

DOL Issues Guidance and Model PPA Annual Funding Notice for Defined Benefit Plans

The DOL has just issued [Field Assistance Bulletin \(FAB\) 2009-01](#), which provides limited guidance and a model notice for defined benefit plans that will constitute good faith compliance with the annual funding notice requirements of ERISA Section 101(f) as amended by the Pension Protection Act of 2006 (PPA).

Background

Effective for 2008 plan years, all PBGC-covered defined benefit plans are required to provide an annual funding notice to each plan participant and beneficiary, each labor organization representing the participants, the PBGC, and in the case of a multiemployer plan, each employer that has an obligation to contribute to the plan. This notice generally must be distributed no later than 120 days after the end of each plan year, so that calendar year plans must distribute their first notice by April 30, 2009. (For small plans, generally those with fewer than 101 participants, the distribution deadline for the notice is the earlier of the due date or the actual filing date for the plan's Form 5500.)

PPA requires that the notice include detailed financial information. It must specify the plan's "funded status" for the year to which the notice relates, as well as the two preceding plan years, and its liabilities (which can reflect reasonable estimates) and the fair market value of assets (with an allocation by investment category) as of the end of the plan year. In addition, the notice must include a description of the plan's funding policy and investment policy.

The notice must also include information on the number of participants, an explanation of each plan amendment or other event that has occurred or is expected to occur in the current plan year (i.e., the plan year after the plan year to which the notice relates) and that had or is expected to have a material effect on assets or liabilities, a general description of the benefits under the plan guaranteed by the PBGC, and an explanation of how the PBGC guarantees work. Multiemployer plans are required to provide additional information.

Field Assistance Bulletin (FAB) 2009-01

Yesterday, the DOL issued FAB 2009-01, which provides limited guidance on the PPA notice requirements in the form of questions and answers and includes two model notices – one for single employer plans and one for multiemployer plans.

The FAB specifies the policy that DOL will follow in the enforcement of the PPA funding notice requirements. Since no other guidance has been issued to date, plan administrators who comply with the guidance in the FAB and rely on a good faith reasonable interpretation of the requirements with respect to issues not covered in the FAB will be treated as having satisfied the requirements.

The biggest challenge for plan sponsors may be complying with the model notice's requirements for the specification of the year-end investment allocation of plan assets. The level of detail is equivalent to the Form 5500 filing. By requiring the inclusion of this information in a notice that must be distributed by April 30 for most calendar year plans, the DOL has effectively accelerated its preparation by at least three months. Plan sponsors are advised to contact the preparers of this information for the Form 5500 filing and alert them to this new deadline.

Conclusion

This new guidance, including the model notices, provides a framework to begin gathering information and creating the required notice which, for most calendar year plans, is required to be issued by April 30. Your Buck consultant will contact you shortly to discuss next steps.

This Newsflash is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.