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PENSION ANALYST

Important information—Plan administration and operation

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DOL issues guidance on MAP-21 annual funding notice

Who's affected

Plan administrators of single-employer defined benefit plans that are covered by the Pension Benefit Guaranty Corporation (PBGC) are subject to the recent guidance provided by the Department of Labor (DOL) in Field Assistance Bulletin 2013-01. Although multiemployer defined benefit plans must provide annual funding notices, they are not subject to the MAP-21 guidance recently issued by the DOL.

Governmental plans and church plans that do not elect to be covered by ERISA ("non-electing" church plans) do not have to provide annual funding notices.

Background and summary

For plan years beginning after December 31, 2007, the Pension Protection Act of 2006 (PPA) requires administrators of defined benefit plans that are covered by PBGC insurance to provide annual funding notices to participants, beneficiaries and other designated parties. In response to the PPA direction to develop a model annual funding notice, the DOL published Field Assistance Bulletin 2009-01.

On July 6, 2012, President Obama signed into law the "Moving Ahead for Progress in the 21st Century Act (MAP-21)." MAP-21 provided welcome funding relief for plan sponsors by providing pension interest rate stabilization, which allows plan sponsors to use higher interest rates when calculating plan liabilities. The use of higher interest rates allows plan sponsors to contribute less money to the plan to satisfy their plan funding obligations. MAP-21 also requires many plan administrators to disclose additional information on the annual funding notice for plan years beginning after December 31, 2011, and before January 1, 2015. The additional disclosures relate to the effect of MAP-21 interest rate stabilization on plan liabilities and the plan sponsor's minimum required contribution to the plan.

Recently, the DOL issued Field Assistance Bulletin (FAB) 2013-01. The FAB addresses new annual notice disclosure requirements mandated by MAP-21. Specifically, FAB 2013-01 discusses topics such as the:

- Timing of notices;
- Coverage requirements;
- Content requirements; and
- Supplement to the DOL model notice.

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 MAP-21 annual funding notice requirements. Plan sponsors with questions about the annual funding notice requirements should contact their plan's enrolled actuary.

In this issue

PPA specifies the interest rates to be used in determining the present value of a plan's normal cost and funding target by using three interest rates (segment rates), each of which applies to benefit payments expected to be paid out during a certain period.

MAP-21 revises the rules for determining the segment rates by adjusting a segment rate if it is outside a specified range of the average of the segment rates for the preceding 25-year period. The average segment rate is the average of the segment rates for the 25-year period ending September 30 of the calendar year preceding the calendar year in which the plan year begins.

Applicable plans and effective dates

The guidance provided in FAB 2013-01 applies to single-employer and multiple employer plans. MAP-21 requires plan administrators to disclose additional information on the annual funding notice in an "applicable plan year." An applicable plan year is any plan year beginning after December 31, 2011, and before January 1. 2015, where the plan:

- Had 50 or more participants on any day during the preceding plan year;
- Has a funding target that is less than 95% of the funding target determined using rates prior to MAP-21; and
- Has a funding shortfall greater than $500,000, determined using the rates prior to MAP-21.

A plan year beginning on or after January 1, 2015 is not subject to the additional MAP-21 disclosures, even if the plan satisfies the above requirements.

The first annual funding notices to include the MAP-21 information will be the annual funding notices for the 2012 plan year. 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 annual funding notice with MAP-21 information no later than April 30, 2013 (120 days after the close of the 2012 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 on which 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.

The FAB also provides guidance and an illustrative example on the application of the aggregation rule to determine the number of participants (i.e., did the plan have at least 50 participants on any day during the preceding plan year). Namely, all single-employer plans that are maintained by the same employer (or any member of the employer's controlled group) shall be treated as one plan, but only participants with respect to the employer or member shall be taken into account. *Example: Corporation A maintains Plan X, a defined benefit plan. Corporation B maintains Plan Y, a defined benefit plan. Corporation A and B are 100% owned by M. M owns 80% or more of the stock of corporations A and B. They are members of the same controlled group. The largest combined total of participants in Plans X and Y on any one day in 2013 was 70 (40 in Plan X and 30 in Plan Y). Plans X and Y are treated as one plan with a total of 70 participants even though each plan has less than 50 participants.*

The guidance also confirms when the at-risk rules are used for purposes of calculating the funding target and the funding shortfall requirements. For example, the guidance specifies that a plan does not have to determine the funding shortfall on an at-risk basis for the current plan year if the plan is not considered at-risk for the current plan year, even where the plan would have been considered at-risk in the current year had the preceding plan year's funding target been determined without respect to the MAP-21 adjusted segment rates.

Exception to MAP-21 disclosures

MAP-21 segment rates are generally effective for plan years beginning after December 31, 2011. However plan sponsors may elect to defer the application of MAP-21 segment rates for plan years beginning before January 1, 2013, either:

- For all purposes; or
- Solely for the purpose of determining funding-based restrictions.

If the plan sponsor elects out of using the MAP-21 segment rates for all purposes before the due date of the 2012 annual funding notice, the MAP-21 disclosures are not required to be included in the notice for the 2012 plan year. However, if the plan sponsor elects out of the MAP-21 segment rates solely for the purposes of applying funding-based restrictions, the plan administrator is required to include the MAP-21 disclosures in the annual funding notice for the 2012 plan year, if the three conditions for meeting the definition of "applicable plan year" described above are satisfied.

A plan sponsor may also elect to use the full corporate bond yield curve instead of the MAP-21 segment rates in determining the minimum required contribution. If a plan sponsor has elected to determine the funding target based on the full yield curve, the funding is determined without regard to the MAP-21 segment rates and the plan administrator is not required to include MAP-21 disclosures in the annual funding notice for that plan year.

Content requirements

MAP-21 requires that the following additional information must be provided on the annual funding notice:

- A statement that MAP-21 modified the method for determining the interest rates used to determine the actuarial value of benefits earned under the plan, providing for a 25-year average of segment rates to be taken into account in addition to a 2-year average;
- A statement that, as a result of MAP-21, the plan sponsor may contribute less money to the plan when interest rates are at historical lows. This statement must be included whether or not the plan sponsor contributed more than the minimum required contribution; and
- A table showing, for the applicable plan year and each of the preceding two plan years, the plan's funding target attainment percentage, funding shortfall and the employer's minimum required contribution, each determined using rates under MAP-21 and rates prior to MAP-21. FAB 2013-01 provides guidance on how to determine this information with and without MAP-21 interest rates.

FAB 2013-01 confirms that while there is no requirement to describe or include the interest rates in MAP-21 disclosures, a plan administrator may include such information to the extent it is necessary or helpful to understanding the required information, as long as it does not mislead or misinform plan participants.

MAP-21 supplement to DOL model notice

MAP-21 required the DOL to modify the annual funding notice to include additional information as described above in a prominent manner, for example, on a separate first page before the remainder of the notice. In response, FAB 2013-01 provides a supplement to the DOL annual funding notice that plan administrators may use to comply with the new MAP-21 requirements. Use of the MAP-21 supplement is not mandatory. Plan administrators may use other notice forms to satisfy the MAP-21 content requirements. However, pending further guidance, use of an appropriately completed MAP-21 supplement, together with the model annual funding notice, will satisfy the content requirements. FAB 2013-01 also confirms that the plan administrator may attach the MAP-21 supplement to the front of the model 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 FAB 2013-01;and
- Acted in accordance with a good faith, reasonable interpretation of ERISA section 101(f)(2)(D) with respect to items not specifically addressed in the FAB. *(Please note that this section of ERISA sets forth the notice requirements for describing the effect of segment rate stabilization on plan funding.)*

If a plan administrator provided the annual funding notice before the issuance of the FAB, the DOL will treat the plan administrator as satisfying the annual funding notice requirement if they acted in accordance with a good faith, reasonable interpretation of those 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 2012 plan year, including any applicable MAP-21 disclosures, using the appropriate model notice and supplement provided by the DOL.

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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