

Comments on Proposed Rule Regarding Annual Funding Notice for Defined Benefit Plans

January 18, 2011

**Department of Labor
Employee Benefit Security Administration
29 CFR Part 2520
[RIN 1210-AB18]**

The American Society of Pension Professionals & Actuaries (ASPPA) appreciates this opportunity to comment on the proposed regulations on the annual funding notice for defined benefit plans issued by the U.S. Department of Labor on November 18, 2010.

ASPPA is a national organization of more than 7,500 retirement plan professionals who provide consulting and administrative services for qualified retirement plans covering millions of American workers. ASPPA members are retirement professionals of all disciplines, including consultants, investment professionals, administrators, actuaries, accountants and attorneys. Our large and broad-based membership gives ASPPA unique insight into current practical applications of ERISA and qualified retirement plans, with a particular focus on the issues faced by small- to medium-sized employers. ASPPA's membership is diverse but united by a common dedication to the employer-sponsored retirement plan system. All credentialed actuarial members of ASPPA are members of the ASPPA College of Pension Actuaries (ASPPA COPA), which has primary responsibility for the content of comment letters that involve actuarial issues.

Summary of Recommendations

The Pension Protection Act of 2006 (PPA) modified ERISA §101(f) to require an annual funding notice for all PBGC-covered plans, instead of just multi-employer plans, and to spell out in some detail the content of the notice. The purpose of the Annual Funding Notice requirement is to provide more transparency about a defined benefit plan's funded status, as well as information on what benefits would be protected by PBGC if the plan were to terminate with insufficient assets. Although our comments are specific to the single-employer plan sponsor, some comments would also apply to multiple-employer plan sponsor issuers of the Annual Funding Notice.



The following is a summary of ASPPA COPA's recommendations which are described in greater detail in the Discussion of Issue section.

- I. The model Annual Funding Notice (AFN) should be reorganized to make it easier to read.
- II. Multi-year participant data should be provided in a format that helps readers put changes in plan liabilities and assets into perspective.
- III. PBGC information should be less detailed in the notice, with links to information on the PBGC website. (Participants would also be able to request additional printed information from the plan administrator.)
- IV. Disclosure of an event that is not known at least 120 days before the due date of the AFN should not be required. In addition, the final rule should clarify that a material event for purposes of IRC §430 and §436 has the same meaning as a material change in the Adjusted Funded Target Attainment Percentage (AFTAP) of the plan.

Discussion of Issues

The model notice in the proposed rule follows the Department of Labor Field Assistance Bulletin (FAB) 2009-01 in many respects, so practitioners are likely to be following procedures consistent with the FAB. Our comments focus on issues raised in the proposed rule that differ from the FAB.

- I. **Model notice format.** The FAB 2009-01 model notice was about five pages long, and the model notice in the proposed rule could be seven pages or more. We are concerned that the longer the notice, the less likely participants and beneficiaries will read it. Additionally, the model notice includes long definitions that may cause readers to miss the more important information contained in the notice.

ASPPA COPA recommends that portions of the notice not required by law be deleted or simplified. For example, the reference to Direct Filing Entities (DFE) below the asset allocation table lists specific investment vehicles, none of which are meaningful terms to the average participant. This information is not required by statute, and should be deleted.

ASPPA COPA suggests an alternative model AFN such as the attached draft notice would be more readable than the model in the proposed rule while providing the required information. The most significant change is moving many of the longer descriptions to a glossary at the end, which allows the participant to concentrate on the intended information, most of which appears in the first two pages of the notice.

- II. **Participant data.** The preamble to the proposed rule requests comments on the inclusion of participant data for more than the current year.

ASPPA COPA recommends that the model AFN include a comparison of participant data which puts changes in plan liabilities and assets into better perspective, especially if significant events (i.e. plan merger) have taken effect. Inclusion in the chart of data, as we suggest in the attached alternative model notice, would make it easier to relate the participant data to the funding status information, in addition to being less cumbersome and more concise.

III. **PBGC information.** The law requires that the notice include a summary of plan termination procedures and general information on guaranteed benefits. Although the focus of the notice should be funded status, the extensive treatment of plan termination procedure and benefits leads participants to interpret this notice as a plan termination notice, causing confusion and distrust.

ASPPA COPA recommends that PBGC information in the notice be condensed, with links to more detail on the PBGC website. Participants would also be able to request additional printed information from the plan administrator.

IV. **Events having a material effect.** The statute provides that an event having a material effect on liabilities or assets taking effect in the current year should be disclosed, if known. We note that the FAB 2009-01 included guidance, but the proposed regulations did not (although it was mentioned that it was removed in the preamble to the proposed regulations). The guidance in FAB 2009-01 provided sufficient time to allow for an accurate projection of the material effect to be prepared before the AFN due date.

ASPPA COPA recommends that the final rule provide that an event need not be disclosed if it is not known by the plan administrator 120 days or less before the due date of the AFN.

ASPPA COPA further recommends that the final rule clarify that a material event for purposes of IRC §430 and §436 means an event that, in the judgment of the plan's enrolled actuary, will result in a material change in the Adjusted Funded Target Attainment Percentage (AFTAP) of the plan, as described in Treasury regulations 1.436-1(h)(4)(iii)(B).

These comments were prepared by ASPPA's Defined Benefit Subcommittee of the Government Affairs Committee and the ASPPA College of Pension Actuaries, and were primarily authored by William P. Held, MSPA, Russell D. Spinner, FSPA and Valerie M. Zinzer, MSPA. Please contact us if you have any comments or questions on the matters discussed above.

Thank you for your consideration of these comments.

Sincerely,

/s/
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Executive Director/CEO

/s/
Judy A. Miller, MSPA
Chief of Actuarial Issues

/s/
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James Paul, Esq., APM
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Karen Smith, MSPA
Co-chair, Defined Benefit Subcommittee

Attachment

**ANNUAL FUNDING NOTICE FOR
XYZ PENSION PLAN
EMPLOYER IDENTIFICATION NUMBER (EIN) – 12-3456789
PLAN NUMBER – 001**

SECTION I – INTRODUCTION

This notice includes important funding information about your pension plan ("the Plan"). This notice also provides a summary of federal rules governing the termination of single-employer defined benefit pension plans and of benefit payments guaranteed by the Pension Benefit Guaranty Corporation (PBGC), a federal agency. This notice is for the plan year beginning [mm/dd/yyyy] and ending [mm/dd/yyyy] (Plan Year).

SECTION II – KEY PLAN STATISTICS

The following table summarizes key statistics for the Plan. Some terms are defined in Section VI – Glossary of Terms.

	2009 Plan Year	2008 Plan Year	2007 Plan Year
<i>Funding Target Attainment Percentage</i>			
1. Valuation Date	01/01/2009	01/01/2008	N/A
2. Actuarial Plan Assets			
a. Total Actuarial Plan Assets	\$8,336,817	\$7,795,063	N/A
b. Funding Standard Carryover Balance	\$118,049	\$168,641	N/A
c. Prefunding Balance	\$7,690	N/A	N/A
d. Net Plan Assets (a) – (b) – (c) = (d)	\$8,211,078	\$7,626,422	N/A
3. Plan Liabilities	\$7,822,249	\$8,635,693	N/A
4. At-Risk Liabilities	N/A	N/A	N/A
5. Funding Target Attainment Percentage (2d)/(3)	104.97%	88.31%	N/A
6. Effective rate	6.10%	6.02%	N/A
<i>7. Demographic Data</i>			
a. Active participants	100	100	100
b. Non active participants entitled to future benefits	7	10	10
c. Participants receiving benefits	19	20	20
d. Total Participants	126	130	130
<i>Year-end Values</i>			
8. Year-end Date	12/31/2009	12/31/2008	12/31/2007
9. Year-end Market Value of Assets	8,100,000	7,900,000	N/A
10. Year-end Liabilities	8,500,000	9,000,000	N/A

The Plan is not required by law to report certain funding related information because such information may not exist for plan years before 2008. In lieu of that information, however, the Plan is providing you with comparable information that reflects the funding status of the Plan under the law then in effect. For 2007, the Plan's "funding target attainment percentage" was 88%, the Plan's assets were \$6,134,910, and Plan liabilities were \$6,970,162.

SECTION III – ADDITIONAL PLAN DATA

A. Funding Policy

To meet the short and long term funding needs of the plan's obligations, the funding policy of the plan is [to contribute at least the minimum required under Internal Revenue Code section 430.]

B. Investment Policy

Once contributions have been deposited, the investment policy of the Plan is [a 50% equity, 44% debt security, 5% real estate, and 1% fixed income allocation.]

In accordance with the Plan's investment policy, the Plan's assets were allocated among the following categories of investments, as of the end of the Plan Year. These allocations are percentages of total assets:

Asset Allocations	Percentage
1. Interest-bearing cash	0.00%
2. U.S. Government securities	15.71%
3. Corporate debt instruments (other than employer securities):	60.23%
4. Corporate stocks (other than employer securities):	18.14%
5. Partnership/joint venture interests	0.00%
6. Real estate (other than employer real property)	0.00%
7. Loans (other than to participants)	0.00%
8. Participant loans	0.00%
9. Value of interest in common/collective trusts	0.00%
10. Value of interest in pooled separate accounts	0.00%
11. Value of interest in master trust investment accounts	0.00%
12. Value of interest in 103-12 investment entities	0.00%
13. Value of interest in registered investment companies (e.g., mutual funds)	0.00%
14. Value of funds held in insurance co. general account (unallocated contracts)	5.92%
15. Employer-related investments:	
Employer Securities	0.00%
Employer real property	0.00%
16. Buildings and other property used in plan operation	0.00%
17. Other	0.00%

C. Events Having a Material Effect on Assets or Liabilities

[Federal law requires the plan administrator to provide in this notice a written explanation of events, taking effect in the current plan year, which are expected to have a material effect on plan liabilities or assets ("material effect events").

For the plan year beginning on [mm/dd/yyyy] and ending on [mm/dd/yyyy], the following events are expected to have a material effect on Plan Liabilities: 1, 2, 3.] The projected impact on liabilities/assets is:

Date of Projection	12/31/10
Plan Liabilities/Assets without the event having a material effect	8,000,000
Plan Liabilities/Assets with the event having a material effect	8,500,000

SECTION IV – PLAN TERMINATION, PBGC GUARANTEES AND INFORMATION ON FILE WITH THE PBGC

A. Summary of Rules Governing Termination of Single-Employer Plans

Employers can end a pension plan through a process called "plan termination." There are two ways an employer can terminate its pension plan. The employer can end the plan in a "standard termination" but only after showing the PBGC that the plan has enough money to pay all benefits owed to participants. The plan must either purchase an annuity from an insurance company (which will provide you with lifetime benefits when you retire) or, if your plan allows, issue one lump-sum payment that covers your entire benefit. Before purchasing your annuity, your plan administrator must give you advance notice that identifies the insurance company (or companies) that your employer may select to provide the annuity. The PBGC's guarantee ends when your employer purchases your annuity or gives you the lump-sum payment.

If the plan is not fully-funded, the employer may apply for a distress termination if the employer is in financial distress. To do so, however, the employer must prove to a bankruptcy court or to the PBGC that the employer cannot remain in business unless the plan is terminated. If the application is granted, the PBGC will take over the plan as trustee and pay plan benefits, up to the legal limits, using plan assets and PBGC guarantee funds.

Under certain circumstances, the PBGC may take action on its own to end a pension plan. Most terminations initiated by the PBGC occur when the PBGC determines that plan termination is needed to protect the interests of plan participants or of the PBGC insurance program. The PBGC can do so if, for example, a plan does not have enough money to pay benefits currently due.

B. Benefit Payments Guaranteed by the PBGC

If a single-employer pension plan terminates without enough money to pay all benefits, the PBGC will take over the plan and pay pension benefits through its insurance program. Most participants and beneficiaries receive all of the pension benefits they would have received under their plan, but some people may lose certain benefits that are not guaranteed.

The PBGC pays pension benefits up to certain maximum limits. The maximum guaranteed benefit is \$4,500 per month, or \$54,000 per year, payable in the form of a straight life annuity, for a 65-year-old person in a plan that terminates in 2009 or 2010. The maximum benefit may be reduced for an individual who is younger than age 65. The maximum benefit will also be reduced when a benefit is provided to a survivor of a plan participant.

The PBGC guarantees "basic benefits" earned before a plan is terminated, which includes:

- * pension benefits at normal retirement age;
- * most early retirement benefits;
- * annuity benefits for survivors of plan participants; and
- * disability benefits for a disability that occurred before the date the plan terminated.

The PBGC does not guarantee certain types of benefits. The PBGC does not guarantee:

- * Benefits for which you do not have a vested right when a plan terminates, usually because you have not worked enough years for the company.
- * Benefits for which you have not met all age, service, or other requirements at the time the plan terminates.

- * Benefit increases and new benefits that have been in place for less than one year are not guaranteed. Those that have been in place for less than five years are only partly guaranteed.
- * Early retirement payments that are greater than payments at normal retirement age may not be guaranteed. For example, a supplemental benefit that stops when you become eligible for Social Security may not be guaranteed.
- * Benefits other than pension benefits, such as health insurance, life insurance, death benefits, vacation pay, or severance pay, are not guaranteed.
- * The PBGC generally does not pay lump sums exceeding \$5,000.

Even if certain benefits are not guaranteed, participants and beneficiaries still may receive some of those benefits from the PBGC depending on how much money the terminated plan has and how much the PBGC collects from the employer. For more information, go to www.pbgc.gov, or ask your plan administrator.

C. [Corporate and Actuarial Information on File with PBGC]

A plan sponsor must provide the PBGC with financial information about itself and actuarial information about the plan under certain circumstances, such as when the funding target attainment percentage of the plan (or any other pension plan sponsored by a member of the sponsor's controlled group) falls below 80 percent (other triggers may also apply). The sponsor of the Plan, [XYZ Company], and members of its controlled group, if any, were subject to this requirement to provide corporate financial information and plan actuarial information to the PBGC. The PBGC uses this information for oversight and monitoring purposes.]

SECTION V –CONTACT INFORMATION

Request a Copy of the Annual Report (Form 5500)

A pension plan is required to file with the US Department of Labor an annual report (i.e., Form 5500) containing financial and other information about the plan.

Copies of the annual report are available from:

- 1) US Department of Labor
Employee Benefits Security Administration's Public Disclosure Room
200 Constitution Avenue, NW, Room N-1513
Washington, DC 20210
Phone – (202).693-8673

For 2009 and later plan years:
Web site – www.efast.dol.gov

You will need the EIN and Plan Number shown on the 1st page of this notice

- 2) By written request to:
XYZ Plan Administrator
Jane Smith
XYZ Company
123 Main Street
Anytown, TX 12345
Phone – (123) 456-7890.

Request More Information about the PBGC and Benefit Guarantees

Web site – www.pbgc.gov

Phone – (800) 400-7242 (toll-free)

TTY/TDD users – (800) 877-8339 and ask to be connected to (800) 400-7242

Request More Information about this Notice or Individual Benefits

XYZ Plan Administrator

Jane Smith

XYZ Company

123 Main Street

Anytown, TX 12345

Phone: (123) 456-7890

SECTION VI – GLOSSARY OF TERMS

Actuarial Plan Assets – Actuarial Plan Assets are actuarial values, not market values. Market values tend to show a clearer picture of a plan's funded status as of a given point in time. However, because market values can fluctuate daily based on factors in the marketplace, such as changes in the stock market, pension law allows plans to use actuarial values for funding purposes. While actuarial values fluctuate less than market values, they are estimates.

At-Risk Liabilities – If a plan's funding target attainment percentage for the prior plan year is below a specified legal threshold, the plan is considered under law to be in "at-risk" status. This means that the plan is required to use actuarial assumptions that result in a higher value of plan liabilities and, as a consequence, requires the employer to contribute more to the plan. For example, plans in "at-risk" status are required to assume that all workers eligible to retire in the next 10 years will do so as soon as they can, and that they will take their distribution in whatever form would create the highest cost to the plan, without regard to whether those workers actually do so. The additional funding that results from "at-risk" status may then remove the plan from this status. If the plan is not in "at-risk" status, the table on page 1 will show "N/A" in row 4 for a given plan year.

Effective Rate – Plan liabilities are determined by discounting the value of future payments using a series of interest rates specified by law depending on how far in the future payments are expected to occur. In order to simplify discussion, a single interest rate, the effective rate, is often used to represent the series of interest rates. The effective rate is unique to the Plan because it is based on the projected cash flow of the Plan.

Funding Policy – The law requires that every pension plan have a procedure for establishing a funding policy to carry out the plan objectives. A funding policy relates to the level of contributions needed to pay for promised benefits.

Funding Standard Carryover Balance and Prefunding Balance (also called "Credit balances") – Credit balances are subtracted from the Plan's assets before calculating the funding target attainment percentage. While pension plans are permitted to maintain credit balances (called "funding standard carryover balance" or "prefunding balance" depending on when the balance was created) for funding purposes, such credits may not be taken into account when calculating a plan's funding target attainment percentage. A plan might have a credit balance, for example, if in a prior year an employer made contributions at a level in excess of the minimum level required by law. Generally, the excess payments are counted as "credits" and may be applied in future years toward the minimum level of contributions a plan sponsor is required by law to make to the plan in those years.

Funding Target Attainment Percentage – a measure of how well the plan is funded on a particular date. This percentage for a plan year is obtained by dividing the Plan's Net Actuarial Plan Assets by Plan Liabilities on the Valuation Date. In general, the higher the percentage, the better funded the plan.

Internal Revenue Code section 430 – This section of the law spells out the minimum funding requirements for defined benefit plans sponsored by a single employer.

Investment Policy – Once money is contributed to the plan, the money is invested by plan officials called fiduciaries. Specific investments are made in accordance with the Plan's investment policy. Generally speaking, an investment policy is a written statement that provides the fiduciaries who are responsible for plan investments with guidelines or general instructions concerning various types or categories of investment management decisions.

Market Value of Assets – The market value of assets shows a clear picture of a plan's funded status as of a given point in time. They are the value of the plan's investments as of a given date based on stock, bond and mutual fund prices.

Material Effect Events – Material effect events are occurrences that tend to have a significant impact on a plan's funding condition. An event is material if it, for example, is expected to increase or decrease Total Actuarial Plan Assets or Plan Liabilities by five percent or more.

Plan Liabilities – Plan liabilities are the default measure for estimating the amount of assets needed to pay future benefit promises. The law requires that plan liabilities be calculated using a set of actuarial assumptions that include specific interest and mortality rates.

Year-end Liabilities – The law requires that Year-end Liabilities be calculated using a different set of actuarial assumptions than are used to calculate Plan Liabilities. Year-end liabilities are calculated using a set of PBGC prescribed assumptions for estimating the amount of assets needed to pay future benefit promises. The valuation date for these liabilities is also different from the valuation date of the Plan Liability measurement.