



# CLIENT ACTION Bulletin

Employee Benefits

## DOL Issues Guidance for Pension Funding Disclosures

### SUMMARY

The Department of Labor (DOL) has issued guidance on the information that a defined benefit plan administrator must provide to plan participants and others about the plan's funded status. The DOL's *Field Assistance Bulletin 2009-01 (FAB)* also includes model notices that single-employer and multi-employer plans may use to satisfy the requirements. Because the disclosure covers the funding status for plan years beginning on or after January 1, 2008, pension plan administrators will be preparing their initial disclosures now, with calendar-year plans required to furnish the information by April 30, 2009. Small plans (generally, those with 100 or fewer participants) may provide the notice when filing their Form 5500. The disclosure requirement applies to defined benefit plans covered by ERISA Title IV, and thus, governmental plans and nonselecting church plans are exempt.

### DISCUSSION

#### Background

The 2006 Pension Protection Act (PPA) created the requirement that plans provide an annual funding notice to participants and beneficiaries, any labor organization representing them, the Pension Benefit Guaranty Corporation (PBGC), and, for multiemployer plans, each contributing employer. The law, which requires plans to furnish the funding notices no later than 120 days following the close of each plan year, specifies an extensive list of information to disclose, including: the plans' assets, liabilities, and funded ratios; the plans' funding policy, investment policy, and asset allocations of investments based on a percentage of overall plan assets; the number of active and inactive participants; a summary of the rules governing plan terminations; a description of the PBGC's guaranteed benefits; and an explanation of any material amendments or benefit increases and their expected impact.

#### Single-Employer Plan Issues

For single-employer plan administrators, the FAB provides the following guidance:

- The "funding target attainment percentage" is calculated by dividing the value of the plan's assets for the relevant plan year (after subtracting any "prefunding" or "funding standard carryover" balances) by the funding target of the plan for that year. The actuarial value of assets is used to develop the funding percentage; however, the market value of assets must also be disclosed.
- In addition to reporting historical information that is typically included in the actuary's valuation report, plan administrators must present year-end assets and liabilities. The determination date is the last day of the plan year, with reasonable actuarial methods permitted to project year-end liabilities. In calculating liabilities, the interest rate used is the one in effect in the last month of the year to which the notice relates. All other assumptions are the same as those used to determine the funding target. Contributions made after year-end and before the funding notice is furnished may be included, but only if the amounts are attributable to such plan year for funding purposes.

#### Multiemployer Plan Issues

The FAB provides multiemployer plan administrators the following guidance:

- The "funded percentage" is ascertained by dividing the plan's actuarial value of assets for the relevant plan year by the accrued liability of the plan for that year, as determined under the "unit credit" funding method.
- The actuarial value of assets and liabilities used in calculating the funded percentages above should be disclosed, along with the market value of assets on the last day of the plan year to which the notice relates and for the preceding two plan years.

## Additional Guidance

For disclosures about events that have a “material effect” on plan assets or liabilities, the FAB says the DOL will consider whether, in the plan year following the plan year to which the notice relates (e.g., the 2009 plan year for the 2008 notices), an amendment, scheduled increase or reduction, or known event results or is projected to result in a change of at least 5% in either the plan liabilities or the value of plan assets from the prior plan year. The plan’s actuary also may determine that an event has a material effect, regardless of the 5% change. The FAB specifically states that, for the DOL’s enforcement policy, the funding notice need not include an event that first becomes known to the plan administrator within 120 days before the due date of the funding notice.

The FAB also provides guidance on other issues for single-employer and multiemployer plans, including:

- “Active” and “retired or separated” participants (defined as in the Form 5500) are counted as of the plan’s valuation date for the plan year.
- For the plan’s asset allocation of investments, the percentages used in the Form 5500 are appropriate. If a plan holds an interest in direct-filing entities (such as a master trust investment account or a common/collective trust), the plan administrator should include the FAB’s special statement, which requires only the insertion of contact information.
- Required disclosures about pre-PPA years include: for 2006, the plan’s funded current liability percentage; and for 2007, the plan’s funding target attainment percentage (for single-employer plans) or the plan’s funded current liability percentage (for multiemployer plans), as well as the related plan asset and liability information for both years.

## Model Notices

The FAB provides two model notices, one for single-employer plans and one for multiemployer plans. Multiemployer plans are prohibited from using the model notice available for pre-2008 plan years. Use of a model notice is not mandatory, as long as plan administrators disclose the required information, and they are permitted to add supplementary information that does not have the effect of misleading or misinforming participants. In addition, other ERISA-required notices – such as the notice of a plan’s “endangered” or “critical” status – may be included in the same mailing as the funding notice. The notices may be furnished to recipients electronically.

## “Good-faith” Compliance

The FAB, which is directed at DOL offices with enforcement authority, acknowledges the lack of guidance about compliance with the funding notice requirements. Until such guidance is issued, the DOL will treat plan administrators as being in compliance if they adhere to the FAB guidance and act in accordance with a good-faith, reasonable interpretation of requirements that are not addressed in the FAB. Pending further guidance, the DOL also will take no enforcement action for single-employer plans that fail to furnish the notice to the PBGC if: a plan’s liabilities do not exceed plan assets by more than \$50 million and the administrator supplies the latest available annual funding notice to the PBGC within 30 days of a request. Enforcement action also will not be taken for insolvent multiemployer plans that are in compliance with the insolvency notice requirements.

## ACTION

Plan administrators should review the FAB and the model notices with the plan’s actuary to determine whether all of the required information is available. Plans should consider using the model notices, because doing so will save time and result in presumed compliance with the notice content requirements. If necessary, plan administrators should prepare, update, or obtain any required but missing or outdated information, such as a summary of the funding and investment policies, and should do so in sufficient time to ensure distribution to the relevant parties by the disclosure deadline.

For additional information about the DOL’s annual funding notice requirements, please contact your Milliman consultant.

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