



SPECIAL BULLETIN

DOL Issues Model Annual Funding Notices Required By PPA

The Department of Labor (DOL) just released *Field Assistance Bulletin (FAB) 2009-1* which addresses the annual funding notice (AFN) requirements added by the *Pension Protection Act of 2006 (PPA)*. PPA Section 501 amended Section 101(f) of the *Employee Retirement Income Security Act (ERISA)*, making significant changes to the AFN requirements. An AFN must include, among other things, the plan's funding percentage, a statement of the value of the plan's assets and liabilities and a description of how the plan's assets are invested as of specific dates, and a description of the benefits under the plan that are eligible to be guaranteed by the PBGC.

The *FAB* is available at: <http://www.dol.gov/ebsa/regs/fab2009-1.html> or by "[clicking here](#)." The *FAB* contains 17 Questions and Answers (Q&As) on the AFN and model notices.

The Q&As

A specially prepared version of the Q&As with an added Table of Contents is available by "[clicking here](#)."

Model Annual Funding Notices

The model single employer and multiemployer notices and a section on "transition information" are found as Appendixes A-C of the *FAB*. According to the DOL, use of the model notices is not mandatory and plans may use other notice forms to satisfy the new annual funding notice content requirements. However, the DOL noted that pending further guidance use of an appropriately completed model notice will satisfy the content requirements of Section 101(f) of *ERISA*.

A copy of the model multiemployer AFN in Word is available by "[clicking here](#)." A copy of the model single employer AFN in Word is available by "[clicking here](#)." A copy of the "transition data" document found in Appendix C is available by "[clicking here](#)." The language in the "transition data" document should be inserted in the model notice directly below the Funding Target Attainment Percentage chart or the Funded Percentage chart. See Q&A 16.

Q&A 13 addresses the inclusion of “additional information” in the AFN and also whether the Plan must distribute the AFN separately. According to Q&A 13, plan administrators may include in the AFN “any additional information which the plan administrator elects to include to the extent not inconsistent with regulations prescribed by the Secretary.” Accordingly, pending further guidance, a plan administrator who decides to use a model may elect to add any additional information that is necessary or helpful to understanding the mandatory information and that does not have the effect of misleading or misinforming participants. Plans are not required to add such information at the end of the model under a separate heading, as is the case for multiemployer plans with respect to notices relating to plan years beginning on or before December 31, 2007.

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

Excerpts from the Introduction of the FAB

Section 101(f) of *ERISA* sets forth requirements applicable to furnishing AFNs. Before the *PPA*, Section 101(f) applied only to multiemployer defined benefit plans. Section 501(a) of the *PPA* amended Section 101(f) of *ERISA*, making significant changes to the AFN requirements. These *PPA* amendments require administrators of all defined benefit plans that are subject to Title IV of *ERISA*, not only multiemployer plans, to provide an AFN to (1) the Pension Benefit Guaranty Corporation (PBGC), (2) to each plan participant and beneficiary, (3) to each labor organization representing such participants or beneficiaries, and (4) in the case of a multiemployer plan, to each employer that has an obligation to contribute to the plan.

The *PPA* amendments to *ERISA* Section 101(f) apply to plan years beginning after December 31, 2007.

Concerns about the imminent compliance date of the new AFN requirements, the absence of regulatory guidance from the DOL, and the cost and burdens attendant to AFN compliance efforts prior to the adoption of AFN regulations prompted the DOL to issue *FAB 2009-1*.

Good Faith Compliance

Pending further guidance, the DOL will, treat a plan administrator as satisfying the requirements of *ERISA* Section 101(f), if the administrator has complied with the guidance contained in this memorandum and has acted in accordance with a good faith, reasonable interpretation of those requirements with respect to matters not specifically addressed in the *FAB*.

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