



PENSION ANALYST

Important information—Plan administration and operation



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DOL issues final annual funding notice rules for defined benefit plans

Who's affected

Plan administrators of single-employer, multiple employer and multiemployer defined benefit plans covered by the Pension Benefit Guaranty Corporation (PBGC) are subject to the annual funding notice requirements. Governmental plans and church plans that do not elect to be covered by ERISA ("non-electing" church plans) do not have to provide the annual funding notice.

Background and summary

Before the enactment of the Pension Protection Act of 2006 (PPA) all plans that filed Form 5500 had to furnish Summary Annual Reports (SARs) to plan participants, beneficiaries and other designated parties.

For plan years beginning after December 31, 2007, PPA requires plan administrators of defined benefit plans covered by PBGC insurance to provide annual funding notices. The goal of providing annual funding notices is to increase pension plan transparency by providing participants with timely and accurate information annually regarding the funding status of their defined benefit pension plans. Plans that are required to provide annual funding notices are no longer required to provide SARs. However, plans that are not subject to the annual funding notice requirements must still distribute SARs if they are subject to the Form 5500 filing requirement.

To assist plan administrators with the annual funding notice requirement, the DOL published interim guidance in [Field Assistance Bulletin 2009-01 \(FAB 2009-01\)](#). In 2010, the DOL issued proposed rules that incorporated the guidance provided in FAB 2009-01.

Since 2010, the DOL revised the annual funding notice to reflect the provisions of the [Moving Ahead for Progress in the 21st Century Act \(MAP-21\)](#) and the [Highway and Transportation Funding Act of 2014 \(HATFA\)](#) which require plan administrators to disclose additional information in the annual funding notice relating to the effect of interest rate stabilization on plan liabilities and the plan sponsor's minimum required contribution to the plan.

On February 2, 2015, the DOL issued final rules regarding annual funding notices. The final rules incorporate the guidance in FAB 2009-01. However, they do not incorporate the MAP-21 or HATFA guidance since this guidance is temporary.

The final rules provide guidance on:

- The timing of the notice;
- Exemptions to the notice requirement;
- Persons entitled to the notice; and
- The content of the notice.

Action and next steps

Plan sponsors should read the guidance discussed in this *Pension Analyst* and determine the information they must obtain to comply with the annual funding notice requirements. Plan sponsors with questions about the annual funding notice should contact their plan's enrolled actuary.

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Timing of notice

Plans covered by the PBGC insurance program must furnish the annual funding notice by the 120th day following the end of the plan year to which the notice relates (“notice year”). For example, for a calendar year plan that must furnish its 2015 funding notice no later than the 120th day of 2016, the “notice year” is the 2015 plan year.

However, small plans must provide the notice no later than the earlier of:

- The date on which the Form 5500 is filed; or
- The latest date the Form 5500 must be filed (including extensions).

A plan is a small plan if it had 100 or fewer participants on each day during the plan year preceding the notice year, regardless of whether it is a single-employer or multiemployer plan.

Exemptions

The final rules provide that the following plans do not have to provide annual funding notices:

- **Multiemployer plans.** The exception to the annual funding notice applies to:
 - Insolvent multiemployer plans provided the plan is in compliance with the notice requirements for insolvent plans before the due date of the funding notice; or
 - A multiemployer plan that has terminated by mass withdrawal if the due date for the funding notice is on or after the date the plan has distributed assets in satisfaction of all nonforfeitable benefit liabilities.
- **Single-employer plans.** A single-employer plan is not required to furnish a funding notice for a plan year if the due date for the funding notice is on or after the date:
 - The PBGC is appointed trustee of the plan;
 - The plan has distributed assets to satisfy all benefit liabilities or guaranteed benefits in a distress termination; or
 - The plan administrator filed a standard termination notice with the PBGC, provided the proposed termination date is on or before the due date of the funding notice and a final distribution of assets.
- **Plans that are part of a plan merger or consolidation.**
 - The plan administrator of a non-successor plan is not required to furnish a funding notice for its plan year in which the merger or consolidation occurred.
 - However, the funding notice of the successor plan, for the plan year in which the merger occurred, in addition to the [content requirements](#) discussed below, must contain a general description of the fact that the merger has taken place, including:
 - The effective date of the merger or consolidation; and
 - The name and plan number of each plan involved in the transaction.

Persons entitled to notice

Plan administrators must provide the annual funding notice to:

- Each participant covered under the plan on the last day of the notice year;
- Each beneficiary receiving benefits under the plan on the last day of the notice year;
- Each alternate payee under the plan on the last day of the notice year;
- Each labor organization (e.g. union) representing participants under the plan on the last day of the notice year;
- The Pension Benefit Guaranty Corporation (PBGC); and
- In the case of a multiemployer plan, each employer that, as of the last day of the notice year, is a party to a collective bargaining agreement under which the plan is maintained or who otherwise may be subject to withdrawal liability.

Content requirements

The annual funding notice must include the following identifying information:

- The plan name;
- The name, address and phone number of the plan administrator;
- The name, address and phone number of the plan's principal administrative officer (if different than the plan administrator); and
- Each plan sponsor's name, employer identification number and plan number.

In addition, the funding notice must include the following:

- The plan's funding percentage for the notice year and the two preceding plan years. The funding percentage indicates how well the plan is funded on a particular date.
- A statement as to whether the plan's funding for the notice year and for the preceding two plan years, is at least 100%, and if not, the actual percentage.
- The fair market value of assets as of the last day of the plan year (and for the last day of the previous two plan years, in the case of a multiemployer plan). This value may include contributions made after the end of the notice year ("contributions receivable") and before the date the notice is provided, but only if those contributions are attributable to such plan year for funding purposes.
- A statement of the value of the plan's assets and liabilities. Notices must also include a description of how the plan's assets are invested as of the last day of the plan year. Note that this requirement can be satisfied by either providing the allocation based on the type of investment (e.g., Separate Accounts, Mutual Funds, etc.), as has been the case previously, or alternatively by providing the classification of the investment (e.g., Real Estate, Stocks, Investment Grade Debt, etc.). The alternative was added as a viable way to satisfy the requirement with these final rules.
- A description of the benefits under the plan that are eligible to be guaranteed by the PBGC along with the limits on the guarantees and the circumstances under which the limits apply.
- A statement detailing the funding policy of the plan and the investment policy for the assets in the plan as of the end of the notice year.
- An explanation of any plan amendment, scheduled benefit increase or reduction, or other known event taking effect in the current plan year and having a material effect on plan liabilities or assets for the year. If an event first becomes known to a plan administrator 120 days or less before the due date of the notice, the plan administrator is not required to explain, or project the effect of, the event in the notice.
- A description of the rules on plan terminations or insolvency.

The notice must also include a statement of the number of participants and beneficiaries who, as of the valuation date of the notice year are:

- Active participants under the plan;
- Retired or separated from service and receiving benefits; and
- Retired or separated from service and entitled to receive future benefits.

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Plan administrators should apply the Form 5500 definitions of the terms “active,” “retired,” and “separated” when providing the employee counts.

Multiemployer plans

Notices issued by multiemployer plans must also include the appropriate disclosure as to whether the plan was considered to be in “endangered,” “critical” or “critical and declining” status for the notice year, as well as the description of any Funding Improvement or Rehabilitation Plan adopted as a result of being in this status.

In the case of a multiemployer plan that is in “critical and declining” status, the notice must also include:

- The projected date of insolvency;
- A clear statement that the insolvency may result in benefit reductions; and
- A statement describing whether the plan sponsor has taken legally permitted actions to prevent insolvency.

Model notice

The final rules provide two model notices. The model notice in Appendix A is intended for use by single-employer and multiple employer plans and the model notice in Appendix B is for multiemployer plans. Plans are not required to use the model notice and may use other formats. However, use of a model notice will satisfy the content requirements.

A plan administrator may include any additional information that the administrator determines would be necessary or helpful to understand the information contained in the notice, as long as it does not mislead or misinform the participants.

Effective date

The final rules apply to notices for plan years beginning on or after January 1, 2015. Prior to this date, plan administrators may elect to comply with the final rules and the DOL will consider such compliance as satisfying the annual funding notice requirements. However, in the interim, plans may continue to rely on the guidance in FAB 2009-01 until the effective date or they may rely on the final rules.

Next steps

Plan sponsors should carefully read the guidance discussed in this *Pension Analyst*. If Prudential Retirement provides actuarial services for your plan, we will annually prepare a suggested notice, using the appropriate model notice provided by the DOL. We will provide the sample notice as part of our standard actuarial/valuation services, for an additional fee.

If Prudential Retirement does not provide actuarial services for your plan, you should contact your plan’s enrolled actuary directly for assistance and guidance regarding the preparation and distribution of the notice.

Pension Analyst by Prudential Retirement

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