (1999). Where ambiguities arise, the "basic contract law principle *contra proferentem* counsels that we construe any ambiguities in the contract against its draftsman." *Maersk Line, Ltd. v. United States*, 513 F.3d 418, 423 (4th Cir. 2008).[5]

Generally, the word "may" has two ordinary meanings. First, "may" can be used to convey discretion. Second, "may" can also be used to convey the possibility of something coming to pass. However, "may" is not usually or ordinarily used to convey a requirement or exclusivity. When evaluating the QDRO holistically, there is no indication from any of the terms that Plaintiff and the Alternate Payee intended for "costs" of the QJSA to be deducted only from the Alternate Payee. As noted above, a QDRO provides a mechanism through which a former spouse may be designated as an alternate payee and thereby "receive all or a portion of the benefits payable with respect to a participant under the plan." 29 U.S.C. § 1056(d)(3)(B)(i)(l). Importantly, there are specific requirements for a DRO to constitute a QDRO including one forbidding

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[5] Plaintiff seems to argue any ambiguity related to allocation of QJSA "costs" should be construed in favor of Plaintiff and against the Plan Administrator. While the Plan Administrator appears to have reviewed a draft of the DRO prior to its filing with the North Carolina state court, the Plan Administrator did not draft the DRO and only determined it constituted a QDRO.

a DRO "to provide any type or form of benefit, or any option, not otherwise provided under the plan." *Id.* § 1056(d)(3)(D)(i). The "may" was interpreted to convey discretion in order for the DRO to comport with the Plan options because the Plan expressly provides the QJSA "cost" is paid for by a reduction to the total benefit amount under the fifty percent SBO option. Clearly, interpreting the QDRO in accordance with Plaintiff's preferred reading would lead to the DRO not meeting the requirements of a QDRO because it would require a division of the benefit not provided for under the Plan.

Given the clear language in the QDRO, coupled with the structure of the QDRO and the Plan, this Court finds the contract to be unambiguous. Therefore, interpretation of the contract is a matter of law and there are no factual issues to be determined. Accordingly, the Court finds the Plan Administrator's interpretation of the QDRO proper.

3. Denial of Benefits Claim Under ERISA § 502(a)(1)(B)

As the Court stated above, the Plan clearly grants the Plan Administrator discretion to determine benefits. Therefore, the Court will review the Plan Administrator's denial of benefits for abuse of discretion.

The abuse of discretion standard is a highly deferential standard. *Cosey*, 735 F.3d at 168. As a result, the plan administrator's decision will remain undisturbed if reasonable. *Williams v. Metropolitan Life Ins. Co.*, 609 F.3d 622, 630 (4th Cir. 2010). A reasonable decision is product of "deliberate, principled reasoning process and if it is supported by substantial

evidence." *Brogan v. Holland*, 105 F.3d 158, 161 (4th Cir. 1997) (internal quotation marks omitted) (quoting *Bernstein v. Capital Care*, 70 F.3d 783, 788 (4th Cir. 1995)). The Court considers eight nonexclusive factors to determine the reasonableness of a plan administrator's decision. *Booth v. Wal-Mart Stores, Inc. Assoc. Health & Welfare Plan*, 201 F.3d 335, 342 (4th Cir. 2000). The eight *Booth* factors are as follows:

> (1) the language of the plan; (2) the purposes and goals of the plan; (3) the adequacy of the materials considered to make the decision and the degree to which they support it; (4) whether the fiduciary's interpretation was consistent with other provisions in the plan and with earlier interpretations of the plan; (5) whether the decision making process was reasoned and principled; (6) whether the decision was consistent with the procedural and substantive requirements of ERISA; (7) any external standard relevant to the exercise of discretion; and (8) the fiduciary's motives and any conflict of interest it may have.

Id. However, "[a]ll eight *Booth* factor need not be, and may not be, relevant in a given case." *Skinder v. Fed. Express Long Term Disability Plan*, NO. 5:19-CV-00153-KDB-DCK, 2021 WL 1377982, at *1 (W.D.N.C. Apr. 12, 2021). The Court will not substitute its own judgment for a reasonable plan administrator's decision. *See Berry v. Ciba-Geigy Corp.*, 761 F.2d 1003, 1008 (4th Cir. 1985). The Court will only evaluate relevant *Booth* factors. *See Skinder*, 2021 WL 1377982, at *7 (W.D.N.C. Apr. 12, 2021) (citing *Helton v. AT&T*, 709 F.3d 343, 357 (4th Cir. 2013)).

A review of the record reveals the Plan Administrator's decision was reasonable. The purpose and goal of the Plan, as related to the QJSA benefit, is "to ensure that the Alternate Payee has a benefit paid to her if she survives [Plaintiff]." (Doc. No. 17, p. 357.) Looking to the express language of the Plan, the Plan states the "cost for the post-retirement spouse benefit option is paid for by a reduction to your [Plaintiff's] monthly pension payment. The amount of the reduction is actuarially determined, taking into account your age and the age of your spouse as of your pension payment start date, the level of benefit elected [ ], and the Plan's investment-return rate." (Doc. No. 17, p. 148, 153.) When Plaintiff elected the Plan, he certified his choice which explained the monthly benefit would be $3,400 and not the higher amount he now contends he is entitled to. (Doc. No. 17, p. 332.) It was this certification in conjunction with the various sections of the over hundred-page Plan and the QDRO which the Plan Administrator relied on to deny the portion of Plaintiff's benefits requested. Then, after Plaintiff raised a question regarding the amount of his benefit, the Informational Notice interpreted the Plan the same. Again, nearly a year later, the Appeals Council interpreted the QDRO and Plan consistent with how it had been interpreted. As this Court has made clear, requiring the QJSA "cost" be allocated solely against the Alternate Payee's distribution would go against the ERISA requirements because a QDRO is prohibited from providing a benefit or option not available under the Plan. This Court finds no evidence in the record supporting a conclusion the Plan Administrator came to its decision through a process that was unprincipled or unreasonable.

The sum relevant *Booth* factors weigh in favor of finding the Plan Administrator's denial of benefits reasonable. Because sufficient evidence is contained in the record to support the determination the "cost" of the QJSA could not be allocated in the manner in which Plaintiff wants and the QDRO does not require such allocation, the Plan Administrator did not abuse its discretion in denying Plaintiff's benefits.

4. Statutory Penalty Claim Under ERISA § 502(c)

Plaintiff alleges Defendant failed to provide him with "full copies of all Plan documents in a timely manner." (Doc. No. 31-1, p. 16.)

ERISA § 104(b)(4) provides:

> The administrator shall, *upon written request of any participant* or beneficiary, furnish a copy of the latest updated summary plan description, plan description, and the latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated. The administrator may make a reasonable charge to cover the cost of furnishing such complete copies. The Secretary may by regulation prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence.

29 U.S.C. § 1024(b)(4) (emphasis added). "Other instruments under which the plan is established or operated" includes legal or formal documents a plan is premised on. *Faircloth v. Lundy Packing Co.*, 91

F.3d 648, 653 (4th Cir. 1996), *cert. denied*, 519 U.S. 1077 (1997). Further, § 104(b)(4) is not interpreted broadly. *Id.* This means, a defendant is not required to turn over any and every document related to a pension plan. *Vincent v. Lucent Tech., Inc.*, 733 F. Supp. 2d 729, 740 (W.D.N.C. 2010) (citing *Faircloth*, 91 F.3d at 652).

ERISA authorizes courts, pursuant to 29 U.S.C. § 1132(c)(1), to authorize a $110/day fine against a plan administrator for failure to provide the requested information within thirty days. Two factors guide a district court's discretion is whether to award statutory fees under 29 U.S.C. § 1132(c)(1): (1) prejudice to plaintiff; and (2) the administrator's conduct in response to a plaintiff's request. *Davis v. Featherstone*, 97 F.3d 734, 738 (4th Cir. 1996). Prejudice may include "frustration, trouble, and expense." *Id.* A finding of prejudice is not required for a district court to assess damages. *Carroll v. Cont'l Auto., Inc.*, 685 F. App'x 272, 276–77 (4th Cir. 2017).

Plaintiff, by written request, requested Plan documents for the first time on July 20, 2020. (Doc. No. 17, p. 346.) In response, the Plan Administrator timely sent Plaintiff Plan documents. (*Id.*, p. 334.) Plaintiff acknowledged receipt of Plan documents through a September 18, 2020, letter. However, in the same September letter, Plaintiff indicates the Plan documents sent in August were "faulty" and further requested "appendices . . . all copies and revisions of the Plan and SPD in effect for the entire time period relating to the QDRO determination process in 2013." (*Id.*) Plaintiff's contentions regarding the statutory penalties under § 1132(c)(1) rely in great part on a declaration not in the administrative

record. (*See* Doc. No. 31-2, pp. 1–10.) The Court will not consider Plaintiff's declaration as it is not a part of the administrative record and exceptional circumstances have not been alleged. *See Gallagher*, 305 F.3d at 276 n.12 (concluding there will be no consideration of a declaration submitted in a support of a motion for summary judgment in ERISA benefit denial case where plaintiff fails to allege exceptional circumstances); *see also Dippel.*, 2011 WL 1233705, at *3 (indicating "[t]he Court therefore will exclude the matters submitted by the parties which are not contained within the administrative record").

It is unclear whether Plaintiff was provided with the: (1) the *latest* SPD; or (2) appendices. It is also unclear whether Plaintiff's request for "all copies and revisions of the Plan . . . in effect for the entire time period relating to the QDRO determination process in 2013" constitutes legal or formal documents the Plan is premised on. *See Faircloth*, 91 F.3d at 653; ERISA § 104(b)(4). Nonetheless, if Plaintiff was not provided with the requested documents in a timely manner, it did not seem to prejudice him in the administrative appeals process as his Level 2 Appeal was received the same days as his first written request for Plan documents. *See Wilson v. United Healthcare Ins. Co.*, 27 F.4th 228, 246 (4th Cir. 2022) (finding defendant's failure to provide a pension plan and its guidelines "impeded the [administrative] appeal process"); (*see also* Doc. No. 17, pp. 346, 360.) Further, the Plan Administrator was responsive to Plaintiff's request for documents. The Plan Administrator complied with Plaintiff's *verbal request* for documents, an action not required under ERISA § 104(b)(4). (Doc. No. 17, p. 395.)

Upon Plaintiff's first written request, he was again provided with documents. (*Id.*, pp. 334, 346.)

Accordingly, because Defendant is not required to turn over every document related to the Plan, Plaintiff's administrative appeal process was seemingly unimpeded, and the Plan Administrator was responsive to document requests at all times, statutory penalties under § 1132(c)(1) are not warranted. *See Carroll v. Continental Automotive, Inc.*, 685 F. App'x 272, 277 (4th Cir. 2017) (finding it within a district court's discretion upon consideration of prejudice to impose civil penalties pursuant to ERISA § 502(c)).

5. Attorneys' Fees and Costs Under ERISA § 502(g)

29 U.S.C. § 1132(g)(1) provides, "[i]n any action under this subchapter . . . by a participant, beneficiary, or fiduciary, the court in its discretion may allow a reasonable attorney's fee and costs of action to either party." Where a party achieves "some success on the merits" a district court properly authorizes award of attorney fees under § 1132(g)(1). *Hardt v. Reliance Standard Life Ins. Co.*, 560 U.S. 242, 256 (2010) (quoting *Ruckelshaus v. Sierra Club*, 463 U.S. 680, 694 (1983)). At this time, the Court declines to award attorneys' fees and costs under 29 U.S.C. § 1132(g). *Tyce v. AT&T Corp.*, No. 3:21-CV-00040-FDW-DSC, 2021 WL 5022377, at *5 (W.D.N.C. Oct. 28, 2021) (finding where a plaintiff "failed to raise a genuine issue of material fact" the Court declined the award of attorney's fees and costs under § 1132(g). The Court grants leave for either party to file subsequent motions for fees and costs consistent with the Court's rulings in this Order.

III. Conclusion

IT IS THEREFORE ORDERED that Defendants' Motion to Exclude Expert Report, (Doc. No. 30), is GRANTED.

IT IS FURTHER ORDERED that Plaintiff's Motion for Summary Judgment, (Doc. Nos. 31), is DENIED.

IT IS FURTHER ORDERED that the Defendants' Motion for Summary Judgment, (Doc. Nos. 29), is GRANTED.

IT IS SO ORDERED.

/s/ Frank D. Whitney
U.S. District Judge

Signed: August 27, 2024

JUDGMENT IN CASE, U.S. DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA (AUGUST 28, 2024)

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

DAVID GASPER,

Plaintiff(s),

v.

EIDP, INC.
THE PENSION AND RETIREMENT PLAN CORTEVA, INC.
THE BENEFIT PLANS ADMINISTRATIVE COMMITTEE,

Defendant(s).

3:23-cv-00512-FDW-SCR

JUDGMENT IN CASE

DECISION BY COURT. This action having come before the Court and a decision having been rendered;

IT IS ORDERED AND ADJUDGED that Judgment is hereby entered in accordance with the Court's August 28, 2024 Order.

/s/ Katherine Hord Simon
Clerk, U.S. District Court

August 28, 2024

RELEVANT STATUTORY AND REGULATORY PROVISIONS

29 U.S.C. § 1056(d) [ERISA § 206(d)] Assignment or alienation of plan benefits

(1) Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated.

(2) For the purposes of paragraph (1) of this subsection, there shall not be taken into account any voluntary and revocable assignment of not to exceed 10 percent of any benefit payment, or of any irrevocable assignment or alienation of benefits executed before September 2, 1974. The preceding sentence shall not apply to any assignment or alienation made for the purposes of defraying plan administration costs. For purposes of this paragraph a loan made to a participant or beneficiary shall not be treated as an assignment or alienation if such loan is secured by the participant's accrued non-forfeitable benefit and is exempt from the tax imposed by section 4975 of title 26 (relating to tax on prohibited transactions) by reason of section 4975(d)(1) of title 26.

(3)

(A) Paragraph (1) shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that paragraph (1) shall not apply if the order is determined to be a qualified domestic relations order. Each pension plan

shall provide for the payment of benefits in accordance with the applicable requirements of any qualified domestic relations order.

(B) For purposes of this paragraph—

(i) the term "qualified domestic relations order" means a domestic relations order—

(I) which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan, and

(II) with respect to which the requirements of subparagraphs (C) and (D) are met, and

(ii) the term "domestic relations order" means any judgment, decree, or order (including approval of a property settlement agreement) which—

(I) relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant, and

(II) is made pursuant to a State or Tribal domestic relations law (including a community property law).

For purposes of clause (ii)(II), the term "Tribal" with respect to a domestic relations law means such a law which

is issued by or under the laws of an Indian tribal government (as defined in section 7701(a)(40) of title 26), a subdivision of such an Indian tribal government, or an agency or instrumentality of either.

(C) A domestic relations order meets the requirements of this subparagraph only if such order clearly specifies

(i) the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the order,

(ii) the amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined,

(iii) the number of payments or period to which such order applies, and

(iv) each plan to which such order applies.

(D) A domestic relations order meets the requirements of this subparagraph only if such order—

(i) does not require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan,

(ii) does not require the plan to provide increased benefits (determined on the basis of actuarial value), and

(iii) does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.

(E)

(i) A domestic relations order shall not be treated as failing to meet the requirements of clause (i) of subparagraph (D) solely because such order requires that payment of benefits be made to an alternate payee—

(I) in the case of any payment before a participant has separated from service, on or after the date on which the participant attains (or would have attained) the earliest retirement age,

(II) as if the participant had retired on the date on which such payment is to begin under such order (but taking into account only the present value of benefits actually accrued and not taking into account the present value of any employer subsidy for early retirement), and

(III) in any form in which such benefits may be paid under the plan to the participant (other than in the form of a joint and survivor annuity with respect to the alternate payee and his or her subsequent spouse).

For purposes of subclause (II), the interest rate assumption used in determining the present value shall be the interest rate specified in the plan or, if no rate is specified, 5 percent.

(ii) For purposes of this subparagraph, the term "earliest retirement age" means the earlier of—

(I) the date on which the participant is entitled to a distribution under the plan, or

(II) the later of the date of the participant attains age 50 or the earliest date on which the participant could begin receiving benefits under the plan if the participant separated from service.

(F) To the extent provided in any qualified domestic relations order—

(i) the former spouse of a participant shall be treated as a surviving spouse of such participant for purposes of section 1055 of this title (and any spouse of the participant shall not be treated as a spouse of the participant for such purposes), and

(ii) if married for at least 1 year, the surviving former spouse shall be treated as meeting the requirements of section 1055(f) of this title.

(G)

(i) In the case of any domestic relations order received by a plan—

(I) the plan administrator shall promptly notify the participant and each alternate payee of the receipt of such order and the plan's procedures for determining the qualified status of domestic relations orders, and

(II) within a reasonable period after receipt of such order, the plan administrator shall determine whether such order is a qualified domestic relations order and notify the participant and each alternate payee of such determination.

(ii) Each plan shall establish reasonable procedures to determine the qualified status of domestic relations orders and to administer distributions under such qualified orders. Such procedures—

(I) shall be in writing,

(II) shall provide for the notification of each person specified in a domestic relations order as entitled to payment of benefits under the plan (at the address included in the domestic relations order) of such procedures promptly upon receipt by the plan of the domestic relations order, and

(III) shall permit an alternate payee to designate a representative for receipt of copies of notices that are sent to

the alternate payee with respect to a domestic relations order.

(H)

(i) During any period in which the issue of whether a domestic relations order is a qualified domestic relations order is being determined (by the plan administrator, by a court of competent jurisdiction, or otherwise), the plan administrator shall separately account for the amounts (hereinafter in this subparagraph referred to as the "segregated amounts") which would have been payable to the alternate payee during such period if the order had been determined to be a qualified domestic relations order.

(ii) If within the 18-month period described in clause (v) the order (or modification thereof) is determined to be a qualified domestic relations order, the plan administrator shall pay the segregated amounts (including any interest thereon) to the person or persons entitled thereto.

(iii) If within the 18-month period described in clause (v)—

(I) it is determined that the order is not a qualified domestic relations order, or

(II) the issue as to whether such order is a qualified domestic relations order is not resolved,

then the plan administrator shall pay the segregated amounts (including any interest thereon) to the person or persons who would have been entitled to such amounts if there had been no order.

(iv) Any determination that an order is a qualified domestic relations order which is made after the close of the 18-month period described in clause (v) shall be applied prospectively only.

(v) For purposes of this subparagraph, the 18-month period described in this clause is the 18-month period beginning with the date on which the first payment would be required to be made under the domestic relations order.

(I) If a plan fiduciary acts in accordance with part 4 of this subtitle in—

(i) treating a domestic relations order as being (or not being) a qualified domestic relations order, or

(ii) taking action under subparagraph (H),

then the plan's obligation to the participant and each alternate payee shall be discharged to the extent of any payment made pursuant to such Act.

(J) A person who is an alternate payee under a qualified domestic relations order shall be considered for purposes of any provision of this chapter a beneficiary under the plan. Nothing in the preceding sentence shall

permit a requirement under section 1301 of this title of the payment of more than 1 premium with respect to a participant for any period.

(K) The term "alternate payee" means any spouse, former spouse, child, or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such participant.

(L) This paragraph shall not apply to any plan to which paragraph (1) does not apply.

(M) Payment of benefits by a pension plan in accordance with the applicable requirements of a qualified domestic relations order shall not be treated as garnishment for purposes of section 1673(a) of title 15.

(N) In prescribing regulations under this paragraph, the Secretary shall consult with the Secretary of the Treasury.

29 U.S.C. § 1055 [ERISA § 205]
Requirement of joint and survivor annuity and preretirement survivor annuity

(a) Required contents for applicable plans

Each pension plan to which this section applies shall provide that—

(1) in the case of a vested participant who does not die before the annuity starting date, the accrued benefit payable to such participant shall be provided in the form of a qualified joint and survivor annuity, and

(2) in the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a qualified preretirement survivor annuity shall be provided to the surviving spouse of such participant.

(b) Applicable plans

(1) This section shall apply to—

(A) any defined benefit plan,

(B) any individual account plan which is subject to the funding standards of section 1082 of this title, and

(C) any participant under any other individual account plan unless—

(i) such plan provides that the participant's nonforfeitable accrued benefit (reduced by any security interest held by the plan by reason of a loan outstanding to such participant) is payable in full, on the death of the participant, to the participant's surviving spouse (or, if there is no surviving spouse or the surviving spouse consents in the manner required under subsection (c)(2), to a designated beneficiary),

(ii) such participant does not elect the payment of benefits in the form of a life annuity, and

(iii) with respect to such participant, such plan is not a direct or indirect transferee (in a transfer after December 31, 1984) of a plan which is described in subpara-

graph (A) or (B) or to which this clause applied with respect to the participant.

Clause (iii) of subparagraph (C) shall apply only with respect to the transferred assets (and income therefrom) if the plan separately accounts for such assets and any income therefrom.

(2)

(A) In the case of—

(i) a tax credit employee stock ownership plan (as defined in section 409(a) of title 26), or

(ii) an employee stock ownership plan (as defined in section 4975(e)(7) of title 26),

subsection (a) shall not apply to that portion of the employee's accrued benefit to which the requirements of section 409(h) of title 26 apply.

(B) Subparagraph (A) shall not apply with respect to any participant unless the requirements of clause (i), (ii), and (iii) of paragraph (1)(C) are met with respect to such participant.

(4) This section shall not apply to a plan which the Secretary of the Treasury or his delegate has determined is a plan described in section 404(c) of title 26 (or a continuation thereof) in which participation is substantially limited to individuals who, before January 1, 1976, ceased employment covered by the plan.

(4) 2 A plan shall not be treated as failing to meet the requirements of paragraph (1)(C) or (2) merely because the plan provides that benefits will not be payable to the surviving spouse of the participant unless the participant and such spouse had been married throughout the 1-year period ending on the earlier of the participant's annuity starting date or the date of the participant's death.

(c) Plans meeting requirements of section

(1) A plan meets the requirements of this section only if—

(A) under the plan, each participant—

(i) may elect at any time during the applicable election period to waive the qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity form of benefit (or both),

(ii) if the participant elects a waiver under clause (i), may elect the qualified optional survivor annuity at any time during the applicable election period, and

(iii) may revoke any such election at any time during the applicable election period, and

(B) the plan meets the requirements of paragraphs (2), (3), and (4).

(2)Each plan shall provide that an election under paragraph (1)(A)(i) shall not take effect unless—

(A)

(i) the spouse of the participant consents in writing to such election, (ii) such

election designates a beneficiary (or a form of benefits) which may not be changed without spousal consent (or the consent of the spouse expressly permits designations by the participant without any requirement of further consent by the spouse), and (iii) the spouse's consent acknowledges the effect of such election and is witnessed by a plan representative or a notary public, or

(B) it is established to the satisfaction of a plan representative that the consent required under subparagraph (A) may not be obtained because there is no spouse, because the spouse cannot be located, or because of such other circumstances as the Secretary of the Treasury may by regulations prescribe.

Any consent by a spouse (or establishment that the consent of a spouse may not be obtained) under the preceding sentence shall be effective only with respect to such spouse.

(3)

(A) Each plan shall provide to each participant, within a reasonable period of time before the annuity starting date (and consistent with such regulations as the Secretary of the Treasury may prescribe) a written explanation of—

(i) the terms and conditions of the qualified joint and survivor annuity and of the qualified optional survivor annuity,

(ii) the participant's right to make, and the effect of, an election under paragraph (1) to waive the joint and survivor annuity form of benefit,

(iii) the rights of the participant's spouse under paragraph (2), and

(iv) the right to make, and the effect of, a revocation of an election under paragraph (1).

(B)

(i) Each plan shall provide to each participant, within the applicable period with respect to such participant (and consistent with such regulations as the Secretary may prescribe), a written explanation with respect to the qualified preretirement survivor annuity comparable to that required under subparagraph (A).

(ii) For purposes of clause (i), the term "applicable period" means, with respect to a participant, whichever of the following periods ends last:

(I) The period beginning with the first day of the plan year in which the participant attains age 32 and ending with the close of the plan year preceding the plan year in which the participant attains age 35.

(II) A reasonable period after the individual becomes a participant.

(III) A reasonable period ending after paragraph (5) ceases to apply to the participant.

(IV) A reasonable period ending after this section applies to the participant.

In the case of a participant who separates from service before attaining age 35, the applicable period shall be a reasonable period after separation.

(4) Each plan shall provide that, if this section applies to a participant when part or all of the participant's accrued benefit is to be used as security for a loan, no portion of the participant's accrued benefit may be used as security for such loan unless—

(A) the spouse of the participant (if any) consents in writing to such use during the 90-day period ending on the date on which the loan is to be so secured, and

(B) requirements comparable to the requirements of paragraph (2) are met with respect to such consent.

(5)

(A) The requirements of this subsection shall not apply with respect to the qualified joint and survivor annuity form of benefit or the qualified preretirement survivor annuity form of benefit, as the case may be, if such benefit may not be waived (or another beneficiary selected) and if the plan fully subsidizes the costs of such benefit.

(B) For purposes of subparagraph (A), a plan fully subsidizes the costs of a benefit if under the plan the failure to waive such benefit by a participant would not result in a decrease in any plan benefits with respect to such participant and would not result in increased contributions from such participant.

(6) If a plan fiduciary acts in accordance with part 4 of this subtitle in—

(A) relying on a consent or revocation referred to in paragraph (1)(A), or

(B) making a determination under paragraph (2),

then such consent, revocation, or determination shall be treated as valid for purposes of discharging the plan from liability to the extent of payments made pursuant to such Act.

(7) For purposes of this subsection, the term "applicable election period" means—

(A) in the case of an election to waive the qualified joint and survivor annuity form of benefit, the 180-day period ending on the annuity starting date, or

(B) in the case of an election to waive the qualified preretirement survivor annuity, the period which begins on the first day of the plan year in which the participant attains age 35 and ends on the date of the participant's death.

In the case of a participant who is separated from service, the applicable election period under subparagraph (B) with respect to benefits accrued before the date of such separation from service shall not begin later than such date.

(8) Notwithstanding any other provision of this subsection—

(A)

(i) A plan may provide the written explanation described in paragraph (3)(A) after the annuity starting date. In any case to which this subparagraph applies, the applicable election period under paragraph (7) shall not end before the 30th day after the date on which such explanation is provided.

(ii) The Secretary of the Treasury may by regulations limit the application of clause (i), except that such regulations may not limit the period of time by which the annuity starting date precedes the provision of the written explanation other than by providing that the annuity starting date may not be earlier than termination of employment.

(B) A plan may permit a participant to elect (with any applicable spousal consent) to waive any requirement that the written explanation be provided at least 30 days before the annuity starting date (or to waive the 30-day requirement under subparagraph (A)) if the distribution commences more

than 7 days after such explanation is provided.

(d) "Qualified joint and survivor annuity" and "qualified optional survivor annuity" defined

(1) For purposes of this section, the term "qualified joint and survivor annuity" means an annuity—

(A) for the life of the participant with a survivor annuity for the life of the spouse which is not less than 50 percent of (and is not greater than 100 percent of) the amount of the annuity which is payable during the joint lives of the participant and the spouse, and

(B) which is the actuarial equivalent of a single annuity for the life of the participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(2)

(A) For purposes of this section, the term "qualified optional survivor annuity" means an annuity

(i) for the life of the participant with a survivor annuity for the life of the spouse which is equal to the applicable percentage of the amount of the annuity which is payable during the joint lives of the participant and the spouse, and

(ii) which is the actuarial equivalent of a single annuity for the life of the participant.

Such term also includes any annuity in a form having the effect of an annuity described in the preceding sentence.

(B)

(i) For purposes of subparagraph (A), if the survivor annuity percentage—

(I) is less than 75 percent, the applicable percentage is 75 percent, and

(II) is greater than or equal to 75 percent, the applicable percentage is 50 percent.

(ii) For purposes of clause (i), the term "survivor annuity percentage" means the percentage which the survivor annuity under the plan's qualified joint and survivor annuity bears to the annuity payable during the joint lives of the participant and the spouse.

(e) "Qualified preretirement survivor annuity" defined

For purposes of this section—

(1) Except as provided in paragraph (2), the term "qualified preretirement survivor annuity" means a survivor annuity for the life of the surviving spouse of the participant if—

(A) the payments to the surviving spouse under such annuity are not less than the amounts which would be payable as a survivor annuity under the qualified joint and survivor annuity under the plan (or the actuarial equivalent thereof) if—

(i) in the case of a participant who dies after the date on which the participant attained the earliest retirement age, such participant had retired with an immediate qualified joint and survivor annuity on the day before the participant's date of death, or

(ii) in the case of a participant who dies on or before the date on which the participant would have attained the earliest retirement age, such participant had—

(I) separated from service on the date of death,

(II) survived to the earliest retirement age,

(III) retired with an immediate qualified joint and survivor annuity at the earliest retirement age, and

(IV) died on the day after the day on which such participant would have attained the earliest retirement age, and

(B) under the plan, the earliest period for which the surviving spouse may receive a payment under such annuity is not later than the month in which the participant would have attained the earliest retirement age under the plan.

In the case of an individual who separated from service before the date of such individ-

ual's death, subparagraph (A)(ii)(I) shall not apply.

(2) In the case of any individual account plan or participant described in subparagraph (B) or (C) of subsection (b)(1), the term "qualified preretirement survivor annuity" means an annuity for the life of the surviving spouse the actuarial equivalent of which is not less than 50 percent of the portion of the account balance of the participant (as of the date of death) to which the participant had a nonforfeitable right (within the meaning of section 1053 of this title).

(3) For purposes of paragraphs (1) and (2), any security interest held by the plan by reason of a loan outstanding to the participant shall be taken into account in determining the amount of the qualified preretirement survivor annuity.

(f) Marriage requirements for plan

(1) Except as provided in paragraph (2), a plan may provide that a qualified joint and survivor annuity (or a qualified preretirement survivor annuity) will not be provided unless the participant and spouse had been married throughout the 1-year period ending on the earlier of

(A) the participant's annuity starting date, or

(B) the date of the participant's death.

(2) For purposes of paragraph (1), if—

(A) a participant marries within 1 year before the annuity starting date, and

(B) the participant and the participant's spouse in such marriage have been married for at

least a 1-year period ending on or before the date of the participant's death,

such participant and such spouse shall be treated as having been married throughout the 1-year period ending on the participant's annuity starting date.

(g) Distribution of present value of annuity; written consent; determination of present value

(1) A plan may provide that the present value of a qualified joint and survivor annuity or a qualified preretirement survivor annuity will be immediately distributed if such value does not exceed the amount that can be distributed without the participant's consent under section 1053(e) of this title. No distribution may be made under the preceding sentence after the annuity starting date unless the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consent in writing to such distribution.

(2)If—

(A) the present value of the qualified joint and survivor annuity or the qualified preretirement survivor annuity exceeds the amount that can be distributed without the participant's consent under section 1053(e) of this title, and

(B) the participant and the spouse of the participant (or where the participant has died, the surviving spouse) consent in writing to the distribution,

the plan may immediately distribute the present value of such annuity.

(3)

(A) For purposes of paragraphs (1) and (2), the present value shall not be less than the present value calculated by using the applicable mortality table and the applicable interest rate.

(B) For purposes of subparagraph (A)—

(i) The term "applicable mortality table" means a mortality table, modified as appropriate by the Secretary of the Treasury, based on the mortality table specified for the plan year under subparagraph (A) of section 1083(h)(3) of this title (without regard to subparagraph (C) or (D) of such section).

(ii) The term "applicable interest rate" means the adjusted first, second, and third segment rates applied under rules similar to the rules of section 1083(h)(2)(C) of this title (determined by not taking into account any adjustment under clause (iv) thereof) for the month before the date of the distribution or such other time as the Secretary of the Treasury may by regulations prescribe.

(iii) For purposes of clause (ii), the adjusted first, second, and third segment rates are the first, second, and third segment rates which would be determined under section 1083(h)(2)(C) of this title (deter-

mined by not taking into account any adjustment under clause (iv) thereof) if section 1083(h)(2)(D) of this title were applied by substituting the average yields for the month described in clause (ii) for the average yields for the 24-month period described in such section.

(h) Definitions

For purposes of this section—

(1) The term "vested participant" means any participant who has a nonforfeitable right (within the meaning of section 1002(19) of this title) to any portion of such participant's accrued benefit.

(2)

(A) The term "annuity starting date" means

(i) the first day of the first period for which an amount is payable as an annuity, or

(ii) in the case of a benefit not payable in the form of an annuity, the first day on which all events have occurred which entitle the participant to such benefit.

(B) For purposes of subparagraph (A), the first day of the first period for which a benefit is to be received by reason of disability shall be treated as the annuity starting date only if such benefit is not an auxiliary benefit.

(3)The term "earliest retirement age" means the earliest date on which, under the plan, the participant could elect to receive retirement benefits.

(i) Increased costs from providing annuity

A plan may take into account in any equitable manner (as determined by the Secretary of the Treasury) any increased costs resulting from providing a qualified joint or survivor annuity or a qualified preretirement survivor annuity.

(j) Use of participant's accrued benefit as security for loan as not preventing distribution

If the use of any participant's accrued benefit (or any portion thereof) as security for a loan meets the requirements of subsection (c)(4), nothing in this section shall prevent any distribution required by reason of a failure to comply with the terms of such loan.

(k) Spousal consent

No consent of a spouse shall be effective for purposes of subsection (g)(1) or (g)(2) (as the case may be) unless requirements comparable to the requirements for spousal consent to an election under subsection (c)(1)(A) are met.

(l) Regulations; consultation of Secretary of the Treasury with Secretary of Labor

In prescribing regulations under this section, the Secretary of the Treasury shall consult with the Secretary of Labor.

(Pub. L. 93–406, title I, § 205, Sept. 2, 1974, 88 Stat. 862; Pub. L. 98–397, title I, § 103(a), Aug. 23, 1984, 98 Stat. 1429; Pub. L. 99–514, title XI, §§ 1139 (c)(2), 1145(b), title XVIII, § 1898(b)(1)(B), (2)(B), (3)(B), (4)(B), (5)(B), (6)(B), (7)(B), (8)(B), (9)(B), (10)(B), (11)(B), (12)(B), (13)(B), (14)(B), Oct. 22, 1986, 100

Stat. 2488, 2491, 2945–2951; Pub. L. 101–239, title VII, §§ 7861(d)(2), 7862(d)(1)(B), (3), (6)–(9), 7891(a)(1), (b)(3), (c), (e), 7894(c)(7)(A), Dec. 19, 1989, 103 Stat. 2431, 2434, 2445, 2447, 2449; Pub. L. 103–465, title VII, § 767(c)(2), Dec. 8, 1994, 108 Stat. 5039; Pub. L. 104–188, title I, § 1451(b), Aug. 20, 1996, 110 Stat. 1815; Pub. L. 105–34, title X, § 1071(b)(2), title XVI, § 1601(d)(5), Aug. 5, 1997, 111 Stat. 948, 1089; Pub. L. 107–147, title IV, § 411(r)(2), Mar. 9, 2002, 116 Stat. 51; Pub. L. 109–280, title III, § 302(a), title X, § 1004(b), title XI, § 1102(a)(2)(A), Aug. 17, 2006, 120 Stat. 920, 1054, 1056; Pub. L. 110–458, title I, § 103(b)(1), Dec. 23, 2008, 122 Stat. 5103; Pub. L. 112–141, div. D, title II, § 40211(b)(3)(B), July 6, 2012, 126 Stat. 849; Pub. L. 113–295, div. A, title II, § 221(a)(57)(B)(ii), Dec. 19, 2014, 128 Stat. 4046.)

29 U.S.C. § 1054(g) [ERISA § 204]
Decrease of accrued benefits through amendment of plan

(1) The accrued benefit of a participant under a plan may not be decreased by an amendment of the plan, other than an amendment described in section 1082(d)(2) or 1441 of this title.

(2) For purposes of paragraph (1), a plan amendment which has the effect of—

(A) eliminating or reducing an early retirement benefit or a retirement-type subsidy (as defined in regulations), or

(B) eliminating an optional form of benefit,

with respect to benefits attributable to service before the amendment shall be treated as reducing accrued benefits. In the case of a

retirement-type subsidy, the preceding sentence shall apply only with respect to a participant who satisfies (either before or after the amendment) the pre-amendment conditions for the subsidy. The Secretary of the Treasury shall by regulations provide that this paragraph shall not apply to any plan amendment which reduces or eliminates benefits or subsidies which create significant burdens or complexities for the plan and plan participants, unless such amendment adversely affects the rights of any participant in a more than de minimis manner. The Secretary of the Treasury may by regulations provide that this subparagraph shall not apply to a plan amendment described in subparagraph (B) (other than a plan amendment having an effect described in subparagraph (A)).

(3) For purposes of this subsection, any—

(A) tax credit employee stock ownership plan (as defined in section 409(a) of title 26, or

(B) employee stock ownership plan (as defined in section 4975(e)(7) of title 26), shall not be treated as failing to meet the requirements of this subsection merely because it modifies distribution options in a nondiscriminatory manner.

(4)

(A) A defined contribution plan (in this subparagraph referred to as the "transferee plan") shall not be treated as failing to meet the requirements of this subsection merely be-

cause the transferee plan does not provide some or all of the forms of distribution previously available under another defined contribution plan (in this subparagraph referred to as the "transferor plan") to the extent that—

(i) the forms of distribution previously available under the transferor plan applied to the account of a participant or beneficiary under the transferor plan that was transferred from the transferor plan to the transferee plan pursuant to a direct transfer rather than pursuant to a distribution from the transferor plan;

(ii) the terms of both the transferor plan and the transferee plan authorize the transfer described in clause (i);

(iii) the transfer described in clause (i) was made pursuant to a voluntary election by the participant or beneficiary whose account was transferred to the transferee plan;

(iv) the election described in clause (iii) was made after the participant or beneficiary received a notice describing the consequences of making the election; and

(v) the transferee plan allows the participant or beneficiary described in clause (iii) to receive any distribution to which the participant or beneficiary is entitled under the transferee plan in the form of a single sum distribution.

(B) Subparagraph (A) shall apply to plan mergers and other transactions having the effect of a direct transfer, including consolidations of benefits attributable to different employers within a multiple employer plan.

(5) Except to the extent provided in regulations promulgated by the Secretary of the Treasury, a defined contribution plan shall not be treated as failing to meet the requirements of this subsection merely because of the elimination of a form of distribution previously available thereunder. This paragraph shall not apply to the elimination of a form of distribution with respect to any participant unless—

(A) a single sum payment is available to such participant at the same time or times as the form of distribution being eliminated; and

(B) such single sum payment is based on the same or greater portion of the participant's account as the form of distribution being eliminated.

29 U.S.C. § 1133 [ERISA § 503]
Claims procedure

In accordance with regulations of the Secretary, every employee benefit plan shall—

(1)provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied, setting forth the specific reasons for such denial, written in a manner calculated to be understood by the participant, and

(2) afford a reasonable opportunity to any participant whose claim for benefits has been denied

for a full and fair review by the appropriate named fiduciary of the decision denying the claim.

(Pub. L. 93–406, title I, § 503, Sept. 2, 1974, 88 Stat. 893.)

29 C.F.R § 2560.503-1(f)
Timing of notification of benefit determination-

(1) In general. Except as provided in paragraphs (f)(2) and (f)(3) of this section, if a claim is wholly or partially denied, the plan administrator shall notify the claimant, in accordance with paragraph (g) of this section, of the plan's adverse benefit determination within a reasonable period of time, but not later than 90 days after receipt of the claim by the plan, unless the plan administrator determines that special circumstances require an extension of time for processing the claim. If the plan administrator determines that an extension of time for processing is required, written notice of the extension shall be furnished to the claimant prior to the termination of the initial 90-day period. In no event shall such extension exceed a period of 90 days from the end of such initial period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the plan expects to render the benefit determination.

29 C.F.R. § 2560.503-1(g)
Manner and content of notification of benefit determination

(1) Except as provided in paragraph (g)(2) of this section, the plan administrator shall provide a claimant with written or electronic notification of any adverse benefit determination. Any

electronic notification shall comply with the standards imposed by 29 CFR 2520.104b-1(c)(1)(i), (iii), and (iv), or with the standards imposed by 29 CFR 2520.104b-31 (for pension benefit plans). The notification shall set forth, in a manner calculated to be understood by the claimant—

(i) The specific reason or reasons for the adverse determination;

(ii) Reference to the specific plan provisions on which the determination is based;

(iii) A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary;

(iv) A description of the plan's review procedures and the time limits applicable to such procedures, including a statement of the claimant's right to bring a civil action under section 502(a) of the Act following an adverse benefit determination on review;

29 C.F.R. § 2560.503-1(h)
Appeal of adverse benefit determinations—

(1) In general. Every employee benefit plan shall establish and maintain a procedure by which a claimant shall have a reasonable opportunity to appeal an adverse benefit determination to an appropriate named fiduciary of the plan, and under which there will be a full and fair review of the claim and the adverse benefit determination.

(2) Full and fair review. Except as provided in paragraphs (h)(3) and (h)(4) of this section, the claims procedures of a plan will not be deemed to

provide a claimant with a reasonable opportunity for a full and fair review of a claim and adverse benefit determination unless the claims procedures—

(i) Provide claimants at least 60 days following receipt of a notification of an adverse benefit determination within which to appeal the determination;

(ii) Provide claimants the opportunity to submit written comments, documents, records, and other information relating to the claim for benefits;

(iii) Provide that a claimant shall be provided, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits. Whether a document, record, or other information is relevant to a claim for benefits shall be determined by reference to paragraph (m)(8) of this section;

(iv) Provide for a review that takes into account all comments, documents, records, and other information submitted by the claimant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination.

29 C.F.R. § 2560.503-1(i)
Timing of notification of benefit determination on review—

(1) In general.

(i) Except as provided in paragraphs (i)(1)(ii), (i)(2), and (i)(3) of this section, the plan administrator shall notify a claimant in accordance with paragraph (j) of this section of the plan's benefit determination on review within a reasonable period of time, but not later than 60 days after receipt of the claimant's request for review by the plan, unless the plan administrator determines that special circumstances (such as the need to hold a hearing, if the plan's procedures provide for a hearing) require an extension of time for processing the claim. If the plan administrator determines that an extension of time for processing is required, written notice of the extension shall be furnished to the claimant prior to the termination of the initial 60-day period. In no event shall such extension exceed a period of 60 days from the end of the initial period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the plan expects to render the determination on review.

(ii) In the case of a plan with a committee or board of trustees designated as the appropriate named fiduciary that holds regularly scheduled meetings at least quarterly, paragraph (i)(1)(i) of this section shall not apply, and, except as provided in paragraphs (i)(2) and (i)(3) of this section, the appropriate named fiduciary shall instead make a benefit determination no later than the date of the meeting of the committee or board that

> immediately follows the plan's receipt of a request for review, unless the request for review is filed within 30 days preceding the date of such meeting. In such case, a benefit determination may be made by no later than the date of the second meeting following the plan's receipt of the request for review. If special circumstances (such as the need to hold a hearing, if the plan's procedures provide for a hearing) require a further extension of time for processing, a benefit determination shall be rendered not later than the third meeting of the committee or board following the plan's receipt of the request for review. If such an extension of time for review is required because of special circumstances, the plan administrator shall provide the claimant with written notice of the extension, describing the special circumstances and the date as of which the benefit determination will be made, prior to the commencement of the extension. The plan administrator shall notify the claimant, in accordance with paragraph (j) of this section, of the benefit determination as soon as possible, but not later than 5 days after the benefit determination is made.

29 C.F.R. § 2560.503-1(j)
Manner and content of notification of benefit determination on review

The plan administrator shall provide a claimant with written or electronic notification of a plan's benefit determination on review. Any electronic notification shall comply with the standards imposed by 29 CFR

2520.104b-1(c)(1)(i), (iii), and (iv), or with the standards imposed by 29 CFR 2520.104b-31 (for pension benefit plans). In the case of an adverse benefit determination, the notification shall set forth, in a manner calculated to be understood by the claimant—

(1) The specific reason or reasons for the adverse determination;

(2) Reference to the specific plan provisions on which the benefit determination is based;

(3) A statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits. Whether a document, record, or other information is relevant to a claim for benefits shall be determined by reference to paragraph (m)(8) of this section;

(4)

(i) A statement describing any voluntary appeal procedures offered by the plan and the claimant's right to obtain the information about such procedures described in paragraph (c)(3)(iv) of this section, and a statement of the claimant's right to bring an action under section 502(a) of the Act; and, . . .