



One Minute Memo®

DOL Issues Model Funding Notice for Defined Benefit Plans

First Notices Due April 30

Under the Pension Protection Act of 2006, defined benefit plans must distribute a "funding notice" to all participants not later than 120 days after the end of each plan year, commencing with the 2008 plan year. For most calendar year plans, the first funding notice must be distributed by April 30, 2009. On February 10, the Department of Labor issued a model for the funding notice. The model is contained in Field Assistance Bulletin (FAB) 2009-1, which also contains guidance on how the notice must be given.

The funding notice replaces the old summary annual report (SAR) for defined benefit plans (defined contribution and welfare plans must still distribute SARs). However, as FAB 2009-1 makes clear, there are a number of differences between the old SAR and the new funding notice.

- While preparing an SAR was primarily a matter of filling in blanks from the plan's Form 5500, the funding notice will require more work to complete. Among other things, it must contain summaries of the plan's investment and funding policies, which will need to be drafted.
- The funding notice must disclose the plan's funding target attainment percentage (FTAP) for the plan year and two prior plan years, and whether the plan is in at-risk status. For the 2008 plan year, the requirement to report the FTAP for the prior two years is waived, but plans will have to be sure they get the necessary information from their actuaries in time to prepare the notice.

- Unlike the SAR, which could be deferred until the Form 5500 was filed, the funding notice must be given to participants 120 days after the end of the plan year. Plans with no more than 100 participants may wait until the Form 5500 is filed.
- The funding notice must also be filed with the Pension Benefit Guaranty Corporation, unlike the SAR for which there is no government filing requirement.
- The \$110 per participant per day penalty is automatic for late distribution of the funding notice, whereas for an SAR the penalty is not triggered unless the SAR is not furnished within 30 days of a participant's request.

The funding notice will be more complicated to prepare than the old SARs, and plan sponsors should begin now to make sure that they are prepared to meet this new disclosure obligation.

For additional information regarding the new funding notice requirement, please contact the Seyfarth attorney with whom you work, or any Employee Benefits attorney on our website at www.seyfarth.com/EmployeeBenefits.

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