

CLIENT BULLETIN

Final Multiemployer DB Funding Notice Regulation Issued Applicable 1st Plan Year On or After January 1, 2015

Model Notice Included

The Department of Labor (DOL) just issued a [final regulation](#) concerning the required annual defined benefit funding notices for single and multiemployer plans, as well as model notices. The DOL [Fact Sheet](#) contains a helpful summary of the regulation.

We will concentrate on the [multiemployer](#) funding notice regulations and model multiemployer notice. The final regulation is mostly similar to the proposed regulation, but some changes were made to simplify the disclosure and reduce cost burdens on plans, including the adoption of narrow exemptions and alternative methods of compliance. The final regulation also reflects changes made to Section 101(f) of *ERISA* made by the *Multiemployer Pension Reform Act of 2014 (MEPRA)*. *MEPRA* was discussed in [Client Bulletin 2014-60](#).

The proposed regulation was discussed in detail in [Client Bulletin 2010-83](#). In addition to the funding regulations, the DOL also made minor conforming amendments to two *ERISA* regulations. One change was made to the DOL's summary annual report regulation (29 CFR 2520.104b-10) to implement the *PPA*'s repeal of *ERISA*'s summary annual report requirement for plans subject to Section 101(f) of *ERISA*. The other change was made to the DOL's small plan audit waiver regulation (29 CFR 2520.104-46).

The final funding notice regulation is available by "[clicking here](#)." A redline showing the changes the final regulation made to the proposed regulation is available by "[clicking here](#)."

A Word version of the multiemployer model funding notice is available by "[clicking here](#)." A redline version showing the changes the final model notice made to the proposed model notice is available by "[clicking here](#)."

A picture being worth a thousand words, a review of the redlines allows one to quickly note the differences between the proposed regulations and model notice and the final regulations and model notice.

New Funding Status

Some of the changes to the model notice reflect the new funding status designated by *MEPRA* for multiemployer plans, *critical and declining status*. A plan is in "critical and declining" status if it is in critical status and is projected to become insolvent (run out of money to pay benefits) within 15 years (or within 20 years if a special rule applies). Such plans must include in their notice: (1) the projected date of insolvency (2) a clear statement that such insolvency may result in benefit reductions; and (3) a statement describing whether the plan sponsor has taken legally permitted actions to prevent insolvency. Another *MEPRA* change resulted in the removal of the notice section on "reorganization rules."

Other Changes

- Adding alternate payees under the plan on the last day of the notice year to the list of persons or entities which must be provided a copy of the annual funding notice.
- Adding an alternative method of notice compliance for multiemployer plans terminated by mass withdrawal.
- Removing "market fluctuations" from the list of events in the notice which are considered to have a "material effect" on the value of plan assets and liabilities. The regulation still allows the addition of any additional information that the plan administrator elects to include, provided that such information is necessary or helpful to understanding the mandatory information in the notice, or is otherwise permitted by law and the effect of market fluctuations is one such item.
- Providing an alternative method of listing the plan's asset allocations.

Plan professionals will want to review the changes and plan actuary's will no doubt be interested in the new rules for plans in critical and declining status, as well as other tweaks to the proposed regulation.

Important Dates

The final regulation is applicable to notices for plan years beginning on or after January 1, 2015. The funding notice generally must be furnished no later than 120 days after the close of the plan year. For a calendar year plan, the first funding notice would need to be furnished no later than April 29, 2016.

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