

EMPLOYEE BENEFITS UPDATE

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Department of Labor Issues Guidance on Annual Funding Notice Requirements for Defined Benefit Plans

The U.S. Department of Labor ("DOL") recently issued Field Assistance Bulletin 2009-01 which provides guidance on the defined benefit plan annual funding notices required by the Pension Protection Act of 2006 ("PPA"). The PPA requires administrators of defined benefit plans subject to Title IV of the Employee Retirement Income Security Act ("ERISA") (including single employer defined benefit plans) to provide an annual funding notice to each plan participant and beneficiary, the Pension Benefit Guaranty Corporation ("PBGC"), and to each labor organization representing plan participants.

Effective Date

The annual funding notice requirements apply to plan years beginning on or after January 1, 2008. Generally, the notices must be provided within 120 days after the end of the plan year, which means that the first notice for calendar

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year plans must be provided by April 30, 2009. Notices for small plans (plans with less than 100 participants) must be provided no later than the earlier of (1) the date on which the annual report is filed under Section 104(a) of ERISA or (2) the latest date the annual report must be filed under that section (including extensions).

Good Faith Compliance

Since no other guidance has been issued to date, plan administrators who comply with the guidance in the Field Assistance Bulletin, and who rely on a good faith, reasonable interpretation of those requirements with respect to matters not specifically addressed in the Field Assistance Bulletin, will be treated as satisfying Section 101(f) of ERISA.

Model Notice

In addition to providing guidance in the form of questions and answers, Field Assistance Bulletin 2009-01 contains a model notice for single employer plans and a separate model notice for multi-employer plans. Plan administrators are not required to use the model notices, but the use of the model notice will satisfy the annual funding notice requirements of ERISA. Administrators who elect to use the model notice may supplement the notice with additional information necessary or helpful to understanding the mandatory information

as long as the additional information does not have the effect of misleading or misinforming participants. Moreover, administrators may furnish other notices required by ERISA in the same mailing as the annual funding notice.

Content Requirements

Among other things, the annual funding notice must include the following:

- the plan's funding target attainment percentage for the plan year to which the notice relates and the two prior plan years;
- the value of the plan's assets and liabilities for the plan year to which the notice relates;
- participant information including the number of participants receiving benefits from the plan, the number of terminated participants entitled to future benefits from the plan, and the number of active participants in the plan;
- the funding policy of the plan and the asset allocation of investments under the plan; and
- an explanation of events that may have a material effect on the plan's assets or liabilities for the plan year.

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Electronic Transmission

The annual funding notice may be transmitted in an electronic format to the extent that such transmission affords reasonable access to persons to whom the notice is required to be provided.

If you have any questions regarding the annual funding notice or this article, please contact any member of the Snell & Wilmer L.L.P. employee benefits group.

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