

Pension ANALYST

Important Information

Plan Administration and Operation

April 2006



DOL Publishes Final Rules Regarding Funding Notice Requirement For Defined Benefit Multiemployer Plans

WHO'S AFFECTED This rule only applies to multiemployer defined benefit plans.

BACKGROUND AND SUMMARY The Pension Funding Equity Act of 2004 (PFEA) requires the administrator of a multiemployer defined benefit plan to provide participants, beneficiaries and other interested parties, including the Pension Benefit Guaranty Corporation (PBGC), with an annual funding notice. This notice must disclose the plan's funded current liability percentage. In general, it must be issued within nine months after the close of the plan year.

On January 11, 2006, the Department of Labor (DOL) published final rules regarding these notice requirements, including a model notice. This publication provides a brief summary of the DOL rules, which are effective February 10, 2006, and highlights key provisions. It also includes a link to the model notice. For plans with calendar plan years, the first notice will have to be provided by September 30, 2006, at the earliest.

ACTION AND NEXT STEPS Sponsors of defined benefit multiemployer plans and their advisors should familiarize themselves with the information contained in this publication. You will want to discuss the notification requirement with the plan's enrolled actuary. Prudential Retirement's enrolled actuaries are well prepared to discuss the notification requirement.

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For plan years beginning after December 31, 2004, PFEA requires multiemployer plans to provide an annual funding notice to plan participants, beneficiaries and other specified individuals. The purpose of this notice requirement is to provide timely disclosure of information concerning the funding status of these plans. Increasing the amount of information available to participants, beneficiaries, the labor organizations representing them, contributing employers, and the PBGC will give these parties a greater opportunity to

monitor these plans' financial condition and take action where necessary. This information may also be useful in corporate merger or acquisition situations.

Who Must Provide the Notice?

Every multiemployer plan must provide this funding notice, regardless of the plan's funding level. Even a fully-funded plan must provide this notice. However, the notice does not have to be provided for any plan year that the plan is receiving financial assistance from the PBGC.

Who Must Receive the Notice?

The notice must be provided to:

- Each participant covered under the plan;
- Each beneficiary receiving benefits under the plan;
- Each labor organization representing participants under the plan;
- Each employer that is a party to the collective bargaining agreement(s) that govern the plan or that may be subject to withdrawal liability; and
- The PBGC.

The notice must be provided to individuals who are participants or beneficiaries as of the last day of the plan year to which the notice relates. The notice must also be provided to labor organizations and employers with relationships to the plan as of the last day of that plan year.

When Must the Notice Be Provided?

In general, a funding notice must be provided within nine (9) months after the close of the plan year to which it relates. *For example, if Multiemployer Plan XYZ has a calendar plan year, the first notice must be issued by September 30, 2006.*

However, if a plan receives an extension of time to file its Form 5500 annual report, the notice must be furnished within two months after the close of the extension period. *For example, if Multiemployer Plan XYZ receives a 2005 Form 5500 filing extension to October 15, 2006, it will have until December 15, 2006, to furnish the funding notice.*

How Must the Notice Be Provided?

The notice must be furnished in any manner reasonably calculated to ensure actual receipt of the material. Acceptable methods of distribution include:

- In-person delivery;
- A special insert in a publication distributed to employees (e.g., a union newspaper);
- 1st class mail;
- 2nd or 3rd class mail, but only if return and forwarding postage is guaranteed and address correction is requested;
- Electronic media, as long as [certain conditions](#) are satisfied.

It is not acceptable merely to place copies of the notice in a location frequented by participants.

Since the deadline for furnishing this funding notice is the same deadline established for providing the summary annual report (SAR), the DOL rules allow plans to simultaneously furnish both notices in the same mailing.

What is the Penalty for Failing to Provide the Notice?

Any plan administrator who does not provide this notice to a participant or beneficiary may be personally liable for a fine of up to \$110 per day from the date of the failure. A court may order additional fines.

What Information Must the Notice Contain?

Under the final rules, the funding notice must be written in a manner calculated to be understood by average plan participants and must include the following information, consistent with the information included in the plan's Form 5500 filed for the plan year to which the funding notice relates:

- The plan name;
- The plan administrator's address and phone number;
- The plan sponsor's employer identification number;
- The plan number;
- 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 percent (and if not, the actual percentage);
- A statement of the market value of the plan's assets (and valuation date), the amount of benefit payments, and the ratio of assets to the payments for the plan year to which the notice relates;
- 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);
- A general description of the benefits under the plan eligible to be guaranteed by the PBGC and the limits of this guarantee.

Additional information that may be necessary or helpful in understanding the information in the notice may also be included. Such additional information is added at the end of the notice under the heading "Additional Explanation."

The final rules include a [model notice](#) that may be used to satisfy the notice requirement. Plans that use this model notice will be deemed to satisfy the requirements for content, style and format of the notice except with respect to any other information that the plan administrator chooses to include. However, plans are not required to use the model notice.

Where to Get Help

A plan's enrolled actuary is in the best position to provide assistance concerning the notice requirements discussed in this publication. You should contact the plan's enrolled actuary to discuss these requirements. In addition, you may want to discuss the notice requirement with the fund counsel.

Pension Analyst by Prudential Retirement

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