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Volume 38 | Issue 8 | January 16, 2015

DOL: Annual Funding Notice Redo Not Needed for HATFA

The DOL has released instructions for plan administrators tasked with preparing annual funding notices (AFNs) for ERISA single-employer defined benefit plans in light of the HATFA extension of MAP-21. Most plans using the MAP-21 segment rates to determine minimum funding requirements must provide information about the effect of MAP-21 / HATFA rates on plan liabilities and minimum contribution requirements. Under DOL's new guidance, plan administrators are not required to re-issue previously provided AFNs to reflect HATFA changes; indeed, notices already in production can go out without the changes up through February 13, 2015.

Background

Under ERISA, plan administrators are required to provide an annual funding notice within 120 days after the end of each plan year. Small plans (100 or fewer participants) have a due date linked to the earlier of the filing or due date of Form 5500. The notice includes funding information such as the plan's funding percentage, asset, liability, and credit balance information, an explanation of plan amendments and scheduled benefit changes, and PBGC guarantees.

For most plans that use the stabilized discount rates offered by the Moving Ahead for Progress in the 21st Century Act (MAP-21), disclosures about the effect of the stabilized rates on minimum funding requirements and on plan funding percentages were required to be included in the annual funding notice (AFN). (See our [July 6, 2012](#) and [March 11, 2013](#) *For Your Information* publications). Under MAP-21, this information was required for plan years beginning in 2012, 2013, and 2014. Information was required for a year if:

- All defined benefit plans of the controlled group covered 50 or more participants in aggregate on any day of the preceding plan year.
- The stabilized funding target is less than 95% of the regular funding target for the year.
- The funding shortfall without stabilization for the year is \$500,000 or more.



In connection with the extension of the MAP-21 funding stabilization rules by the Highway and Transportation Funding Act of 2014 (HATFA), the requirement to disclose the effect of the stabilized rates was also extended. AFNs will report this information through the 2019 plan year.

For many plans, AFNs for the 2013 plan year had already been issued before HATFA was enacted, so a key question is whether revised AFNs are needed to meet the ERISA mandate if choosing to accept the retroactive application of the funding relief for the 2013 plan year.

New Model Notice and Good Faith Guidance

DOL's [Field Assistance Bulletin 2015-01](#) advises that plan administrators who follow a good faith, reasonable interpretation of the notice requirement will not encounter enforcement troubles from the DOL. FAB 2015-01 provides guidance on what that means for the 2013 plan year with retroactive changes in values and provides a new model notice updated to describe the HATFA changes. It also changes the position taken in FAB 2013-01 that had required the value of plan assets determined without regard to the MAP-21 interest rates and an accompanying explanation be stated in the notice.

30-Day Window and Unknown Elections

In FAB 2015-01, DOL offers a very practical approach to notices for the 2013 plan year. If the notice has already been provided, it is not necessary to re-issue it with numbers modified to reflect HATFA. However, DOL points out that a revised notice can be provided if the plan administrator determines that it is in the best interest of participants to do so. Allowing that decisions still might not be in place for some plans, DOL says an unadjusted notice could be used up through February 13 (30 days from the date of the Bulletin) and yet still qualify as good faith compliance.

Comment. If the information is readily available and the plan sponsor has informed the plan actuary to use the HATFA rates for 2013, we recommend using the updated model with the HATFA information even though DOL's 30-day window would allow a different result.

Even after the February 13 cutoff, there will still be situations where uncertainty remains about whether the HATFA rates will be used. In cases where the plan sponsor has not elected out of HATFA by the due date of the notice and the plan administrator reasonably believes no such election will be made, the AFN should be prepared using the HATFA rates. In such cases, a revised notice is not needed if an election is actually made. For example, the election deadline for a plan with a November 1, 2013 to October 31, 2014 plan year could be as late as August 15, 2015. The 120 day due date for the AFN is February 28, 2015.

In Closing

DOL's guidance calls for a rational approach to communicating the required plan information to participants and other relevant parties. With the updated model language, plan actuaries can assist plan administrators with any remaining 2013 plan year disclosures and be positioned to handle the next set as required for 2014 plan years.

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Produced by the Knowledge Resource Center of Buck Consultants at Xerox

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