

January 17, 2011

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210
Attention: Annual Funding Notice for Defined Benefit Plans

Regulation Identifier Number (RIN) 1210-AB18

Dear Sir or Madam:

Towers Watson appreciates the opportunity to comment on the proposed changes to the annual funding notice regulations under ERISA section 101(f), as published on November 18, 2010 in the Federal Register.

We thank the Department of Labor for providing regulatory guidance on the changes made to annual funding notice rules by the Pension Protection Act and the Worker, Retiree, and Employer Recovery Act, and we applaud the approach taken by the Department in addressing many of the interpretive questions that have been raised. However, there are a number of areas in which we have comments, which are discussed below.

Towers Watson is a leading global professional services company specializing in employee benefits, human capital strategies, and technology solutions. Towers Watson was established on January 1, 2010 as a combination of the former Watson Wyatt and Towers Perrin, and employs approximately 14,000 associates on a worldwide basis. Our more than 600 Enrolled Actuaries under ERISA provide actuarial and consulting services to more than 1,500 defined benefit plans in the U.S. The undersigned have prepared our firm's response with input from others in the firm.

Reliance on the Proposed Regulations

According to the preamble, FAB 2009-01 remains in effect until the DOL adopts final regulations under section 101(f) of ERISA (or publishes any other guidance under section 101(f) of ERISA other than final regulations). However, the issue of reliance on the proposed regulations was not addressed.

The DOL should clarify that following the guidance in the proposed regulations satisfies the good faith standard in FAB 2009-01. This would be particularly useful where a plan has been terminated or there has been a merger during the plan year since the proposed regulations provide exceptions in such situations that did not exist under prior guidance.

Plan Mergers

Under the proposal, in a plan merger situation, a disappearing plan is not required to furnish a funding notice for its final plan year. Instead, the funding notice of the surviving plan for the plan year in which the merger occurred must include, in addition to other required information, a general explanation of the merger, including the effective date of the merger, and the identity of each plan involved. However, the proposed regulations do not address how the historical funding information (i.e., assets and liabilities and funding target attainment percentage for the two preceding years) should be presented in the funding notice for the surviving plan. The DOL should clarify that the historical funding information should be presented on a plan-by-plan basis (i.e., where the funding information for each merged plan is shown separately). Providing the historical funding information on a combined basis may be confusing for participants, would require additional effort and would produce numbers with no actual relevance.

Changes in Funding Percentage Information

On occasion, the year-end asset values reported on the annual funding notice (which are often unaudited) may differ from those reported on the Form 5500 (i.e., after the audit has been completed). Also, the liabilities may differ from those reported on the Form 5500 (e.g., due to an updated valuation after the issuance of the notice). A change in either assets or liabilities could cause a change in the funding target attainment percentage.

The DOL has indicated informally (in Green Book Q&A-9 from the 2009 Enrolled Actuaries meeting) that plan administrators are not required to issue a revised annual funding notice for a plan year simply because the asset, liability or funding target attainment percentage information reported on the notice changes between the date the notice is furnished and the date the plan's Form 5500 for that same year is filed. However, it would be helpful if this issue was formally addressed in the final regulations.

Disclosure of Recent Material Effect Events

An annual funding notice for a single-employer plan must contain an explanation of any plan amendment, scheduled benefit increase or reduction, or other known event taking effect in the current plan year and having a material effect on plan liabilities or assets for the year, as well as a projection to the end of such plan year of the effect of the amendment, scheduled increase or reduction, or event on plan liabilities.

In FAB 2009-01, the DOL indicated that as a matter of enforcement policy, "if an otherwise disclosable event first becomes known to the plan administrator 120 days or less before the due date for furnishing the notice, such event is not required to be included in the notice." This policy was not included in the proposed regulation.

The preamble to the proposed regulations describes the thinking behind including this policy in the FAB. It is simply impractical after some point to expect a plan administrator to reflect an event, especially considering that the event will be reflected in the notice for the following year. We agree with this thinking and believe that the policy should be included in the final regulations. The 120-day period in the FAB strikes a reasonable and appropriate balance between the participants' need for timely information and the administrative and financial burden that would otherwise be placed on defined benefit plan sponsors.

Time for Furnishing the Notice

Notices generally must be furnished no later than 120 days after the end of the notice year. However, where the notice is mailed to recipients, it is unclear whether the notice must be mailed by April 30 or received by April 30 (assuming a calendar year plan). The DOL should clarify that an April 30 postmark is acceptable.

Date for Determining Recipients of the Notice

The annual funding notice must be distributed to participants, beneficiaries, each labor organization representing participants under the plan, and the PBGC. However, the statute does not specify the date that should be used to determine participant/beneficiary status. The proposed regulations would use the valuation date for the notice year to determine the participant counts that must be disclosed in the notice but would require that the notice be provided to individuals who are participants or beneficiaries as of the last day of the notice year.

However, in some cases, data as of the first day of the notice year (i.e., the valuation date for most plans) may be the most up to date information available to the sponsor without substantial additional cost and effort. The DOL should permit sponsors to choose between the valuation date and the last day of the notice year (if different from the valuation date) as the date for determining participant/beneficiary status, provided the date chosen is used consistently from year-to-year.

Thank you for the opportunity to comment on the proposed regulation. If your staff has any questions concerning our comments, please contact either of the undersigned directly.

Sincerely,



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