



CLIENT BULLETIN

Multiemployer Defined Benefit Plan Funding Notices Required To Be Distributed Annually Year Beginning With The First Plan Year After The 2004 Plan Year

The *Pension Funding Equity Act of 2004* ("PFEA") added a new subsection (f) to *ERISA 101*. [ERISA Section 101\(f\)](#) contains new funding notice ("Notice") requirements applicable to multiemployer defined benefit plans. The Notice requirements DO NOT apply to multiemployer DC plans. The DOL is required by the *PFEA* to issue regulations and a model Notice by mid-April 2005. Multiemployer defined benefit plans should begin thinking about this new requirement and add it to the list of "things to do" each year. The Notice requirements are discussed below.

In General

Administrators of **multiemployer defined benefit plans** shall provide a plan funding Notice to: (1) each plan participant and beneficiary; (2) each labor organization representing such participants or beneficiaries; (3) each employer that has an obligation to contribute under the plan; and (4) to the Pension Benefit Guaranty Corporation (PBGC) **for each plan year beginning with the first plan year after 2004**.

Required Identifying and Funding Information

The Notice is required to contain the following **identifying information**: (1) the name of the plan; (2) the address and phone number of the plan administrator and the plan's principal administrative officer; (3) each plan sponsor's employer identification number, and (4) the plan number of the plan.

The Notice is also required to contain the following plan **funding information**: (1) a statement as to whether the plan's funded current liability percentage for the plan year to which the Notice relates is at least 100% (and, if not, the actual

percentage); (2) a statement of the value of the plan's assets, the amount of benefit payments, and the ratio of the assets to the payments for the plan year to which the Notice relates; (3) a summary of the rules governing insolvent multiemployer plans, including the limitations on benefit payments and any potential benefit reductions and suspensions (and the potential effects of such limitations, reductions, and suspensions on the plan); and (4) a general description of the benefits under the plan which are eligible to be guaranteed by the PBGC, along with an explanation of the limitations on the guarantee and the circumstances under which such limitations apply.

Each Notice shall also include any additional information which the plan administrator elects to include (to the extent not inconsistent with the regulations that will be issued by the DOL).

Time for Providing Funding Notice

Each year the Notice shall be provided no later than two months after the deadline (including extensions) for filing the annual report for the plan year to which the Notice relates. The annual distribution due date for a funding notice would be the same as for the summary annual report (SAR) which is within 9½ months after the end of a specific plan year. If adopted, it probably will make sense to include the Notice in the same mailing as the SAR in order to make sure the Notice gets out on time and to save on mailing costs.

Form and Manner of Notice

Any Notice: (1) shall be provided in a form and manner prescribed in regulations of the Secretary; (2) shall be written in a manner so as to be understood by the average plan participant, and (3) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to persons to whom the Notice is required to be provided. The DOL is to issue any needed regulations to implement the Notice requirement and provide a model Notice by mid-April 2005.

Penalties for Failing to Provide Notice

It wouldn't be *ERISA* if there weren't penalties attached for failure to provide the Notice. Administrators who do not provide an annual multiemployer plan funding Notice will be subject to the civil penalties under *ERISA 502(c)* of up to \$110 per day for each failure to provide the Notice. Each failure to provide a Notice to a single participant or beneficiary is a separate violation with respect to that participant or beneficiary. Each such violation is treated as a separately for purposes computing the civil penalty. For example, a plan with 1,000 participants and beneficiaries that failed to provide the Notice could conceivably be fined \$110,000 in a single year. Unlikely, but possible.

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