Pension Analyst

Plan administration | Plan administration and operation | April 2009

DOL issues model PPA annual funding notice

Who's affected

Plan administrators of single-employer, multiple employer and multiemployer defined benefit plans that are 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. In addition, multiemployer defined benefit plans had to provide annual funding notices to these individuals.

However, for plan years beginning after December 31, 2007, PPA requires administrators of all defined benefit plans that are covered by PBGC insurance to provide annual funding notices. Plans that must now provide funding notices are no longer required to provide SARs. In response to the PPA direction to develop a model annual funding notice, the Department of Labor (DOL) has recently published Field Assistance Bulletin (FAB) 2009-01, which provides guidance concerning good faith compliance with the new annual funding notice requirements. However, plans that are not subject to the funding notice requirement must still distribute SARs if they are subject to the Form 5500 filing requirement.

Specifically, FAB 2009-01:

- Clarifies when plans must first comply with the new annual funding notice requirements;
- Identifies who must receive the notice;
- Discusses the contents of the notice;
- Provides separate model notices for single-employer and multiemployer plans; and
- Indicates how the notice may be delivered.

Action and next steps

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

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Next steps

Effective date and timing of notice

The annual funding notice requirements apply to plan years beginning after December 31, 2007. Plans must furnish the notice no later than 120 calendar days after the close of the plan year. As a result, calendar year plans must furnish their first annual funding notice no later than April 30, 2009 (120 days after the close of the 2008 plan year).

However, there is a timing exception for small plans. 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 considered a small plan if it had 100 or fewer participants on each day during the plan year preceding the year to which the notice relates, regardless of whether it is a single-employer or multiemployer plan.

Applicable individuals

Plan administrators must provide the annual funding notice to:

- Plan participants;
- Plan beneficiaries;
- Alternate payees under Qualified Domestic Relations Orders (QDROs);
- Labor organizations representing participants and beneficiaries (e.g., unions);
- The Pension Benefit Guaranty Corporation (PBGC); and
- In the case of a multiemployer plan, each contributing employer that has an obligation to contribute to the plan. A contributing employer is an employer, which as of the last day of the plan year to which the notice relates, is a party to the collective bargaining agreement under which the plan is maintained.

Contents of the notice

The annual funding notice must include:

- The plan's funding percentage for the plan year to which the notice relates and the two preceding plan years;
- A statement of the value of the plan's assets and liabilities;
- A description of how the plan's assets are invested as of specific dates;
- A description of the benefits under the plan that are eligible to be guaranteed by the PBGC;
- A statement setting forth the funding policy of the plan and asset allocation of investments under the plan (expressed as a percentage of total assets) as of the end of the plan year to which the notice relates; and
- An explanation of a plan amendment, scheduled benefit increase or reduction, or other known event that has a material effect on plan liabilities or assets for the current plan year. The FAB defines "material" as a change of five percent or more in plan liabilities or a change of five percent or more in the value of plan assets, from the prior plan year.

The notice must also include a statement of the number of participants who are:

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

Until the DOL provides additional guidance, plan administrators should apply the Form 5500 definitions of the terms "active," "retired," and "separated" when providing this employee count. Since PPA does not specify which day of the plan year must be used for making this count, plan administrators should use the plan's valuation date for the plan year, which is typically the first day of the plan year.

Single-employer plans

Notices issued by single-employer plans must also include:

- A statement as to whether the plan's ***funding target attainment percentage*** for the plan year to which the notice relates and for the two preceding plan years, is at least 100%, and if not, the actual percentage.

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- The ***fair market value of assets*** as of the last day of the plan year. This value may include contributions made after the end of the plan year to which the notice relates and before the date the notice is provided, but only if those contributions are attributable to such plan year for funding purposes.
- The plan's ***year-end liabilities,*** which are equal to the present value, as of the last day of the plan year, of benefits accrued as of that date. Plan administrators may need to estimate this year-end liability for purposes of this funding notice.
- Whether the plan was considered to be ***"at risk"*** for the plan year covered by the notice, or either of the two preceding plan years. The notice must provide details about the Plan's increased liabilities for each year it was in "at risk" status.

Multiemployer plans

Notices issued by multiemployer plans must also include:

- The plan's ***funded percentage*** for the plan year, calculated by dividing the plan's assets for that year by the accrued liability of the plan for that year.
- The plan's ***assets and liabilities*** as of the valuation date for the plan year, as well as the fair market value of plan assets on the last day of the plan year, and on the same date for each of the preceding two plan years.
- The appropriate disclosure as to whether the plan was considered to be in ***"endangered" or "critical" status*** for the plan year, as well as a description of any Funding Improvement or Rehabilitation Plan adopted as a result of being in this status.

The DOL also clarifies that the model notice used by multiemployer plans for plan years beginning prior to January 1, 2008, can no longer be used because it does not contain all the information required by PPA.

Model notice

FAB 2009-01 provides 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 to satisfy the annual funding notice requirement. However, use of an appropriately completed model notice will satisfy the content requirements. In addition, the FAB includes Appendix C for single-employer plans, which contains a paragraph describing transition period data that must be included in the information provided for plan years before 2008.

Plan administrators who decide to use a model notice may add to the notice any information that is necessary or helpful to understand the required information, as long as it does not mislead or misinform plan participants.

In addition, a plan administrator may provide other notices required by ERISA along with the model notice. For example, a plan administrator may include the notice of endangered or critical status in the same mailing as the annual funding notice and explain the relationship between the two notices in the annual funding notice.

Good faith compliance

Until the DOL issues formal regulations concerning the annual funding notice, a plan administrator will be treated as satisfying the annual funding notice requirement if the administrator has:

- Complied with the guidance contained in the FAB; and
- Acted in good faith, reasonable interpretation of those requirements with respect to items not specifically addressed in the FAB.

Methods of delivery

The annual funding notice may be provided in written, electronic, or other appropriate form of delivery to the extent such form is reasonably accessible to those individuals who must receive the notice. If the notices are provided electronically, plan administrators may follow the DOL's safe harbor electronic delivery guidelines. Alternatively, plan sponsors may use other methods to deliver the funding notice electronically, as long as the delivery method is consistent with ERISA and the E-SIGN Act. Plan administrators may use different methods to deliver the notices to different groups of individuals (e.g., active employees and retirees).

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Failure to comply

The penalty for late distribution of the funding notice is $110 per day per participant.

However, the DOL has indicated that, until it publishes additional guidance, it will not penalize certain plans for failing to provide an annual funding notice to the PBGC. A plan is temporarily exempt from DOL penalties if it is:

- A single-employer plan with liabilities that do not exceed plan assets by more than $50 million, and it provides the latest available annual funding notice to the PBGC within 30 days of receiving a written request from the PBGC; or
- A multiemployer plan that is insolvent and that, as of the due date for the annual funding notice, is in compliance with the insolvency notice requirements mandated by the PBGC. Once the plan emerges from insolvency, it must comply with the annual funding notice requirements.

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 prepare a suggested notice for your 2008 plan year, using the appropriate model notice provided by the DOL. Going forward, we will annually provide a draft Notice for your review and approval in advance of your distribution deadline. We will provide the sample notice as part of our standard actuarial/valuation services, for an additional fee.

If Prudential does not provide actuarial services to you, we will not provide the annual funding notice. You should contact your Plan's enrolled actuary directly for assistance and guidance regarding the preparation and distribution of the notice.

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