AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FEDERAL REGISTER

Vol. 80 Monday,
No. 21 February 2, 2015

Part II

Department of Labor

Employee Benefits Security Administration

29 CFR Part 2520

Annual Funding Notice for Defined Benefit Plans; Final Rule

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2520

RIN 1210–AB18

Annual Funding Notice for Defined Benefit Plans

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Final rule.

SUMMARY: This document contains a final rule implementing the annual funding notice requirement of section 101(f) of the Employee Retirement Income Security Act of 1974, as amended (ERISA). The final rule requires the administrators of defined benefit plans (single-employer and multiemployer) to furnish an annual funding notice to participants, beneficiaries, the Pension Benefit Guaranty Corporation, and certain other persons. The rule enhances retirement security and increases pension plan transparency by ensuring that workers receive timely and accurate notification annually of the funded status of their defined benefit pension plans. This document also contains necessary conforming amendments to other regulations under ERISA, such as the summary annual report regulation.

DATES: *Effective date:* March 4, 2015.

Applicability date: The final rule is applicable to notices for plan years beginning on or after January 1, 2015. Prior to this applicability date, however, plan administrators may elect to comply with the requirements of the final regulation and the Department of Labor, as a matter of enforcement, will consider such compliance as satisfying the requirements of section 101(f) of ERISA. This temporary enforcement policy does not address the rights or obligations of other parties.

FOR FURTHER INFORMATION CONTACT: Thomas M. Hindmarch or Stephanie Ward Cibinic, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Executive Summary

In accordance with Executive Order 13563 (76 FR 3821), this section of the preamble contains an executive summary of the rulemaking in order to promote public understanding of the content of the final rule. Sections B through G of this preamble, below, contain a more detailed description of the final regulatory provisions and need for the rulemaking as well as its costs and benefits.

1. Purpose of Regulatory Action

This final rule implements the annual funding notice requirement of section 101(f) of ERISA as amended by the Pension Protection Act of 2006 (PPA), Public Law 109–280, 120 Stat. 780. The PPA made significant changes to the existing funding notice requirement by enhancing the content of the notice, shortening the timeframe for providing notices, and expanding the requirement to provide funding notices from multiemployer defined benefit plans (which have been required to provide funding notices starting with plan years beginning in 2005) to all defined benefit plans. Section 501 of the PPA authorizes the Secretary of Labor to promulgate rules to implement the amendments to the annual funding notice requirement and to publish model notices.

2. Summary of Major Provisions

The final rule requires the plan administrator of a defined benefit pension plan that is subject to the Pension Benefit Guaranty Corporation's Insurance Program to furnish a funding notice annually to participants, beneficiaries, labor organizations representing such participants or beneficiaries, employers obligated to make contributions to a multiemployer plan, and the Pension Benefit Guaranty Corporation (PBGC). Large plans must furnish the notice by the 120th day following the end of the plan year to which the notice relates (the ''notice year''). A small plan may furnish a funding notice on or before the due date, with extensions, of the plan's Form 5500 Annual Return/Report filed with the Department of Labor (the Department). While the Department made some changes, the final rule is substantially the same as the proposal (published in November 2010) with respect to specific funding information disclosed in the notice. For example, the funding notice must show the plan's funding percentage, the assets and liabilities that determine the funding percentage, the fair market value of the plan's assets on the last day of the plan year, the plan's funding and investment policies and allocation of assets, known events that are projected to have a material effect on the plan's funding, and other information. Significant changes from the proposal include: exempting certain terminating single-employer plans from furnishing their funding notices; establishing alternative methods of compliance for multiemployer pension plans that have terminated by mass withdrawal and for plans described in section 412(e)(3) of the Internal Revenue Code of 1986, as amended (hereinafter ''Code''); and including a rule of administrative convenience that if an otherwise disclosable material event first becomes known to the plan administrator 120 days or less before the due date of the funding notice, the event is not required to be disclosed in the notice.

3. Costs and Benefits

The Department estimates that the costs attributable to the final rule will be approximately $51 million in the first year and $46.5 million in each subsequent year.[1] The Department expects that the final rule will increase the transparency of information about the funding status of defined benefit plans, which benefits all parties interested in the financial viability of such plans by providing them with a greater opportunity to monitor the plans' funding status and take action when necessary. In addition, the rule will benefit plan administrators by providing them with model notices, which should mitigate burden and contribute to the efficiency of compliance. The Department believes that these benefits justify the costs associated with the final rule. The Department's full cost/benefit analysis is set forth below in Section G of this preamble, entitled ''Regulatory Impact Analysis.''

B. Background

In 2006, section 501(a) of the PPA significantly amended section 101(f) of ERISA. Before the PPA, section 101(f) of ERISA only required multiemployer defined benefit pension plans to furnish a funding notice annually to plan participants and others.[2] Now, section 101(f) of ERISA, as amended by the PPA, requires administrators of all defined benefit plans that are subject to title IV of ERISA, not only multiemployer plans, to furnish annual

[1] This is approximately $6 million less than the total cost the Department estimated at the proposed rule stage. The cost reduction results primarily from a reduction in the clerical time required to prepare and distribute the notices based on a comment from an actuary. The Department has estimated minimal start-up costs (primarily to review and update the model notice), because plans have been complying with the annual funding notice requirement for several years.

[2] In 2004, the Pension Funding Equity Act, Public Law 108–218, amended title I of ERISA by adding section 101(f), which required multiemployer defined benefit plans to furnish a funding notice annually to each participant and beneficiary, to each labor organization representing such participants or beneficiaries, to each employer that has an obligation to contribute under the plan, and to the Pension Benefit Guaranty Corporation.

funding notices. In addition, the PPA shortened the time frame for providing funding notices and changed the content requirements. These changes and others are discussed in detail below. Pursuant to section 501(d) of the PPA, the amendments to section 101(f) apply to plan years beginning after December 31, 2007.

In 2009, the Department issued Field Assistance Bulletin 2009–01 (FAB 2009–01) to provide interim guidance to plan administrators in discharging their obligations under the new annual funding notice requirements. FAB 2009–01 addresses a number of issues under section 101(f) of ERISA and includes model funding notices. Much of the guidance in FAB 2009–01 was incorporated into the proposed regulation and now into the final regulation contained in this document. The final rule supersedes FAB 2009–01 as of the applicability date of the final rule. Until the applicability date, plan administrators may continue to rely on FAB 2009–01 or they may elect to comply with the requirements of the final regulation.

In 2010, the Department published in the **Federal Register** a proposed rule under section 101(f) of ERISA and invited interested parties to comment.[3] The Department received 11 written comments on the proposal. Copies of these comments are available to the public on the Department's Web site at *http://www.dol.gov/ebsa.*

In 2012, section 40211(b)(2)(A) of the Moving Ahead for Progress in the 21st Century Act (MAP–21), Public Law 112–141, 126 Stat. 405, amended the annual funding notice requirements by adding a new paragraph (2)(D) to ERISA section 101(f). The additional MAP–21 disclosures relate to the effect of the ERISA section 303(h)(2)(C)(iv) funding stabilization rules on single-employer plan liabilities and minimum required contributions to such plans for the 2012, 2013, and 2014 plan years. Section 40211(b)(2)(B) of MAP–21 directed the Department to modify the model annual funding notice required under section 501(c) of the PPA to prominently include these new disclosures. On March 8, 2013, the Department issued Field Assistance Bulletin 2013–01 (FAB 2013–01), which included a supplement to the model annual funding notice for single-employer defined benefit pension plans and a number of questions and answers providing guidance on how to comply with the MAP–21 requirements.

In 2014, section 2003(b) of the Highway and Transportation Funding Act of 2014 (HATFA), Public Law 113–159, 128 Stat. 1839, modified the MAP–21 funding stabilization rules of section 303(h)(2)(C)(iv) of ERISA and the disclosure requirements of section 101(f)(2)(D) of ERISA and directed the Department to modify the MAP–21 supplement to the model annual funding notice. To reflect the changes made to the funding stabilization rules, section 2003(b)(2)(A)(ii) of HATFA changed the plan years subject to disclosures required by section 101(f)(2)(D) from plan years 2012 through 2014 to plan years 2012 through 2019. Section 2003(b)(2)(A)(i) of HATFA added a reference to HATFA in the disclosure statements required by sections 101(f)(2)(D)(i)(I) and (II) of ERISA. On January 14, 2015, the Department issued Field Assistance Bulletin 2015–01 (FAB 2015–01), providing guidance on how to comply with the HATFA requirements.[4]

The Multiemployer Pension Reform Act of 2014 (MPRA), Public Law 113–235 (2014), added new disclosure requirements to section 101(f)(2)(B) of ERISA relating to the new multiemployer funding classification of ''critical and declining status.'' In addition to these new disclosures, other MPRA changes affect the model annual funding notice for multiemployer plans.

After careful consideration of the issues raised by the written comments, the Department is adopting the final rule contained herein. While the Department has made some changes to the proposed rule, the final regulation, described below, is substantially the same as the proposal.

C. Overview of Final Rule

1. In General § 2520.101–5(a)

a. Scope

Paragraph (a)(1) of the final regulation sets forth the general requirement that, unless otherwise exempted, all defined benefit plans subject to title IV of ERISA must furnish compliant funding notices to eligible recipients. Paragraphs (a)(2) and (3) of the final regulation provide limited exceptions for certain plans, and paragraphs (j), (k) and (l) provide alternative methods of compliance where exceptions are not appropriate. The limited exceptions are discussed immediately below and the alternative methods of compliance are discussed in subsection C.8 of this preamble.

b. Limited Exceptions for Certain Multiemployer Plans

The exception to the annual funding notice requirement for insolvent multiemployer plans in paragraph (a)(2)(i) of the proposal was reordered as paragraph (a)(2)(i)(A) in the final regulation, but the substance is unchanged from the proposal. Under this exception, the plan administrator of an insolvent multiemployer plan that is in compliance with the insolvency notice requirements of sections 4245(e) or 4281(d)(3) of ERISA before the due date of the funding notice for a plan year is not, for such year, required to furnish the funding notice to the parties otherwise entitled to such notice. Inasmuch as this exception is predicated on sufficient alternative notification under sections 4245(e) and 4281(d)(3) of ERISA, the exception would cease to be available with respect to a plan that emerges from insolvency or ceases to comply with the insolvency notice requirements under title IV of ERISA. The Department received no comments on this provision.

Under paragraph (a)(2)(i)(B) of the final regulation, the plan administrator of a multiemployer plan that has terminated by mass withdrawal under section 4041A(a)(2) of ERISA is not required to furnish a funding notice for a plan year if the due date for such notice is on or after the date the plan has distributed assets in satisfaction of all nonforfeitable benefit liabilities in accordance with section 4041A of ERISA and Subpart D of 29 CFR part 4041A. This new provision provides relief to multiemployer plans similar to the relief available under paragraph (a)(2)(ii)(C) for single-employer plans.

c. Limited Exceptions for Certain Single-Employer Plans

Proposed paragraph (a)(2)(ii)(A) provided that the plan administrator of a single-employer plan is not required to furnish a funding notice for a plan year if the due date for such notice is on or after the date the PBGC is appointed trustee of the plan pursuant to section 4042 of ERISA. Proposed paragraph (a)(2)(ii)(B) provided for similar relief when a plan has distributed assets in satisfaction of all benefit liabilities in a distress termination pursuant to section 4041(c)(3)(B)(i) or of all guaranteed benefits in a distress termination pursuant to section 4041(c)(3)(B)(ii) of ERISA. The Department's rationale for these exceptions was based on termination procedures and the disclosure regime under title IV of ERISA discussed in the preamble to the

[3] 75 FR 70625 (Nov. 18, 2010).

[4] Because the MAP–21 and HATFA supplemental disclosures are temporary and otherwise have no effect on the permanent disclosure requirements in section 101(f) of ERISA, they are not addressed in this final rule. Instead, plan administrators may rely on FAB 2013–01 and FAB 2015–01 or any other guidance issued by the Department under section 101(f) of ERISA until the expiration date.

proposal.[5] The Department received no negative comments on these provisions. They have been adopted as is from the proposal.

Based in large part on the exceptions discussed immediately above, paragraph (a)(2)(ii)(B) of the proposal provided similar relief for a plan that distributed assets in satisfaction of all benefit liabilities in a standard termination pursuant to section 4041(b). One commenter requested that this exception be expanded to provide relief from the annual funding notice requirements for plan years after the plan's termination, but before the plan actually distributes assets in satisfaction of all benefit liabilities. Typically this occurs when a plan is waiting for a favorable determination letter from the Internal Revenue Service (IRS). Such plans, according to a commenter, ordinarily will not have the information they need to complete annual funding notices during this period. The funding target attainment percentage, value of assets and liabilities that determine the plan's funding target attainment percentage, and year-end liabilities will not be readily available because such plans are no longer subject to the minimum funding requirements in section 430 of the Code (ERISA§ 303) or the requirement to file a Schedule SB to the Form 5500 Annual Return/Report after the plan year of termination.[6] Thus, in the absence of the exception in paragraph (a)(2)(ii) of the final regulation, such plans would have to hire an actuary as if the plan were subject to these requirements, solely to obtain the missing section 101(f) information. The commenter argues that valuable resources will be expended unnecessarily in this regard. The Department agrees with this commenter that such an outcome is not in the best interests of plan participants and beneficiaries in these limited circumstances. For these reasons, and after consulting with the PBGC, Treasury and the IRS, the Department adopts paragraph (a)(2)(ii)(C) of the final rule which exempts the plan administrator from providing a funding notice for a plan year if the due date for the funding notice is on or after the date the plan administrator files a standard termination notice (*i.e.,* PBGC Form 500) pursuant to 29 CFR 4041.25, provided that the proposed termination date is on or before the due date of the funding notice and a final distribution of assets in satisfaction of the plan's benefit liabilities proceeds according to the requirements of section 4041(b) of ERISA. If, for some reason, the termination does not proceed according to the requirements of section 4041(b) of ERISA with a distribution of assets in satisfaction of all benefit liabilities and the plan again becomes subject to the minimum funding standards, the exception ceases to apply.

The following example illustrates the exception in paragraph (a)(2)(ii)(C).

Example: On March 1, 2017, the plan administrator furnishes to all affected parties a notice of intent to terminate, stating that Plan Y, a calendar year plan, will terminate on April 30, 2016. On April 15, 2017, the plan administrator files a standard notice of termination (PBGC Form 500) with the PBGC. Under the exception in paragraph (a)(2)(ii)(C) of the final rule, the funding notice for the 2015 notice year (due no later than April 30, 2016) is the final funding notice of Plan Y, since both the proposed termination date and the date the PBGC Form 500 is filed with the PBGC occur on or before the April 30, 2017, due date of the 2016 funding notice.

Finally, one commenter recommended expanding the exception to excuse the plan administrator of a single-employer plan from furnishing a funding notice if the plan administrator reasonably believed that the PBGC would appoint itself trustee within the next 12 months. The same commenter also recommended excusing the plan administrator from furnishing a funding notice after commencement of the distribution of assets under a standard or distress termination instead of after the final distribution of all assets as set out in the proposal. Neither of these recommendations is adopted in the final rule. The first recommendation, without more, would give too much discretion to the plan administrator to determine whether or not to provide the funding notice. In addition, unlike the other exceptions in the final rule, the first recommendation is not grounded on a factor such as cost savings to the plan or an absence of information needed to complete the annual funding notice (for example, because the plan is no longer subject to the funding rules under the Code or ERISA's annual reporting requirements); nor does it appear to rest on any separate disclosure requirements applicable to such plans under title IV of ERISA. The commenter's second recommendation was not adopted for essentially the same reasons against the first recommendation, but also because the new exception in paragraph (a)(2)(ii)C), in the Department's view, provides substantially equivalent relief in the case of a standard termination.

d. Mergers and Consolidations

Paragraph (a)(3) of the final regulation, like the proposal, provides relief in the case of a merger or consolidation of two or more plans. The final plan year of a plan that has legally transferred control of its assets to a successor plan (hereafter the ''non-successor plan'') ends upon the occurrence of the merger or consolidation. Under this exception, the plan administrator of a non-successor plan is not required to furnish a funding notice for its final plan year.

For example, if plan A were to merge with plan B in 2017 and plan B is the successor plan (*i.e.,* the plan to which control of the assets of plan A was legally transferred), then the plan administrator of plan A is not required to furnish a funding notice for plan A for its final plan year, which ends upon the occurrence of the merger in 2017. However, the funding notice of plan B (*i.e.,* the plan to which control of the assets of plan A was legally transferred) must satisfy the general content requirements in paragraph (b) of the final regulation and, in addition, contain a general explanation of the merger or consolidation. The general explanation must include the effective date of, and identify each plan involved with, the merger or consolidation. Given that participants and beneficiaries will look to the successor plan for their pension benefits following the merger or consolidation, rather than the plan whose assets and liabilities were transferred to the successor plan, the Department believes that participants and beneficiaries would realize little, if any, benefit from receiving a funding notice from the non-successor plan. In addition, including an explanation of the merger in the funding notice of the successor plan should abate any participant confusion that might exist by virtue of not receiving a funding notice from the non-successor plan.

One commenter requested clarification whether the funding notice of the successor plan for the year of the

[5] *See* 75 FR 70625, 70627 (explaining that because of the separate disclosure requirements applicable to such plans under title IV of ERISA, a funding notice may be unnecessary or confusing to participants where the PBGC is appointed trustee of a terminated single-employer plan or where a terminated single-employer plan has already satisfied all benefit liabilities or all guaranteed benefits. For example, under a standard termination, participants are provided a notice of intent to terminate 60 to 90 days prior to the proposed termination date (29 CFR 4041.23), a notice of plan benefits by the time PBGC Form 500 is filed with the PBGC (29 CFR 4041.24), and a notice of annuity information in the notice of intent to terminate or, in certain cases, 45 days prior to the distribution date (29 CFR 4041.23(b)(5) and 29 CFR 4041.27)).

[6] *See also* the instructions to Schedule SB of the 2013 Form 5500 Annual Return/Report, which state: ''For terminating plans, Rev. Rul. 79–237, 1979–2 C.B. 190 provides that minimum funding standards apply until the end of the plan year that includes the termination date. Accordingly, the Schedule SB is not required to be filed for any later plan year.''

merger must reflect the funding percentages, assets, and liabilities of the non-successor plan for the two preceding plan years. Because the assets and liabilities of the non-successor plan were not assets and liabilities of the successor plan before the merger or consolidation, the successor plan's funding notice for the year of the merger would not have to reflect this information. The year-end data in this funding notice, however, would reflect the combined assets (both single and multiemployer plans) and liabilities (single-employer plans only). No changes to the operative text were needed for this clarification.

2. Content Requirements § 2520.101–5(b)

a. Identifying Information (§ 2520.101–5(b)(1))

Paragraph (b)(1) of the final regulation, like the proposal, provides that a funding notice must include the name of the plan, the plan number, name of each plan sponsor, the employer identification number of the plan sponsor, and the name, address and telephone number of the plan administrator (and the name, address and phone number of the plan's principal administrative officer if the principal administrative officer is different from the plan administrator). For purposes of this requirement, employer identification numbers, name of plan sponsor, and plan numbers are the same as those used in the Form 5500 Annual Return/Report filed in accordance with section 104(a) of ERISA. The Department received no comments on this provision, as proposed, and it is adopted without change in the final rule.

b. Funding Percentage (§ 2520.101–5(b)(2))

Paragraph (b)(2) of the final regulation, like the proposal, requires disclosure of a plan's funding percentage. Specifically, in the case of a single-employer plan, paragraph (b)(2)(i) of the final regulation provides that a notice must include a statement as to whether the plan's funding target attainment percentage for the notice year, and for each of the two preceding plan years, is at least 100 percent (and, if not, the actual percentages). The term ''funding target attainment percentage'' is defined in section 303(d)(2) of ERISA, which corresponds to Code section 430(d)(2). Guidance issued by the Department of the Treasury under Code section 430 also applies for purposes of section 303 of ERISA. Treasury regulations under Code section 430 provide that the funding target attainment percentage of a plan for a plan year is a fraction (expressed as a percentage), the numerator of which is the value of the plan's assets for the plan year (determined under the rules of 26 CFR 1.430(g)–1) after subtracting the prefunding balance and funding standard carryover balance (collectively the ''credit balances'') under section 430(f)(4)(B) of the Code and § 1.430(f)–1(c), and the denominator of which is the funding target of the plan for the plan year (determined without regard to the at-risk rules of section 430(i) of the Code and § 1.430(i)–1).[7] Thus, this percentage for a plan year is calculated by dividing the value of the plan's assets for that year (after subtracting the credit balances, if any) by the funding target of the plan for that year (disregarding the at-risk rules).

One commenter expressed concern with using the funding target attainment percentage calculated in the manner described above. This commenter believes there are circumstances when this percentage does not necessarily show the most accurate picture of the plan's funded status. For instance, this commenter believes it is misleading to subtract the credit balances discussed above when the plan otherwise is 100 percent funded. Such a subtraction, according to this commenter, could show a funding target attainment percentage of less than 80 percent when the plan is 100 percent or more funded before such subtraction and needlessly raise the concerns of participants regarding the application of the benefit restrictions and limitations of section 436 of the Code.[8] ERISA section 101(f)(2)(B)(i), however, specifically requires a plan administrator to disclose the funding target attainment percentage determined by subtracting the credit balances from the value of the plan's assets.

Paragraph (b)(12) of the final rule permits plan administrators to include additional information in funding notices if the additional information is either necessary or helpful to understanding the mandated information. The Department is of the view, however, that ordinarily a funding notice with more than one funding percentage for the same plan year would be very confusing to participants and beneficiaries. Thus, the Department strongly discourages this practice. One exception may be when the plan administrator concludes it is necessary or helpful to explain that a benefit restriction or limitation under Code section 436 has not been triggered despite the funding target attainment percentage disclosed in the funding notice being below 80 percent. Even in these circumstances, however, a narrative explanation ordinarily should suffice.

In the case of a multiemployer plan, paragraph (b)(2)(ii) of the final regulation, like the proposal, provides that a notice must include a statement as to whether the plan's funded percentage for the notice year, and for each of the two preceding plan years, is at least 100 percent (and, if not, the actual percentages). The term ''funded percentage'' is defined in section 305(i) of ERISA, which corresponds to section 432(i) of the Code. Guidance issued by the Department of the Treasury under section 432 of the Code also applies for purposes of section 305 of ERISA. Proposed Treasury regulations under Code section 432 provide that the funded percentage of a plan for a plan year is a fraction (expressed as a percentage), the numerator of which is the actuarial value of the plan's assets as determined under section 431(c)(2) of the Code and the denominator of which is the accrued liability of the plan, determined using the actuarial assumptions described in section 431(c)(3) of the Code and the unit credit funding method.[9] Thus, this percentage for a plan year is calculated by dividing the plan's assets for that year by the accrued liability of the plan for that year, determined using the unit credit funding method. The Department received no comments on this provision and it was adopted in the final rule without change.

c. Assets and Liabilities (§ 2520.101–5(b)(3))

(i) Single-Employer Plans—Assets and Liabilities as of the Valuation Date

In the case of a single-employer plan, paragraph (b)(3)(i)(A) of the final regulation, like the proposal, requires that a funding notice include a statement of the total assets (separately stating the prefunding balance and the funding standard carryover balance) and liabilities of the plan for the notice year and each of the two preceding plan years. Like section 101(f)(2)(B)(ii)(I)(aa)

[7] *See* 26 CFR 1.430(d)–1(b)(3)(i); 74 FR 53004, 53036 (Oct. 15, 2009).

[8] Section 436(j)(3) of the Code states that if the funding target attainment percentage is 100% or more before the value of plan assets is reduced by the credit balances, the funding target attainment percentage is determined without regard to such reduction for purposes of calculating the adjusted funding target attainment percentage used to determine whether the benefit restrictions and limitations of Code section 436 apply.

[9] *See* proposed Treasury regulation 26 CFR 1.432(a)–1(b)(7); 73 FR 14417, 14423 (March 18, 2008).

of the statute, the final regulation provides that assets and liabilities are to be determined ''in the same manner as under section 303'' of ERISA. The Department interprets the quoted statutory language to mean that the total assets and liabilities used for this purpose are the same as those used to determine a plan's funding target attainment percentage (as well as the plan's ''at-risk'' liabilities pursuant to section 303(i) of ERISA, taking into account section 303(i)(5), if the plan is in ''at-risk'' status). The Department received no comments on this provision, as proposed. It was adopted without change in the final regulation.

(ii) Single-Employer Plans—Assets and Liabilities as of the Last Day of the Plan Year

Section 101(f)(2)(B)(ii)(I)(bb) of ERISA states that a funding notice must include, in the case of a single-employer plan, ''the value of the plan's assets and liabilities for the plan year to which the notice relates as of the last day of the plan year to which the notice relates determined using the asset valuation under subclause (II) of section 4006(a)(3)(E)(iii) and the interest rate under section 4006(a)(3)(E)(iv)[.]''

Based on the foregoing, paragraph (b)(3)(i)(B) of the proposal provided that a single-employer plan must include a statement of the value of the plan's assets and liabilities determined as of the last day of the notice year. For purposes of this statement, plan administrators must report the fair market value of assets as of the last day of the plan year. In addition, a plan's liabilities as of the last day of the plan year are equal to the present value, as of the last day of the plan year, of benefits accrued as of that same date. With the exception of the interest rate assumption, the present value should be determined using the assumptions used to determine the funding target under ERISA section 303. The interest rate assumption is the interest rate provided under section 4006(a)(3)(E)(iv) of ERISA in effect for the last month of the notice year rather than the rate in effect for the month preceding the first month of the notice year. For the reasons set forth below, this proposed provision is adopted without change.

Some commenters expressed their concerns that this aspect of the proposal would lead to confusion. More specifically, they argued that participants and beneficiaries will be confused by seeing year-end figures that are calculated with different assumptions than those used to calculate beginning-of-the-year figures. To illustrate the confusing effect of the proposal, the commenters explained by way of example that a plan's assets and liabilities as of one second before midnight on December 31 could be dramatically different from that plan's assets and liabilities one second later on January 1, for no reason other than the different assumptions prescribed by paragraphs (b)(3)(i)(A) and (b)(3)(i)(B) of the proposal.

The solution offered by one of these commenters is that the proposal should be revised to mandate use of identical assumptions for both dates. Thus, the same interest rate, mortality, and other actuarial assumptions would be used to determine the present value of both the year-end liabilities for the notice year and the valuation date liabilities of the next plan year. This would eliminate the December 31/January 1 difference described above. In this regard, the commenter suggested using the same assumptions used by the plan sponsor to determine pension liabilities in its SEC filings.

The Department did not adopt this recommendation. Because the disclosure requirements in paragraph (b)(3)(i)(B) of the proposal track the statutory requirements in section 101(f)(2)(B)(ii)(I)(bb) of ERISA, adopting this commenter's recommendation would effectively read these requirements out of the statute. Whatever the differences that might exist between year-end assets and liabilities and the next year's valuation date assets and liabilities, such differences result from the actuarial assumptions and methods mandated by the statute.

Other commenters recommended enhanced disclosure of the assumptions behind the year-end figures, including an explanation of how such assumptions differ from the assumptions used for the beginning-of-the-year (*i.e.,* valuation date) figures. These commenters suggested that enhanced disclosure of this type could be helpful in explaining the December 31/January 1 difference described above. Because paragraph (b)(12) of the final regulation permits plan administrators to add additional or supplemental information to funding notices, if appropriate, the Department decided against mandating the specific disclosures suggested by these commenters.

Finally, the Department, in the preamble to the proposal, recognized that some plans may need to estimate their year-end liabilities for the notice year. For instance, this would be necessary if the plan lacked up-to-date information (*e.g.,* hours of service, compensation, eligibility status, etc.) to calculate year-end liabilities by the due date of the funding notice. The preamble discussion further provided that, inasmuch as section 101(f) of ERISA does not specifically set forth any standards to govern such estimations, pending guidance to the contrary, plan administrators may, in a reasonable manner, project liabilities to year-end using standard actuarial techniques. While the Department specifically solicited comments on this issue, none were received. Accordingly, the Department has no reason at this time to provide contrary guidance.

One commenter noted that instructions to ''round off all amounts in this notice to the nearest dollar'' located under the ''Funding Target Attainment Percentage'' chart in Appendix A would be difficult in the context of estimating year-end liabilities. The commenter interpreted these instructions to mean plan administrators must estimate year-end liabilities to the nearest dollar. The Department intended for the rounding instruction to apply to valuation date liabilities used to determine the funding target attainment percentage because by the due date of the funding notice, the valuation date liabilities should be precise to the nearest dollar. Accordingly, no change was made to the rounding instruction in the final version of the model notice. With respect to year-end liabilities, however, the plan should use rounding conventions that are standard for estimating projected plan liabilities and are reasonable with regard to the plan. The Department recognizes that plans may not be able to achieve the same level of precision with respect to estimated year-end liabilities as with valuation date figures.

(iii) Multiemployer Plans—Assets and Liabilities as of the Valuation Date

In the case of a multiemployer plan, paragraph (b)(3)(ii)(A) of the final regulation, like the proposal, requires a statement of the value of the plan's assets (determined in the same manner as under section 304(c)(2) of ERISA) and liabilities (determined in the same manner as under section 305(i)(8) of ERISA, using reasonable actuarial assumptions as required under section 304(c)(3) of ERISA) for the notice year and each of the two plan years preceding the notice year. The assets and liabilities are to be measured as of the valuation date in each of these three years. These are the same assets and liabilities used to determine the plan's funded percentage required to be disclosed under paragraph (b)(2)(ii) of the final regulation. Thus, the recipients of a funding notice will receive not only their plans' funded percentage, pursuant

to paragraph (b)(2)(ii), but, pursuant to paragraph (b)(3)(ii)(A), they also will receive the numbers behind that percentage. Under section 305(i)(8) of ERISA, liabilities are determined using the unit credit funding method whether or not that actuarial method is used for the plan's actuarial valuation in general. There were no comments on this provision and it is adopted without change.

(iv) Multiemployer Plans—Assets as of the Last Day of the Plan Year

In the case of a multiemployer plan, paragraph (b)(3)(ii)(B) of the final regulation, like the proposal, requires a statement of the fair market value of plan assets as of the last day of the notice year, and as of the last day of each of the two preceding plan years as reported in the annual report filed under section 104(a) of ERISA for each such preceding plan year. There were no comments on this provision and it is adopted in the final regulation without change.

(v) Year-end Statement of Plan Assets—Contributions Receivable

As discussed above, funding notices must contain a statement of the fair market value of plan assets as of the last day of the notice year. Plans may receive contributions for the notice year after the close of that year but before the funding notice is sent to recipients. In such circumstances, these contributions may be included in the fair market value of assets, but only if they are attributable to the notice year for funding purposes. The regulation does not require these contributions to be included in the year-end asset statement.

In the case of a single-employer plan, such contributions must be discounted back to the last day of the notice year using the effective interest rate for the notice year. The effective interest rate is defined under section 303(h)(2)(A) of ERISA (section 430(h)(2)(A) of the Code). This approach ensures consistency with section 303(g)(4) of ERISA (section 430(g)(4) of the Code) relating to prior year contributions.[10] For example: Plan X is a calendar year plan. The plan's funding notice for 2012 was timely furnished in 2013. The year-end statement of assets was based on December 31, 2012, fair market value. The plan administrator included the present value of contributions made to the plan on February 14, 2013, in the year-end statement of assets. The effective interest rate for the plan was five percent in 2012 and four percent in 2013. The contributions would be discounted from February 14, 2013, to December 31, 2012, using a discount rate of five percent per annum, which was the effective interest rate for 2012.

In the case of a multiemployer plan, section 304(c)(8) of ERISA provides that contributions made by an employer for the plan year after the last day of the plan year, but not later than two and one-half months after such day (which may be extended for not more than six months under regulations prescribed by the Secretary of the Treasury), shall be deemed made on the last day of the plan year. Section 304(c)(8) of ERISA corresponds to section 431(c)(8) of the Code. Section 431(c)(8) of the Code is the post-PPA counterpart to former section 412(c)(10)(B) of the Code. Pursuant to the Treasury regulations under former section 412(c)(10)(B) of the Code (26 CFR 11.412(c)–12), contributions for a plan year that are made within eight and one-half months after the end of a plan year are deemed to have been made on the last day of that plan year. Therefore, consistent with section 304(c)(8) of ERISA and the corresponding section 431(c)(8) of the Code, and Treasury regulations under former section 412(c)(10)(B) of the Code, it is not necessary for a multiemployer plan to discount such contributions for interest when stating its year-end asset value in a funding notice.

The foregoing provisions were discussed in the preamble of the proposal. The Department received no negative commentary on them. They were adopted and codified at paragraph (b)(3)(iii) of the final regulation.

(vi) Addressing Changes in Assets and Liabilities After the Notice Is Furnished

One commenter requested clarification on whether a plan administrator would be required to issue a revised funding notice for a plan year if the funding percentage data (described by this commenter as valuation date assets and liabilities and the funding percentage derived therefrom) in the notice were to change between the date the notice was furnished to participants and the date of the filing of the plan's Form 5500 Annual Return/Report for that same year. The commenter stated that this might occur, for example, because of an error or mistake in preparing the notice or if a plan were to change its actuarial assumptions in the period between the respective due dates of the notice and the Form 5500. The view of the Department, generally, is that funding percentage data in the notice for a particular plan year should not differ from the funding percentage data that must be reported on that plan's Schedule SB or MB, as applicable, for that same plan year. However, in those rare circumstances where there is a difference because of a good faith error or changes in actuarial assumptions, for example, the view of the Department is that a plan administrator is not obligated by section 101(f) of ERISA to revise and restate the funding notice for that year. If the difference in the data in the notice and the data in the annual report is substantial, plan administrators should consider explaining the discrepancy in the funding notice for the next plan year.

d. Demographic Information (§ 2520.101–5(b)(4))

Paragraph (b)(4) of the final regulation, like the proposal, requires a statement of the number of participants who, as of the valuation date of the notice year, are: (i) Retired or separated from service and receiving benefits; (ii) retired or separated from service and entitled to future benefits (but currently not receiving benefits); or (iii) active participants under the plan. Plan administrators must state the number of participants in each of these categories and the sum of all such participants. For purposes of this statement, the terms ''active'' and ''retired or separated'' have the same meaning given to those terms in instructions to the latest annual report filed under section 104(a) of the Act (currently, instructions relating to lines 5 and 6 of the 2013 Form 5500 Annual Return/Report).

In response to one comment, the Department clarifies that beneficiaries of deceased participants should be accounted for in the disclosure of demographic information required under paragraph (b)(4) and should be reflected in the relevant ''retired or separated'' category based on whether the beneficiary of the deceased participant is receiving benefits or is entitled to receive benefits in the future (but currently is not receiving them). These beneficiaries are similar to retired or separated participants who are themselves receiving, or are entitled to receive, benefits under the plan in that the plan's liabilities include benefits accrued by such deceased participants.

A few commenters asked the Department to enhance this disclosure requirement by mandating the disclosure of demographic information covering a longer period of time, such as the notice year and two preceding plan years, similar to disclosure of the

[10] This approach is consistent with the position taken by the PBGC regarding the treatment of contributions made on account of the prior year in determining the fair market value of assets under section 4006(a)(3)(E)(iii). *See* page 17 of the PBGC's 2013 Comprehensive Premium Payment Instructions.

plan's funding percentage over a three year period. Such information, they suggest, could help participants and, in the case of multiemployer plans, unions and contributing employers, draw a positive correlation between demographic trends and changes in funding status, *e.g.,* a downward slope in active participants would offer a possible explanation of a declining funding percentage or, possibly, be indicative of such a decline in the future. Other commenters, however, questioned whether such information would be helpful to participants, even if the data allowed for a positive correlation, and pointed out that such information already is publicly available. They also noted that any new disclosure mandate would come at a cost. The Department notes that this data already is required to be reported in the Form 5500 Annual Return/Report, so there would be little cost associated with the commenter's suggested expansion. Nonetheless, the Department declined to adopt the requested expansion. The Department agrees with the commenters who question the value to participants of the additional information. A plan, for example, may have few active participants and a high funding percentage or many active participants and a low funding percentage. In addition, the statute affords no clear basis for imposing such a requirement. Congress was careful to specify a three-year period in other parts of section 101(f) of ERISA but failed to do so in section 101(f)(2)(B)(iii) of ERISA.

e. Funding and Investment Policies; Asset Allocation (§ 2520.101–5(b)(5))

Paragraph (b)(5)(i) through (iii) of the proposal provided that a funding notice must include a statement setting forth the funding policy of the plan, the asset allocation of investments under the plan (expressed as percentages of total assets) as of the end of the notice year, and a general description of any investment policy of the plan as it relates to the funding policy and the asset allocation of investments. This provision is adopted without change.

(i) Investment Policy

One commenter was opposed to the proposed requirement to include a ''general description of any investment policy of the plan.'' The commenter argued that this requirement is not explicitly in the statute, that investment policies often can be complex and lengthy, and that such policies may be irrelevant to participants and beneficiaries.[11] Even though a particular plan's investment policy might be lengthy and complex in its totality, the final regulation requires only a ''general description'' of the policy. Thus, except in rare cases, the Department does not expect that a plan's entire investment policy would be restated in the annual funding notice. Further, to ensure relevance, the final regulation requires that the general description must relate to the funding policy and asset allocation of investments. The purpose of the requirement to include a ''general description of any investment policy of the plan'' simply is to provide participants and beneficiaries with contextual information to help them better understand and appreciate the plan's approach to funding benefits.[12] Use of the word ''any'' in paragraph (b)(5)(iii) reflects that the maintenance of a written statement of investment policy is not specifically required under ERISA, although the Department expects that it would be rare for a plan subject to section 101(f) of ERISA not to have such a policy.

(ii) Year-End Asset Allocation of Investments

Section 101(f)(2)(B)(iv) of ERISA, in relevant part, provides that a funding notice must include a statement setting forth ''the asset allocation of investments under the plan (expressed as percentages of total assets) as of the end of the plan year to which the notice relates[.]'' Like the proposal, paragraph (b)(5)(ii) of the final regulation directly incorporates this statutory requirement. The Department anticipates that plan administrators may satisfy the requirements in paragraph (b)(5)(ii) in any number of ways.

For example, one way a plan administrator may satisfy this requirement is by using the appropriate model notice in the appendices to the final rule. The asset classes in the models are based on the asset classes listed in Part 1 of the Asset and Liability Statement of Schedule H of the Form 5500 Annual Return/Report.[13] Plan administrators who use the models must insert an appropriate percentage with respect to each asset class, using the same valuation and accounting methods as for Form 5500 Schedule H reporting purposes. For this purpose, the master trust investment account (MTIA), common/collective trust (CCT), pooled separate account (PSA), and 103–12 investment entity (103–12IE) investment categories have the same definitions as for the Form 5500 instructions. If a plan held at year-end an interest in one or more direct filing entities (DFEs), *i.e.,* MTIAs, CCTs, PSAs, or 103–12IEs, the plan administrator should include in the model notice a statement apprising recipients how to obtain more information regarding the plan's DFE investments (*e.g.,* a plan's Schedule D and R and/or the DFE's Schedule H). The model notice provides a statement immediately following the asset allocation table for contact information, which a plan administrator should complete and include if the plan held an interest in one or more DFEs. The reason for this special treatment for plans investing in DFEs is that such plans often do not know the precise year-end holdings of a DFE by the due date of the annual funding notice. One commenter questioned whether this special treatment is appropriate for single-employer plans that use MTIAs, on the theory that administrators of such plans have more control over and access to information about such investment arrangements than, say, CCTs. Given that plan fiduciaries have a duty not to misrepresent material information relating to the plan, plan administrators should not report a percentage interest in MTIAs if they know the MTIA's actual asset allocation sufficiently in advance of the due date of the annual funding notice. Instead, they should use the other asset categories in Schedule H.

A number of commenters on the proposal favored the asset categories in Schedule R over the asset categories in the Schedule H. The Schedule R categories are stocks, investment-grade debt, high-yield debt, real estate, and other. These commenters suggested either replacing the Schedule H approach in the model notice with the categories in Schedule R, or perhaps

[11] Section 101(f)(2)(B)(iv) of ERISA provides that a funding notice must include ''a statement setting forth the funding policy of the plan and the asset allocation of investments under the plan (expressed as percentages of total assets) as of the end of the plan year to which the notice relates[.]''

[12] A requisite feature of every employee benefit plan is a procedure for establishing a funding policy to carry out plan objectives. *See* section 402(b)(1) of ERISA. The maintenance by an employee benefit plan of a statement of investment policy is consistent with the fiduciary obligations set forth in ERISA section 404(a)(1)(A) and (B). A statement of 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. A statement of investment policy is distinguished from directions as to the purchase or sale of a specific investment at a specific time. *See* 29 CFR 2509.08–2(2) (formerly 29 CFR 2509.94–2).

[13] *See* lines 1a, 1c, 1d and 1(e) of the 2013 Schedule H. The asset classes identified in the models do not include any receivables reportable on Schedule H of the Form 5500 (*see* lines 1b(1)–(3) of the 2013 Schedule H).

establishing the Schedule R approach as an alternative to the Schedule H approach. In some cases the asset categories in Schedule R may better align with a plan's investment policy. In other cases, the asset categories in the Schedule R may be more informative to participants and beneficiaries. For these reasons, the Department has determined that the Schedule R asset categories are an acceptable alternative to the asset categories in the Schedule H for purposes of the model notices in the appendices to the final rule. Thus, the Department is of the view that a plan administrator may substitute the Schedule R categories for asset categories in Schedule H in the model notices, and remain eligible for the relief provided in paragraph (h) of the final regulation. Plan administrators who use the Schedule R alternative must insert an appropriate percentage with respect to each asset class.

Another commenter suggested allowing the plan administrator discretion when using the model notice to break out the investments held in a DFE among the other Form 5500 Schedule H asset classes where the plan administrator knows the underlying make-up of the assets held by the DFE. The Department never intended to preclude plan administrators from breaking out the DFE's investments among the other asset classes, since the disclosure of such information will better inform participants about the plan's asset allocation of investments. To make this option clear, the final model notice instructions expressly permit plan administrators to break-out DFE investments in the notice, or to include a statement informing participants how to get additional information regarding DFE investments. See the model notice in appendices A and B.

One commenter recommended deleting the phrase ''Under the plan's investment policy'' from the section of the model notice addressing the year-end percentage allocation of investments. The commenter believes this language implies that the allocation percentages reflect the investment policy. The commenter opposes this implication because the asset allocation percentages under paragraph (b)(5) of the regulation are a snapshot of information and may not accurately reflect the plan's long-term investment policy. The Department declined to adopt this recommendation. The commenter appears to be concerned with inferences of wrongdoing or investment imprudence that might be drawn by participants and others if their plan's asset allocation percentages do not precisely match the plan's investment policy, and believes those inferences would be less likely with the recommended deletion. The Department disagrees with the commenter that the quoted phrase would imply wrongdoing if the asset allocation differed from the investment policy. The objective of the disclosures under paragraph (b)(5), in the aggregate, is to help participants and other recipients understand that there is a relationship between funding, investment policies, and asset allocations. The commenter's recommendation appears to run contrary to that objective.

f. Endangered, Critical, or Critical and Declining Status (§ 2520.101–5(b)(6))

Paragraph (b)(6) of the final regulation requires that the funding notice for a multiemployer plan indicate whether the plan was in endangered, critical, or critical and declining status for the notice year. For this purpose, ''endangered, critical, or critical and declining status'' is determined in accordance with section 305 of ERISA, which corresponds to section 432 of the Code. Paragraph (b)(6)(i) requires that the funding notice of a plan in endangered, critical, or critical and declining status must describe how a person may obtain a copy of the plan's funding improvement or rehabilitation plan, as appropriate, and the actuarial and financial data that demonstrate any action taken by the plan toward fiscal improvement. Paragraph (b)(6)(ii) requires that the funding notice of a plan in endangered, critical, or critical and declining status must contain a summary of the plan's funding improvement or rehabilitation plan and a description of any updates or modifications to such funding improvement or rehabilitation plan adopted during the notice year. A summary of the funding improvement or rehabilitation plan is required not only for the notice year in which such plan was adopted, but for every plan year thereafter until the funding improvement or rehabilitation plan ceases to be in effect. Paragraph (b)(6)(iii) requires that the funding notice of a plan in critical and declining status also must include the projected date of insolvency; a clear statement that such insolvency may result in benefit reductions; and a statement describing whether the plan sponsor has taken legally permitted actions to prevent insolvency. The requirements in paragraph (b)(6)(iii) were not part of the proposed regulation. These requirements were added to the final regulation to reflect recent amendments to section 101(f) of ERISA by the MPRA.[14]

g. Material Effect Events (§ 2520.101–5(b)(7) and § 2520.101–5(g))

(i) The Statute and Proposed Rule

Paragraph (b)(7) of the proposed regulation directly incorporated the requirements of section 101(f)(2)(B)(vii) of ERISA, which requires: ''in the case 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 defined in regulations by the Secretary), an explanation of the amendment, schedule increase or reduction, or event, and a projection to the end of such plan year of the effect of the amendment, scheduled increase or reduction, or event on plan liabilities [.]'' Beyond this direct incorporation, the Department took three other steps in the proposal to clarify and implement the material effect requirements.

First, the preamble to the proposal noted ambiguity with respect to the term ''current plan year'' in the language quoted above. The question is whether this term refers to the notice year or the plan year following the notice year. The proposal adopted the view that such term means the plan year following the notice year (*i.e.,* the plan year in which the notice is due). Thus, for a calendar year plan that must furnish its 2010 annual funding notice no later than the 120th day of 2011, the ''notice year'' is the 2010 plan year and the ''current plan year'' for purposes of paragraph (b)(7) of the proposal is the 2011 plan year. The Department's rationale for this interpretation, as explained in the preamble of the proposal, was that it is difficult to find meaning in the phrase ''a projection to the end of such year'' if ''current plan year'' is interpreted to mean the notice year because the notice year has already ended. Comments were solicited on this issue specifically.

Second, in an effort to bring clarity to the language ''having a material effect on plan liabilities or assets for the year'' in section 101(f)(2)(B)(vii) of ERISA, the proposal set forth two tests for determining whether an event has a material effect on assets or liabilities.

[14] *See* section 201(a)(4) of the MPRA (adding new disclosure requirements to section 101(f)(2)(B)(vi) of ERISA and renumbering former clauses (vi) through (x) of section 101(f) as clauses (vii) through (xi)). *See also* section 201(a)(2) of this Act, which added section 305(b)(6) of ERISA to define ''critical and declining'' status. *See also* section 201(a)(1)(C) of this Act, adding new section 305 (a)(3)(A) to ERISA, which subjects a multiemployer plan in critical and declining status to the same requirements as a multiemployer plan in critical status.

The first test, at paragraph (g)(1)(i) of the proposal, provided that a plan amendment, scheduled benefit increase (or reduction), or other known event has a material effect on plan liabilities or assets for the current plan year if it results, or is projected to result, in an increase or decrease of five percent or more in the value of assets or liabilities from the valuation date of the notice year. For example, if the liabilities of a calendar year plan were $100 million on January 1, 2010, (the valuation date for the 2010 notice year), a scheduled increase in benefits taking effect in 2011 will have a material effect if the present value of the increase, determined using the same actuarial assumptions used to determine the $100 million in liabilities, equals or exceeds $5 million. Under the second test, an event has a material effect on plan liabilities or assets for the current plan year if, in the judgment of the plan's enrolled actuary, the event is material for purposes of the plan's funding status under section 430 or 431 of the Code, without regard to an increase or decrease of five percent or more in the value of assets or liabilities from the prior plan year. The second test is in paragraph (g)(1)(ii) of the proposal.

Third, the preamble to the proposal also specifically solicited comments on an issue addressed in the Department's Field Assistance Bulletin 2009–01 (February 10, 2009). In that Bulletin, the Department provided interim guidance under section 101(f) of ERISA in the form of an enforcement policy. Under this policy, if an otherwise disclosable event first became known to the plan administrator 120 days or less before the due date for furnishing the funding notice, the administrator did not have to disclose the event in the notice. See Question 12 of FAB 2009–01. The rationale behind this policy is that at some close point in time before the due date for furnishing the notice, it becomes impracticable for, and unreasonable to expect, plan administrators to satisfy the detailed material effect provisions even though an otherwise disclosable event is known. In addition, the event's effect on the plan's assets and liabilities will in any event be reflected in the next annual funding notice. This policy was not included in the operative text in the proposal. However, the preamble to the proposal solicited comments on whether this 120-day ''rule'' should be included in the final regulation.

(ii) Public Comments and Questions

In general, the public comments on the material effect provisions focused on the 120-day policy articulated in FAB 2009–01 and its absence from the operative text of the proposal. One commenter, however, criticized the position of the Department on the ''current plan year'' language. This person is concerned that some material events would not be covered if ''current plan year'' means the plan year following the notice year. Another commenter believes the five percent test to determine materiality is unnecessary in light of the actuary judgment test. This commenter, therefore, recommends deleting the five percent test. This commenter also asked the Department to consider a third alternative based on Code section 436. These questions and comments are addressed in the context of explaining the final rule below.

(iii) The Final Rule

The framework of the final rule is substantially the same as in the proposal. The general requirement to explain and project events that have a material effect on the assets and liabilities of the plan is in paragraph (b)(7) of the final regulation. As in the proposal, paragraph (b)(7) of the final rule simply incorporates the language from section 101(f)(2)(B)(vii) of ERISA. Paragraph (g) contains special rules and definitions related to the general requirement in paragraph (b)(7) of the final regulation. The substantive modifications to the proposal are in paragraph (g) of the final rule.

General Requirement

Paragraph (b)(7) of the final rule requires, ''in the case 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, an explanation of the amendment, scheduled benefit increase or reduction, or event, and a projection to the end of such plan year of the effect of the amendment, scheduled benefit increase or reduction, or event on plan liabilities.'' The final regulation explicitly makes this requirement subject to the special rules and definitions in paragraph (g) of the final regulation.

Special Rules and Example

Paragraph (g) contains several special rules and definitions that collectively clarify, limit, and illustrate application of the material effect content requirement in paragraph (b)(7) of the final regulation. Paragraph (g)(1) provides that ''current plan year'' in paragraph (b)(7) means the plan year after the notice year. Paragraph (g)(2) of the final regulation states that ''[a]n event described in paragraph (b)(7) is recognized as 'taking effect' in the current plan year if the effect of the event is taken into account for the first time for funding under section 430 or 431 of the Internal Revenue Code, as applicable.'' Paragraphs (g)(3) and (g)(4) of the final regulation provide the standards for determining if an event described in paragraph (b)(7) has a ''material effect.'' Paragraph (g)(3) states that such an event ''has a 'material effect' if it results, or is projected to result, in an increase or decrease of five percent or more in the value of assets or liabilities from the valuation date of the notice year.'' Paragraph (g)(4) provides that an event also ''has a 'material effect' if, in the judgment of the plan's enrolled actuary, the effect of the event is considered material for purposes of the plan's funding status under section 430 or 431, as applicable, of the Internal Revenue Code, without regard to paragraph (g)(3). . . .'' Paragraph (g)(5) states that ''[a]n event described in paragraph (b)(7) of this section is 'known' only if it is known by the plan administrator prior to 120 days before the due date of the notice.''

The following example illustrates these requirements.

Facts: Plan Y is a single-employer calendar year plan. Company X, the sponsor of Plan Y, adopts an amendment on June 1, 2017, offering a subsidized early retirement benefit to participants age 50 or older who retire on or after September 1, 2017 and before March 1, 2018. The amendment increases the liabilities of Plan Y by an amount greater than 5% of the value of Plan Y's liabilities on January 1, 2017. Company X does not make an election under Code section 412(d)(2) to accelerate recognition of the event for funding. The amendment is taken into account for the first time under section 430 of the Code as of the January 1, 2018, valuation date. The notice year is 2017.

Conclusions: Pursuant to paragraph (g)(1) of the final rule, the ''current plan year'' is 2018 because the notice year is 2017. Pursuant to paragraph (g)(2) of the final rule, the amendment is recognized as ''taking effect'' in 2018 because it is first taken into account for funding purposes as of the January 1, 2018 valuation date. Pursuant to paragraph (g)(3) of the final rule, the event has a ''material effect'' on plan liabilities because it results in an increase of five percent or more in the value of liabilities. Pursuant to paragraph (g)(5), the amendment is ''known'' because it is adopted on June 1, 2017, which is more than 120 days prior to the April 30, 2018 due date of the 2017 funding notice. Therefore, an explanation of the amendment must be included in the 2017 funding notice.

''Taking Effect'' and ''Current Plan Year''

As mentioned above, one commenter raised a concern that by interpreting

''current plan year'' as the year after the notice year, as opposed to the notice year itself, the proposal effectively created a loophole that might result in a substantial number of events not being covered by the material effect disclosure provisions. To illustrate the commenter's point, assume the same facts as in the example above. Also assume the amendment was not known by the plan administrator before January 1, 2017. Applying the proposal, the early retirement amendment would not be explained in the 2017 notice because it does not take effect in the current plan year (*i.e.,* 2018). Nor would the amendment be explained in the 2016 notice because it was not known by the plan administrator more than 120 days before the deadline of that notice.

New paragraph (g)(2) of the final regulation addresses this loophole. Specifically, it states that ''[a]n event described in paragraph (b)(7) is recognized as 'taking effect' in the current plan year if the effect of the event is taken into account for the first time for funding under section 430 or 431 of the Internal Revenue Code, as applicable.'' Thus, a material effect event is recognized as ''taking effect'' in the first plan year that the effect of the event is taken into account for funding. Events occurring in the notice year, therefore, would not escape disclosure as feared by the commenter, if the effect of the event is taken into account for funding for the first time in a subsequent plan year. The term ''taking effect'' under the final regulation does not have the same meaning as ''take effect'' under Code sections 430 and 436 and the regulations promulgated thereunder.

Materiality—the Five Percent Test

As noted above, one commenter recommended eliminating the five percent materiality test on the grounds that it is unnecessary in light of the actuary judgment test. It is unnecessary, according to this commenter, because five percent events are the kind of events that also would be considered material to funding under the actuary judgment test. From this premise, the commenter argues that plans should not have to incur the cost of performing an unnecessary test. No data were provided regarding potential cost savings if the recommendation were adopted. The Department does not agree that the actuary judgment test makes the five percent test unnecessary. The five percent test is an objective test; it has all the certainty of a bright line, numerical test. It ensures that participants will be informed automatically of any event if its financial impact meets or exceeds this percentage. The plan has no discretion when the effect of an event is at or above the established numerical threshold. It effectively reflects the Department's determination of baseline materiality for purposes of section 101(f) disclosures, without regard to what a plan, or its enrolled actuary, may think of the significance of the event. The actuary judgment test in the proposal, by contrast, operates underneath the five percent ceiling. Below the ceiling, the plan has discretion and is not required to explain the effect of each and every event that has any effect on assets or liabilities. Instead, disclosure is required only if the plan's actuary determines the effect of the event is material for funding purposes. Even if, as is suggested by the commenter, there is some overlap in the two-test approach in the proposal, the framework recommended by the commenter would lack the certainty and consistency of the proposal and it would confer too much discretion on the plan to decide whether and what events are material under section 101(f) of ERISA. For these reasons, the Department declined to adopt this commenter's recommendation, and the final rule therefore continues to contain the five percent test.

Materiality—the Actuary Judgment Test

As mentioned above, if, in the judgment of the plan's enrolled actuary, the effect of an event is material for purposes of the plan's funding status under section 430 or 431 of the Code, paragraph (g)(1)(ii) of the proposal deemed the event to have a material effect under paragraph (b)(7). The final rule retains this provision. See paragraph (g)(4). The purpose of this ''actuary judgment test'' is to disclose any event that is not picked up by the five percent test which the actuary determines has a material effect on the funding status of the plan under section 430 or 431 of the Code (sections 303 and 304 of ERISA). Although the actuary's exercise of judgment under paragraph (g)(4) of the final regulation would not ordinarily rise to the level of fiduciary conduct, see 29 CFR 2509.75–5 D–1, it is expected that the plan's enrolled actuary will make a determination under paragraph (g)(4) in a manner that is consistent with the standards for performance of actuarial services set out in 20 CFR 901.20.

Other Known Events

Paragraph (g)(2) of the proposal contains a non-exclusive list of events that could constitute an ''other known event'' for purposes of paragraph (b)(7) of the regulation. Paragraph (g)(6) of the final rule retains this list with two noteworthy modifications. First, the examples in paragraph (g)(2)(iv) and (v) of the proposal, relating to a retirement window benefit and a cost-of-living increase for retirees, were eliminated because they describe events that typically do not happen in the absence of a plan amendment or scheduled benefit increase. Since such events constitute amendments or increases already covered by other language in the regulation, the Department, on reflection, determined that the two examples were not very helpful and possibly misleading. The second change clarifies that the Department does not view general market fluctuations (as compared to a fraud, such as a Ponzi scheme, or other similar event affecting the value of a specific investment) as an event contemplated by the material effect disclosure provision in section 101(f) of ERISA. Market fluctuations theoretically could result in numerous, yet offsetting, material effect disclosures all in the same funding notice. For instance, assume a precipitous decline in the equity market in a given month results in a 10 percent reduction in the value of a plan's assets. Also assume the decline is followed by a market correction in the next month and the correction results in a 10 percent increase in the fair market value of the plan's assets. Thus, although the plan has no net gain or loss over this two month period, its assets have changed more than five percent twice during this time. Such a decline and correction could happen over the course of two days rather than two months. The Department agrees with the commenters who believe that this kind of information is not likely to be very helpful or informative to participants in defined benefit plans, and possibly confusing to them. The Department also thinks it would be administratively burdensome for small plans to track and explain market fluctuations. Accordingly, the proposal was modified and paragraph (g)(6) of the final regulation clarifies that market fluctuations are not ''other known events'' for purposes of the material effect disclosure requirement in paragraph (b)(7), and are not required to be explained or projected in funding notices. The Department is of the view that a voluntary explanation of the effect of a market fluctuation could be added to the notice pursuant to paragraph (b)(12) of the final rule, if the plan administrator determined that the explanation would be helpful and the explanation is not misleading or confusing.

Finally, we have been asked if changes in actuarial assumptions constitute a material event for this purpose. The Department is not prepared to conclude categorically that changes in actuarial assumptions should never be subject to the material event disclosure provisions. Minor changes in actuarial assumptions or methods sometimes can result in substantial increases or decreases in liabilities whether the change in assumptions arises by operation of law, from an election or action of the plan sponsor, or automatically under the terms of the plan. Disclosure of a change in actuarial assumptions or methods could help participants better understand a material increase or decrease in the value of the plan's liabilities. Consequently, such changes have not been given the same treatment as market fluctuations and, therefore, in deciding whether such changes trigger disclosure, plans must determine whether, in the aggregate, any change or changes in actuarial assumptions or methods are material under the applicable tests.

Projection of Liabilities

The Department received a number of inquiries regarding the requirement in section 101(f)(2)(B)(vii) of ERISA to project the effect of a material effect event on liabilities to the end of the current plan year. Section 101(f)(2)(B)(vii), in relevant part, requires ''a projection to the end of such plan year of the effect of the amendment, scheduled increase or reduction, or event on plan liabilities[.]'' The inquiries illustrated numerous approaches to carry out such projection and asked whether the Department contemplated a specific methodology. The Department does not contemplate a single projection method. The Department expects only that plan administrators act reasonably and in good faith when choosing a projection method. A reasonable interpretation of the projection requirement would be to show liabilities with and without the material effect event as of last day of the current plan year based on the interest rate as of the valuation date of the notice year, with the difference expressed as a percentage, dollar amount, or both. For example:

Plan liabilities before the scheduled benefit increase	Plan liabilities after the scheduled benefit increase	Increase in liabilities	Percentage change
$525 million	$557 million	$32 million	6%

The projection requirement in section 101(f)(2)(B)(vii) of ERISA applies to any material effect event. However, paragraph (g)(7) of the final regulation gives plan administrators the option of foregoing projections in limited situations. Specifically, if an event is not expected to change the plan's liabilities by five percent or more, then a projection is not required, but the funding notice must contain an explanation of why the specific event is considered material. This special provision will reduce administrative burdens on plans because they will not have to perform projections, which may be complex and time consuming. At the same time, participants and beneficiaries will not be adversely affected by the special provision because they will receive an explanation of why the event is considered material. Knowing why an event is considered material may be significantly more helpful to participants and beneficiaries than the projection contemplated by section 101(f)(2)(B)(vii).

h. Rules on Termination or Insolvency (§ 2520.101–5(b)(8))

Paragraph (b)(8) of the final regulation, like the proposal, requires a summary of the rules under title IV of ERISA relating to plan termination or insolvency, as applicable. Specifically, in the case of single-employer plans, the regulation provides that a notice shall include a summary of the rules governing termination of single-employer plans under subtitle C of title IV of ERISA. See paragraph (b)(8)(i). In the case of multiemployer plans, the regulation provides that a notice shall include a summary of the rules governing insolvency, including limitations on benefit payments. See paragraph (b)(8)(ii). The Department received no comments on this provision and it is adopted in the final regulation without change (except for modifications to update the rule for a statutory change). [15]

i. PBGC Guarantees (§ 2520.101–5(b)(9))

Paragraph (b)(9) of the final regulation, like the proposal, requires a funding notice to include a general description of the benefits under the plan that are eligible to be guaranteed by the PBGC, and an explanation of the limitations on the guarantee and the circumstances under which such limitations apply. The requirement in paragraph (b)(9) directly incorporates the requirements of the statute. See section 101(f)(2)(B)(ix) of ERISA. One commenter observed that the information required under paragraph (b)(9) is somewhat similar to information that pension plans already must include in their summary plan descriptions pursuant to 29 CFR 2520.102–3, although the commenter also noted that the funding notice is an annual disclosure and the summary plan description is not. This commenter asked the Department to consider exercising its authority under section 110 of ERISA to establish an alternative method of compliance under which a plan administrator's obligation under paragraph (b)(9) of the regulation (and, therefore, section 101(f)(2)(B)(ix) of ERISA) would be considered satisfied if the plan administrator otherwise complied with summary plan description requirements under § 2520.102–3. Section 110 of ERISA grants the Secretary of Labor authority to prescribe an alternative method of compliance for any requirement of part 1 of subtitle B of title I of ERISA, under certain circumstances, if the Secretary makes certain findings, including that the requirement would increase the costs to or impose unreasonable administrative burdens on the plan and be adverse to the interests of plan participants in the aggregate and that the alternative is consistent with the purposes of title I of ERISA and provides adequate disclosure to the participants and beneficiaries in the plan. The public record, however, does not contain sufficient information on whether, and to what extent, the specific content requirement of section 101(f)(2)(B)(ix) would increase the costs to plans or impose unreasonable administrative burdens. Nor does it contain sufficient information on whether, and to what extent, the specific content requirement of section 101(f)(2)(B)(ix) would be adverse to the interests of plan participants in the aggregate. In the absence of such information, and evidence that the proposed alternative method provides adequate disclosure to the participants

[15] The proposal also required the funding notices of multiemployer plans to include a summary of the reorganization rules. This requirement was deleted from the final rule as the result of the repeal of the reorganization rules of title IV of ERISA by section 108 of the MPRA.

and beneficiaries in the plan, the Department is unable to accommodate the commenter's request. Nothing in this final rule, however, precludes the commenter, or any other interested person, from pursuing this matter further with the Department in the future and supplying the information needed for the Department to make the requisite determinations under section 110 of ERISA.

j. Annual Report Information (§ 2520.101–5(b)(10))

Paragraph (b)(10) of the final regulation, like the proposal, provides that a funding notice shall include a statement that any person entitled to notice under paragraph (f) may obtain a copy of the annual report of the plan filed under section 104(a) of ERISA upon request, through the Internet Web site of the Department of Labor (*www.efast.dol.gov*), or through any Intranet Web site maintained by the applicable plan sponsor (or plan administrator on behalf of the plan sponsor). The Department received no comments on this provision and it is adopted in the final regulation without change.

k. Information Disclosed to PBGC (§ 2520.101–5(b)(11))

Paragraph (b)(11) of the proposal required funding notices to state whether the contributing sponsor or a controlled group member was subject to the reporting requirements under section 4010 of ERISA. Section 4010 of ERISA generally requires plan sponsors (and each member of their controlled group) to report identifying, financial, and actuarial information about themselves and their plans to the PBGC if one or more single-employer plans maintained by any member of the controlled group has a funding target attainment percentage of less than 80 percent, has a minimum funding waiver in excess of $1 million any portion of which is still outstanding, or has met the conditions for imposition of a lien for failure to make required contributions (including interest) with an unpaid balance in excess of $1 million. The Department received no comments on this provision.

The requirement is adopted in the final rule with a slight technical adjustment in response to an issue raised by PBGC. PBGC advised that the section 4010 reporting obligation relates to the ''information year'' and not the ''plan year.'' Generally, the information year is the fiscal year of the plan sponsor. However, if any two members of the controlled group report financial information on the basis of different financial years, the information year is the calendar year. Thus, ''information year'' does not necessarily align with the plan year or the notice year. Accordingly, the final regulation was modified to deal with possible misalignments such that the statement requirement under paragraph (b)(11) is triggered if an ERISA section 4010 report is required for the information year ending within the notice year.

l. Additional Information (§ 2520.101–5(b)(12))

Paragraph (b)(12) of the final regulation, like the proposal, permits the plan administrator to include in a funding notice any additional information that the administrator determines would be necessary or helpful to understanding the information required to be contained in the notice. The purpose of this provision is to limit the type of information that may be added to these notices so that recipients do not face confusion or distraction based on information lacking an appropriate nexus to the funding status of the plan. In addition, paragraph (b)(12) also permits information that is ''otherwise permitted by law.'' This clause, by contrast, reflects the fact that some plan administrators may elect to satisfy the requirements of section 101(f) and other disclosure requirements through a combined notification where such combined notification is permitted by law. For example, where a plan elects the waiver described in 29 CFR 2520.104–46 (small pension plan audit waiver regulation), the plan administrator must include specified information about the waiver in the funding notice in order to satisfy the requirements of § 2520.104–46.[16] No public comments were received on this provision as proposed and it is adopted without change in the final regulation.

3. Style and Format (§ 2520.101–5(c))

Paragraph (c) of the final regulation sets forth the style and format requirements for the annual funding notice requirements. Specifically, it provides that funding notices shall be written in a manner that is consistent with the style and format requirements of 29 CFR 2520.102–2 (style and format requirements for summary plan descriptions). Thus, as with summary plan descriptions, funding notices shall be written in a manner calculated to be understood by the average plan participant and in a format that does not have the effect of misleading or misinforming recipients. This means that plan administrators must, among other things, exercise considered judgment and discretion by taking into account such factors as the level of comprehension and education of typical participants in the plan.

4. Timing Requirements (§ 2520.101–5(d))

Paragraph (d) of the final regulation, like the proposal, describes when a funding notice must be furnished to recipients. Paragraph (d)(1) provides that notices generally must be furnished not later than 120 days after the end of the notice year. Paragraph (d)(2) provides that in the case of small plans, notices must be furnished no later than the earlier of the date on which the annual report required by section 104 of ERISA is filed or the latest date the report could be filed (with granted filing extensions). For this purpose, a plan is a small plan if it had 100 or fewer participants on each day during the plan year preceding the notice year. See section 101(f)(3)(B) of ERISA (referencing section 303(g)(2)(B) of ERISA). Although section 303(g)(2)(B) of ERISA relates to single-employer plans only, the Department interprets section 101(f)(3)(B) of ERISA as applying the 100 or fewer participant standard in section 303(g)(2)(B) of ERISA to both single-employer and multiemployer plans.

One commenter recommended that the deadline for furnishing the funding notice for large plans be shortened from no later than 120 days after the end of the notice year to no later than 180 days after the valuation date of the notice year. This would accelerate the deadline by approximately 10 months for plans whose valuation date is January 1. The commenter favors timelier information. The Department also favors timely information for participants and beneficiaries. However, the statutory deadline is clear and unambiguous, thereby limiting the Department's authority to accept this comment under section 101(f) of ERISA. In addition, adopting the commenter's recommendation would make it impossible for many plan administrators to comply with other content requirements in section 101(f) of ERISA. For instance, section 101(f)(2)(B)(iv) of ERISA requires that funding notices contain a statement setting forth the asset allocation of investments under the plan as of the end of the plan year. For plans with a January 1 valuation date, the plan administrators could not comply with the foregoing requirement because the end of the plan year always would be after the 180-day deadline

[16] Section D of this preamble discusses amendments to § 2520.104–46.

recommended by the commenter. Accordingly, the Department did not adopt this recommendation.

5. Manner of Furnishing (§ 2520.101–5(e))

Paragraph (e) of the regulation relates to how funding notices must be furnished to recipients, with paragraph (e)(1) addressing how notices must be furnished to participants and beneficiaries and paragraph (e)(2) addressing how notices must be furnished to the PBGC. As with the proposal, paragraph (e)(1) of the final regulation is reserved. The reservation reflects the fact that the Department has not yet finished exploring whether, and possibly how, to expand or modify the standards in 29 CFR 2520.104b–1(c) applicable to the electronic distribution of required plan disclosures.[17] Pending the completion of this review and issuance of further guidance, the Department notes that the general disclosure regulation at § 2520.104b–1 applies to material furnished under this regulation, including the safe harbor for electronic disclosures at paragraph (c) of that regulation. Paragraph (e)(2) of the final regulation provides that funding notices shall be furnished to the PBGC consistent with the requirements of 29 CFR part 4000.

6. Persons Entitled to Notice (§ 2520.101(5)(f))

Paragraph (f) of the proposed regulation defines a person entitled to receive a funding notice as: each participant covered under the plan on the last day of the notice year, each beneficiary receiving benefits under the plan on the last day of the notice year, each labor organization representing participants under the plan on the last day of the notice year, the PBGC, and, in the case of a multiemployer plan, each employer that, as of the last day of the notice year, is a party to the collective bargaining agreement(s) pursuant to which the plan is maintained or who otherwise may be subject to withdrawal liability pursuant to section 4203 of ERISA.

One commenter asked for clarification whether alternate payees must be furnished annual funding notices under this provision. The language in the proposal could be read as mandating disclosure to alternate payees only after they have entered pay status. We agree with the commenter that there is a need for further clarification on this issue. Section 206(d)(3)(J) of ERISA, in relevant part, explicitly states that ''a person who is an alternate payee under a qualified domestic relations order shall be considered for purposes of any provision of this Act a beneficiary under the plan.'' Section 101(f) of ERISA, in relevant part, states that for each plan year the plan administrator shall provide a funding notice to ''each plan participant and beneficiary.'' Unlike the summary plan description and summary annual report requirements of sections 104(b)(1) and 104(b)(3) of ERISA, respectively, the annual funding notice disclosures are not limited expressly to beneficiaries ''receiving benefits under the plan.'' Of course, the Department is concerned that furnishing annual funding notices to all beneficiaries could result in costs and burdens that outweigh the benefits. However, the Department agrees with the commenter that alternate payees, especially those who have a separate interest qualified domestic relations order, have an interest in the plan's funding status equal to the other categories of persons entitled to notices listed in paragraph (f) of the proposal. The Department, therefore, has provided the clarification requested by the commenter by adding ''[e]ach alternate payee under the plan on the last day of the notice year . . .'' to the list of persons entitled to a funding notice under paragraph (f) of the final regulation. See § 2520.101–5(f)(3).

Another commenter suggested that plan administrators should have the option of using either the first or last day of the notice year to determine whether someone is entitled to a notice, subject to a consistency rule. According to this commenter, valuation date data may be the most up to date data available to a plan sponsor without additional cost and effort to the plan. In the Department's view, however, the identity of each participant and alternate payee covered under the plan and each beneficiary receiving benefits on the last day of the plan year should be readily available to the plan administrator by the due date of the funding notice. The commenter offers no empirical data showing a cost differential between valuation date determinations and determinations on the last day of the plan year. In addition, if, in accordance with the commenter's recommendation, the participant/beneficiary population were determined on the valuation date, which is generally the first day of the plan year, any individuals who become participants, alternate payees or beneficiaries receiving benefits during the notice year would not receive a notice for that year. For these reasons, the Department did not adopt the commenter's suggestion.

7. Model Notices (§ 2520.101–5(h))

The appendices to § 2520.101–5 include two model notices (one for single-employer plans and one for multiemployer plans) that may be used by plan administrators for purposes of section 101(f) of ERISA. The model in Appendix A is for single-employer plans (including multiple employer plans) and the model in Appendix B is for multiemployer plans. These models are intended to assist plan administrators in discharging their notice obligations under section 101(f) of ERISA and the regulation. Use of a model notice is not mandatory. However, the regulation provides that use of a model notice will be deemed to satisfy the content requirements in paragraph (b) of the regulation, as well as the style and format requirements in paragraph (c) of the regulation.

The Department solicited comments on how the models could be improved to enhance understandability and comprehensibility. One commenter submitted an alternative to the Department's model for single-employer plans. This alternative essentially would move definitions and descriptions to a glossary at the end of the notice on the premise that it would help participants to focus on the funding status data located in the chart in the front of the notice. Another commenter subjected both notices to a passive sentences readability test, the Flesch Reading Ease Test, and the Flesch-Kincaid Grade Level Test. The tests were applied to both models and to each paragraph within the models. Both models are below the suggested readability scores according to the commenter. This commenter recommended improving readability by replacing much of the content in the models with a single sentence; for single-employer plans, the sentence would state whether the plan is or is not ''at risk;'' for multiemployer plans, the sentence would state whether the plan is a ''green, yellow, orange or red'' zone plan. Another commenter encouraged the Department to create a model notice that does not exceed a single page. This commenter would limit the content to the name of the plan, the funded percentage, the dollar amount of the shortfall, the risk of not being able to fund pension obligations, a description of the plan sponsor's plan to reduce such risk, and an explanation

[17] The same reasoning was behind the reservation in the Department's final regulation on fiduciary requirements for disclosure in participant-directed individual account plans. *See* 29 CFR 2550.404a–5(g), 75 FR 64910, 64922 (October 20, 2010). *See also* Request for Information Regarding Electronic Disclosure by Employee Benefit Plans, 76 FR 19285 (April 7, 2011).

of how to get more information, in order to meet the one page standard. Other miscellaneous comments were made to improve the single-employer plan model. Many of these comments focused on emphasizing or deemphasizing certain information relative to other information, such as, for example, emphasizing the fact that the notice is ''required by law.''

The Department retained the general framework of the proposed models. The Department was unable to accommodate the single page and single sentence approaches discussed above without eliminating statutorily mandated information. However, the models were revised to eliminate passive sentences where possible. Modifications to address the Flesch scores, on the other hand, were more difficult given the nature of the specific disclosure requirements under section 101(f) of ERISA. Nonetheless, where possible, lengthy sentences were made shorter and more concise, funding jargon was removed, and readability was improved determined using the same testing methods used by the commenter. The Department was not persuaded that the alternative with a glossary, submitted by one commenter, is any more user-friendly or understandable than the models appended to the final rule. Finally, the opening paragraph of the models now contains the following sentence: ''The notice is required by federal law.''

The Department's intent behind models, in part, is to ease the burden on plan administrators by providing model language to satisfy applicable regulatory requirements. As noted above, use of a model notice is not mandatory. To the extent a plan administrator elects to include in a model notice additional information described in paragraph (b)(12) of the regulation, such additional information must be consistent with the style and format requirements in paragraph (c) of the regulation. Thus, such additional information should not have the effect of misleading or misinforming recipients.

8. Alternative Methods of Compliance

The Department recognizes that there are situations in which some of the information to be provided in the annual funding notice is duplicative of other information sources or irrelevant. In the preamble to the proposed rule, the Department discussed and sought comments on whether there should be special rules with respect to (1) the furnishing of an annual funding notice to the PBGC in the case of certain single-employer plans; (2) the scope of the content of a notice for multiemployer plans terminated by mass withdrawal; and (3) the scope of the content of a notice for certain insurance contract plans to which Code section 412(e)(3) applies.

Section 110 of ERISA permits the Department to prescribe alternative methods of complying with any of the reporting and disclosure requirements of ERISA if it finds: (1) That the use of the alternative is consistent with the purposes of ERISA and that it provides adequate disclosure to plan participants and beneficiaries and to the Department; (2) that the application of the statutory reporting and disclosure requirements would increase the costs to the plan or impose unreasonable administrative burdens with respect to the operation of the plan; and (3) that the application of the statutory reporting and disclosure requirements would be adverse to the interests of plan participants in the aggregate. The Department finds, for the reasons discussed below, these three conditions to be satisfied in each of the circumstances described above. Thus, it includes in paragraphs (j), (k), and (l) of this final regulation alternative methods of complying with the annual funding notice requirements under section 101(f) in these limited circumstances.

a. Alternative Method of Compliance for Furnishing Notice to PBGC for Certain Single-Employer Plans (§ 2520.101–5(j))

The final regulation includes an alternative method of compliance for single-employer plans to furnish their funding notices to the PBGC. Under this alternative, the plan administrator of a single-employer plan with liabilities that do not exceed plan assets by more than $50 million is not required to furnish a funding notice to the PBGC provided that the administrator furnishes the latest available funding notice to the PBGC within 30 days of receiving a written request from the PBGC. To determine whether a plan's liabilities exceed its assets by more than $50 million, the plan administrator should subtract the plan's total assets from its liabilities, using the assets and liabilities disclosed in the funding notice in accordance with paragraph (b)(3)(i)(A) of this regulation. The alternative method of compliance does not have any effect on the plan administrator's obligation to furnish notices to parties other than the PBGC.

The Department explained the rationale for this alternative in the proposal. First, the PBGC has determined that, in light of the extended due date for small plans, it will have electronic access to the information included on the funding notice for most single-employer plans as a result of ERISA's annual reporting requirement under section 104(a) on or around the time it would receive a copy of a funding notice under section 101(f) of ERISA. Second, under the PBGC's Reportable Events regulation (29 CFR part 4043), the PBGC typically would receive information about certain events that might indicate increased exposure or risk before it would receive information under either ERISA section 101(f) or 104(a). Third, the Department believes the alternative method will reduce administrative burdens for plans that meet its conditions. Fourth, such an alternative should be limited to single-employer plans because PBGC does not have the same early access to this information in the case of multiemployer plans. For instance, multiemployer plans are not subject to ERISA section 4043 and very few multiemployer plans will qualify for the small plan extended annual funding notice due date. The Department received only positive comments on the proposed provision. The final regulation adopts the alternative, with only minor changes to improve readability.

b. Alternative Method of Compliance for Multiemployer Plans That Terminate by Reason of Mass Withdrawal (§ 2520.101–5(k))

The Department sought comments on whether a special rule should be provided for multiemployer plans that terminate by mass withdrawal pursuant to ERISA section 4041A(a)(2). ERISA section 4041A(a)(2) provides that the termination of a multiemployer plan occurs as a result of the withdrawal of every employer from the plan or the cessation of the obligation of all employers to contribute under the plan. Specifically, the Department noted that while some information required by the regulation may not be relevant, other information, such as PBGC guarantee levels, assets and liabilities, participant status, and insolvency information may still be important to participants and beneficiaries receiving benefits from such plans. Specific comments were requested on whether a special rule should be provided, and if so, information that should be excluded from the notice as well as the information that should be included, and any data on cost savings as a result of a special rule.

Commenters made the following observations about these plans. First, the minimum funding standards cease to apply to these plans and the Schedule MB of the Form 5500 is no longer required. Second, because of that, the Code's critical/endangered status rules become inoperable. Third, since the

minimum funding and Schedule MB reporting requirements no longer apply, there is no reason for the plan's enrolled actuary to perform a funding valuation. Thus, information needed to satisfy section 101(f) and the requirements of the regulation is not readily available. Fourth, the actuarial and other costs needed to generate such information will be borne entirely by the participants and beneficiaries because there are no contributing employers to defray the costs. Fifth, participants in these plans might be better served with different or less information than is otherwise included in an annual funding notice.

Based on the foregoing, the Department has adopted an alternative method of compliance in paragraph (k) of the final regulation for plans that terminate pursuant to section 4041A(a)(2) of ERISA. These plans no longer have any contributing employers and, therefore, typically have no cash in-flow other than investment return and, perhaps, withdrawal liability payments. Thus, such a plan exists merely to pay benefits to participants, until such time as the plan's trust runs out of money. This ''wasting trust'' period often can span several years depending on the particular plan.

The rules in paragraph (k), on the one hand, acknowledge that such plans hardly ever have all the section 101(f) information because they are no longer required to comply with the minimum funding rules. At the same time, however, these rules acknowledge that participants and beneficiaries continue to have an interest in the funding status of the plan during the wasting trust period. Thus, instead of the specific funding information required by the regulation more generally, the final rule allows plan administrators of a plan terminated by mass withdrawal to comply with the annual funding notice rules under ERISA section 101(f) through this alternative method. The rules in paragraph (k) focus mainly on the plan's assets and benefit payments being made so that participants are able to draw a rough estimate of how long the plan will be able to pay benefits. Paragraph (k) also focuses on information about PBGC guarantees, insolvency and possible benefit reductions, *i.e.,* the kind of information that is directly relevant to participants when their plan is in this situation. The rules do not require disclosure of this alternative notice to labor organizations representing participants, contributing employers, or the PBGC under paragraphs (f)(4), (5), and (6) of the final regulation.

c. Alternative Method of Compliance for Code Section 412(e)(3) Insurance Contract Plans (§ 2520.101–5(l))

During the development of the proposed regulation, concerns were expressed about the relevance of section 101(f) information to Code section 412(e)(3) insurance contract plans. Code section 412(e)(3) insurance contract plans are plans under which retirement benefits are provided through contracts that are guaranteed by an insurance carrier. In general, such contracts must provide for level premium payments over the individual's period of participation in the plan (to retirement age), premiums must be timely paid as currently required under the contract, no rights under the contract may be subject to a security interest, and no policy loans may be outstanding. Consequently, the Department sought comments on whether a special rule should be adopted with respect to Code section 412(e)(3) plans and if so, what information should or should not be included in the annual funding notice for these plans.

If a plan is funded exclusively by the purchase of such contracts, the minimum funding requirements of section 412 of the Code and section 302 of ERISA do not apply for the plan year and neither the Schedule MB nor the Schedule SB of the Form 5500 Annual Return/Report is required to be filed. Consequently, nearly all of the content requirements in section 101(f) are irrelevant to section 412(e)(3) plans. These content requirements are irrelevant because they reflect funding rules and concepts that simply are not applicable to these plans. For this reason, the final rule adopts an alternative method of compliance for section 412(e)(3) plans which is set forth in paragraph (l) of the final regulation. Specifically, the alternative method focuses on whether the premiums necessary to fund retirement benefits under these plans are being paid to the insurer in a timely manner and the consequences of a failure to do so. This alternative approach is needed so that participants in section 412(e)(3) plans do not receive information inapplicable to their plans and benefits, and so that plans do not incur the cost of providing such information.

9. Plans Not Immediately Subject to New Funding Rules or to Which Special Funding Rules Apply

a. CSEC Plans

On April 7, 2014, section 104(a)(1) of the Cooperative and Small Employer Charity Pension Plan Flexibility Act (CSEC Act), Public Law 113–97, 128 Stat. 1101 (as amended by the Consolidated and Continuing Appropriations Act, 2015, Public Law 113–235), added new disclosures to the funding notices of CSEC plans for plan years beginning after December 31, 2013.[18] The additional disclosures relate to the CSEC plan funding rules of new section 306 of ERISA.[19] A CSEC plan is a defined benefit pension plan (other than a multiemployer plan) that is either a multiple employer cooperative plan described in section 104 of the PPA, a plan that as of June 25, 2010, was maintained by more than one employer and all of the employers were Code section 501(c)(3) charitable organizations, or a plan, as of June 25, 2010, maintained by a Code section 501(c)(3) charitable organization chartered under part B of subtitle II of title 36 of the Code, with employees in at least 40 states, and whose primary exempt purpose is to provide services with respect to children.[20] A CSEC plan sponsor can elect out of CSEC plan status by the end of the first plan year beginning after December 31, 2013.[21]

The final rule does not address the new disclosures required by the CSEC Act. Since the CSEC Act covers only a small number of plans subject to section 101(f) of ERISA, the Department decided it is better for the vast majority of defined benefit plans to proceed with the final rule now and subsequently address the disclosure requirements for CSEC plans. The final rule, therefore, reserves paragraph (m) to address CSEC plan disclosures in the future, if necessary. Pending further guidance, the Department, as a matter of enforcement policy, will treat a plan administrator as satisfying the requirements of section 101(f)(2)(E) (which contains the new CSEC disclosures), if the administrator acts in accordance with a good faith, reasonable interpretation of those requirements.

b. PPA Section 104 and 402 Plans

Section 104 of the PPA defers the effective date of the amendments to the funding rules made by the PPA for certain multiple employer plans of rural

[18] ERISA section 101(f)(2)(E).

[19] Section 306 of ERISA and corresponding section 433 of the Code were added by sections 102 and 202 of the CSEC Act, respectively.

[20] ERISA section 210(f)(1). Section 210(f)(1) of ERISA and corresponding section 414(y)(1) of the Code were added by sections 101 and 201 of the CSEC Act, respectively. These provisions were amended by the Consolidated and Continuing Appropriations Act, 2015, Public Law 113–235, Division P, section 3 (2014).

[21] ERISA section 210(f)(3). Section 210(f)(3) of ERISA and corresponding section 414(y)(3) of the Code were added by sections 103 and 203 of the CSEC Act, respectively.

cooperatives and eligible charity plans.[22] Generally, these plans will be CSEC plans, unless they elect out of CSEC status (or are maintained by charities that are under common control). In addition, section 402 of the PPA applies special funding rules to certain plans of commercial passenger airlines and airline caterers.[23] Neither section 104 nor section 402 of the PPA affected the application of section 101(f) of ERISA to such plans. Consequently, plans electing out of CSEC status, eligible charity plans that are not CSEC plans, and section 402 plans should disclose their funding target attainment percentage (and related asset and liability information) in accordance with guidance provided by the Secretary of the Treasury until such time as they become subject to the PPA funding rules. For example, the funding target attainment percentage of a plan described in section 104 is determined in accordance with paragraph (b)(2)(i) of the final regulation, except that the value of plan assets is determined without subtraction of the funding standard carryover balance or prefunding balance. See 26 CFR 1.430(d)–1(b)(3)(ii).

10. Multiple Employer Pension Plans

After the Department issued FAB 2009–01, a number of plan administrators of multiple employer plans raised questions regarding whether, and how, the new annual funding notice requirements apply to such plans. The central question was whether all participants in such a plan must receive the same funding notice containing funding data at the plan level or whether each participant must receive a notice that reflects funding information relevant to his employer. It is the view of the Department that if all assets of the multiple employer pension plan are, on an ongoing basis, available to pay benefits to all plan participants and beneficiaries covered under the plan, then the information in the funding notice should be reflective of the plan as a whole. The plan administrator need not create a separate funding notice for the employees of each participating employer in the multiple employer plan containing the funding information (assets, liabilities, etc.) pertaining to that employer in the case of a multiple employer plan to which section 413(c)(4)(A) of the Code applies. Based on the foregoing, the proposal did not contain any special rules for multiple employer pension plans. However, the Department requested comments on whether funding notices for such plans should alert participants to the fact that some funding rules under the Code, *e.g.,* benefit restrictions under Code section 436, may apply on an employer-by-employer basis. The Department received no comments in response to this request. The final rule contains no special rules for multiple employer plans.

D. Overview of Amendments to 29 CFR 2520.104–46—Waiver of Examination and Report of an Independent Qualified Public Accountant for Employee Benefit Plans With Fewer Than 100 Participants

Department of Labor regulation 29 CFR 2520.104–46 governs the circumstances under which small pension plans (plans with fewer than 100 participants at the beginning of the plan year) are exempt from the requirements to engage an independent qualified public accountant and to include a report of the accountant as part of the plan's annual report under title I of ERISA. The waiver of the requirement to engage an accountant is conditioned on, among other things, the disclosure of certain information to participants and beneficiaries. A requirement of § 2520.104–46 is that such disclosure must be included in the summary annual report (SAR) of a plan electing the waiver. However, section 503(c) of the PPA amended section 104(b)(3) of ERISA by repealing the SAR requirement for defined benefit plans to which the annual funding notice requirements of section 101(f) of ERISA apply.[24] Therefore, in conjunction with the annual funding notice regulation (29 CFR 2520.101–5), as set forth in the final rule and discussed in section C of this preamble, above, the Department is adopting conforming amendments to § 2520.104–46 to enable plans subject to section 101(f) of ERISA to elect to use the waiver provision in § 2520.104–46. Under § 2520.104–46, as amended, a plan subject to section 101(f) of ERISA that elects to use the waiver must include the information in § 2520.104–46(b)(1)(i)(B)(*1*)–(*4*) in the plan's annual funding notice. The model audit waiver language in the Appendix to § 2520.104–46, modified for the format of the annual funding notice, may be used to meet those information requirements.

E. Overview of Amendments to 29 CFR 2520.104b–10—Summary Annual Report

As discussed in section D of this preamble, the PPA repealed the summary annual report (SAR) requirement for plans subject to section 101(f) of ERISA, effective for plan years beginning after December 31, 2007. The Department, therefore, is making technical conforming amendments to the SAR regulation (§ 2520.104b–10) to give effect to the repeal. Specifically, the proposal added a new paragraph (g)(9) to provide that a SAR is not required to be furnished if the plan is subject to title IV of ERISA. The Department received no comments on this provision. The final regulation adopts paragraph (g)(9) of the proposal, without change.

In the preamble of the proposal, the Department mentioned that some items and language in the form prescribed in paragraph (d)(3) and the appendix to § 2520.104b–10 might be irrelevant on and after the effective date of the repeal and solicited comments regarding how best to revise the form and Appendix. The Department received no comments in response to this request. After reviewing the coverage requirements of titles I and IV of ERISA, the Department recognizes that not all defined benefit plans covered under title 1 of ERISA are subject to title IV.[25] Such plans would remain subject to the SAR requirements of § 2520.104b–10. Accordingly, the Department is not making any changes to paragraph (d)(3) and the appendix of § 2520.104b–10 at this time.

F. Removal of 29 CFR 2520.101–4

In 2004, the Pension Funding Equity Act (PFEA '04), Public Law 108–218, amended title I of the Employee Retirement Income Security Act of 1974 (ERISA) by adding section 101(f), which required multiemployer defined benefit plans to furnish a plan funding notice annually to each participant and beneficiary, to each labor organization representing such participants or beneficiaries, to each employer that has an obligation to contribute under the plan, and to the PBGC. On January 11, 2006, the Department published a final regulation, 29 CFR 2520.101–4,

[22] Section 202(b) of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, Public Law 111–192, amended section 104 of the Pension Protection Act of 2006, Pub. L. 109–280, by expanding the group of plans that are eligible for a deferred effective date under section 104 to include eligible charity plans.

[23] Section 402 of the PPA as amended by the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Public Law 110–28.

[24] The repeal is effective for plan years beginning after December 31, 2007.

[25] A plan established and maintained by a professional services employer which does not at any time after September 2, 1974 have more than 25 active participants is not covered by title IV. *See* section 4021(b)(13) of ERISA. Also, plans funded entirely by employee contributions are not covered by title IV. *See* section 4021(b)(5) of ERISA. There are no comparable provisions under section 4 of ERISA excluding such plans from title I.

implementing the requirements of section 101(f) of ERISA as amended by PFEA '04. The final regulation published today implements changes to section 101(f) of ERISA, as amended by PPA, and supersedes and reserves 29 CFR 2520.101–4.

G. Regulatory Impact Analysis

Summary

The final rule contains a model notice and other guidance necessary to implement section 101(f) of ERISA as amended. Section 101(f) and the final rule increase the transparency of information about the funding status of plans, affording all parties interested in the financial viability of these plans with a greater opportunity to monitor their funding status and take action where necessary. In addition, the rule offers separate model notices to administrators of single-employer and multiemployer defined benefit pension plans, which are expected to mitigate burden and contribute to the efficiency of compliance. Another benefit is that the rule would afford plan administrators greater certainty that they have discharged their notice obligation under section 101(f) by clarifying certain terms used in the statute. The Department has concluded that the benefits of the rule justify their costs. These benefits—increased transparency, greater efficiency, certainty, and clarity—are expected to be substantial, but cannot be specifically quantified.

The cost of the final rule is expected to amount to $51 million in the first year of implementation and $46.5 million in each subsequent year. The total estimated cost includes the one-time development of a notice by each plan and the annual preparation and mailing of the notices to the required recipients.[26] The first year estimate is higher to account for the time required for plan administrators to adapt and review the model notice. The Department also makes the following additional cost estimates regarding the components of the total estimated cost:

—The total mailing costs are estimated to be about $22.6 million annually in the first three years; and

—In addition to the mailing costs, the Department estimates that firms will spend about $28.4 million in the year of implementation and $23.9 million in subsequent years on labor costs.[27]

The Department has attempted to provide guidance in the final rule to assist administrators in meeting their responsibilities in the most economically efficient manner possible. Because the costs of the rule arise only from notice provisions in PPA, the data and methodology used in developing these estimates are more fully described in the Paperwork Reduction Act section of this analysis of regulatory impact.

TABLE 1—ACCOUNTING TABLE

Qualitative Benefits	Section 101(f) and the final rule increase the transparency of information about the funding status of plans, affording all parties interested in the financial viability of these plans with a greater opportunity to monitor their funding status and take action where necessary. In addition, the rule offers a model notice to administrators of single-employer and multiemployer defined benefit pension plans, which is expected to mitigate burden and contribute to the efficiency of compliance. Another benefit is that the rule would afford plan administrators greater certainty that they have discharged their notice obligation under section 101(f) by clarifying certain terms used in the statute.					
	Primary estimate	Low estimate	High estimate	Year dollar	Discount rate (%)	Period covered
Annualized Monetized Costs ($millions/year)	48.1 48.0	45.1 45.0	60.2 60.0	2014 2014	7 3	2015–2017 2015–2017
Discussion of Costs	Monetized costs are a result of labor hours in preparing the annual funding notice and from materials and mailing costs.					

Executive Order 12866 and 13563

Under Executive Order 12866, the Department must determine whether a regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB). Executive Order 13563 reaffirms the principles set forth in Executive Order 12866 by emphasizing, among other things, the importance of proposing or adopting regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify), tailoring regulations to impose the least burden on society consistent with obtaining regulatory objectives, coordinating across agencies to reduce costs by simplifying and harmonizing rules, and encouraging public participation in the rulemaking process.

Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. It has been determined that this action is significant under section 3(f)(4) of Executive Order 12866; therefore, OMB has reviewed this regulatory action pursuant to the Executive Order.

[26] As discussed earlier in this preamble, this final regulation will implement the statutory requirement for defined benefit pension plan administrators to provide an annual funding notice that meets the requirements of ERISA section 101(f). Because plans were required to comply with ERISA section 101(f) before the issuance of implementing regulations, and taking into account guidance previously issued by the Department in Field Assistance Bulletin 2009–01, this regulatory impact analysis includes a small initial cost for plans to make adjustments that would be necessary to ensure compliance with implementing regulations. These estimates then take into account the ongoing annual costs for plan administrators to create and send the annual funding notices.

[27] The total hour burden is estimated to be about 603,000 hours in the year of implementation and 562,000 hours in each subsequent year.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)), the Department submitted an information collection request (ICR) to OMB regarding the ICRs contained in the final rule in accordance with 44 U.S.C. 3507(d), for OMB's review. OMB approved the ICR under OMB Control Number 1210–0126, which currently is scheduled to expire on January 31, 2018.

A copy of the ICR may be obtained by contacting the PRA addressee: G. Christopher Cosby, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., Room N–5718, Washington, DC 20210. Telephone (202) 693–8410; Fax: (202) 219–5333. These are not toll-free numbers. ICRs submitted to OMB also are available at *http://www.RegInfo.gov.*

The final rule implements the disclosure requirements of section 101(f) of ERISA, as amended by section 501 of the PPA and section 201(a)(4) of MPRA. As described earlier in the preamble, section 101(f) of ERISA and section 2520.101–5(a) of the final rule require the administrator of a defined benefit plan to which title IV of ERISA applies to furnish an annual funding notice to the PBGC, each participant and beneficiary, each labor organization representing participants and beneficiaries, and for multiemployer plans only, each employer with an obligation to contribute to the plan. The annual funding notice is an ICR subject to the

Paperwork Reduction Act

The content requirements for the ICR are contained in section 2520.101–5(b). Model notices are provided in the appendices to the rule to facilitate compliance and moderate the burden attendant to supplying notices to participants and beneficiaries, labor organizations, contributing employers, and PBGC. Use of the model notice is not mandatory; however, use of the model will be deemed to satisfy the requirements for content, style, and format of the notice, except with respect to any other information the plan administrator elects to include. The final rule also is intended to clarify several statutory requirements with respect to content, style and format, manner of furnishing, and persons entitled to receive the annual funding notice. Increasing the transparency of information about the funding status of defined benefit plans for participants and beneficiaries, labor organizations, contributing employers, and the PBGC will afford all parties interested in the financial viability of these plans greater opportunity to monitor their funding status.

In order to estimate the potential costs of the notice provisions of section 101(f) of ERISA and the final rule, the Department estimated the number of single-employer and multiemployer defined benefit plans, and the numbers of participants, beneficiaries receiving benefits, labor organizations representing participants, and employers with an obligation to contribute to these plans. The Department lacks sufficient information to estimate the number of alternate payees.

The PBGC Pension Insurance Data Tables 2011 indicates that there are 1,454 multiemployer defined benefit plans with approximately 10.3 million participants and beneficiaries receiving benefits. These estimates are based on premium filings with PBGC for fiscal year 2011. This total has been adjusted slightly to reflect the exception from the requirement to furnish annual funding notices to plans that are receiving financial assistance from PBGC.[28] The PBGC Pension Insurance Data Tables 2011 also indicates that there are 25,607 single-employer defined benefit plans with approximately 33.4 million participants.

The Department is not aware of a direct source of information for the number of notices that must be sent to labor organizations that represent participants of multiemployer defined benefit plans and that would be entitled to receive notice under section 101(f). The Department has relied on data from the 1998 Form 5500 which collected information on plans that are collectively bargained to approximate the distribution of the number of unions per plan. This leads to an estimated 1,834 labor organizations for the 1,454 multiemployer plans and 34,263 labor organizations for the 25,607 single-employer plans (a total of approximately 36,100 labor organizations).

There are 232,570 employers obligated to contribute to multiemployer defined benefit plans that are required to receive a funding notice.[29]

For purposes of its estimates of regulatory impact, the Department has assumed that each plan will develop a notice, and that each year approximately 44.0 million notices will be prepared and sent. The 44.0 million estimate breaks down as follows: 10.3 million notices to participants and beneficiaries of approximately 1,454 multiemployer defined benefit plans; 33.4 million notices to participants and beneficiaries of close to 25,607 single-employer plans; 36,100 notices to labor organizations; 232,570 notices to contributing employers of multiemployer plans; and 27,000 notices to the PBGC.

Estimates of notice preparations are based on the assumption that plan service providers, actuaries, lawyers, and financial professionals will produce the notices. It is assumed that the availability of a model notice will lessen the time otherwise required by a plan administrator to draft a required notice. The Department received one comment questioning the estimates of the time required to complete the notices. The Department did consult with an individual familiar with the industry and adjusted its estimates as recommended. The estimates are as follows: On average, actuaries will spend 3.5 hours in the first year and 2.5 hours in each succeeding year preparing notices for single-employer plans and two hours in the first year and two hours in each succeeding year preparing notices for multiemployer plans making specific calculations for information that must be provided in the notice; on average legal professionals will spend one hour in the first year and 0.5 hours in each succeeding year reviewing the notice;[30] and financial professionals will spend on average one hour in the first year and thereafter drafting the notice for single-employer plans and two hours in the first year and one hour in each succeeding year preparing the notice for multiemployer plans. The final preparation and distribution of the notice will be done by a clerical professional using an estimate of one minute per notice mailed.

[28] According to the PBGC Pension Insurance Data Tables 2011, there were 1,454 multiemployer defined benefit plans in 2010. This number was reduced by 49 in order to account for the 49 plans that received financial assistance and are not required to furnish an annual funding notice.

[29] PBGC, ''Multiemployer Pension Plans: Report to Congress Required by the Pension Protection Act of 2006.) *See* page 13 table 3. *http://www.pbgc.gov/documents/pbgc-report-multiemployer-pension-plans.pdf.*

[30] The estimate of the number of hours needed for a legal professional is based on the average time required. While the Department acknowledges that more time could be required for each plan to draft its own notice, based on its conversations with industry groups, the Department believes that trade associations, service providers, or others would draft the first version of the notice using the provided model notice as a starting point, which could then be used by multiple plans. This economy of scale would result in a lower average hour burden than if every plan used a legal professional to create its own notice. The time estimate would still allow for plans to have a legal professional review the unique pieces of its notice.

Assuming 44.0 million notices are distributed,[31] the burden hours for that initial year of implementation are 92,500 actuarial hours, 28,500 financial professional hours, and 27,100 legal professional hours. Total clerical professional hours are calculated based on the total number of notices mailed and the preparation time of one minute per notice resulting in 454,600 hours. The total hour burden for the year of implementation is 603,000 hours (rounded to the nearest thousand). Each subsequent year requires 66,900 actuarial hours, 454,600 clerical hours, 27,100 financial professional hours, and 13,500 legal professional hours for a total of 562,100 hours.[32]

Hourly labor rates were calculated using the rates based on the Bureau of Labor Statistics, National Occupational Employment Survey (March 2013) and the Bureau of Labor Statistics, Employment Cost Index (September 2013).[33] Calculations of the 2014 hourly labor costs were $29.60 for a clerical professional, $68.68 for a financial professional, $103.15 for an actuary, and $126.56 for a legal professional.[34]

Based on the foregoing, the total equivalent cost for the initial year is estimated at approximately $9,545,000 for actuarial services, $13,457,000 for clerical services, $1,958,000 for financial professional services, and $3,425,000 for legal professional services. The total equivalent cost is approximately $28,385,000 in the initial year.

The total equivalent cost in each subsequent year is estimated at approximately $6,963,000 for actuarial services, $13,457,000 for clerical services, $1,859,000 for financial professional services, and $1,712,000 for legal professional services. The total equivalent cost is estimated at approximately $23,931,000 in each subsequent year.

The cost of mailing the notices was based on the assumption that each notice would be seven pages for single-employer plans and six pages for multiemployer plans, with printing costs of 5 cents per page and postage of 49 cents resulting in an estimated 84 cent cost per paper notice for single-employer plans and a 79 cent cost per paper notice for multiemployer plans. It was further assumed that 38 percent of notices would be sent electronically. The Department has not estimated any additional burden for preparation or distribution of notices via electronic means, because the Department assumes that plans will utilize pre-existing electronic communications systems and email lists for these purposes and the process of preparation and distribution involves only a de minimis additional effort, *e.g.,* a few computer key strokes or the equivalent. This assumption will result in a total of approximately 16.7 million notices being sent electronically by multiemployer and single-employer plans. Single-employer plans will mail out approximately 20.7 million paper notices and multiemployer plans will mail out approximately 6.5 million paper notices. Total annual paper mailing costs are estimated to be approximately $22.6 million.

Sensitivity Analysis

There is uncertainty surrounding the estimates of the time required to prepare and review the notice. The Department has sought to model this uncertainty by varying the time estimates and creating a range around the estimates reported above. The Department reduced the actuarial, financial professional and legal professional time by 25 percent. This change lowered the total cost of the rule to $47.2 million in the first year and $43.9 million in the subsequent years. The Department is more concerned about the effect on costs if it underestimated the cost of the rule, so it doubled the time estimates as well and found that this increased the total costs of the rule to $65.9 million it the first year and $57.0 million in subsequent years.

These paperwork burden estimates are summarized as follows:

Type of Review: Revised collection.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Annual Funding Notice for Defined Benefit Plans.

OMB Control Number: 1210–0126.

Affected Public: Business or other for-profit; not-for-profit institutions.

Respondents: 27,061.

Responses: 43,996,000. *Frequency of Response:* Annually.

Estimated Total Annual Burden Hours: 576,000 (average over first three years); 603,000 (first year) (562,000 subsequent years).

Estimated Total Annual Burden Cost: $22,586,000 (first year and subsequent years).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and which are likely to have a significant economic impact on a substantial number of small entities. Unless the head of an agency certifies that a final rule is not likely to have a significant economic impact on a substantial number of small entities, section 604 of the RFA requires that the agency present final regulatory flexibility analysis describing the rule's impact on small entities and explaining how the agency made its decisions with respect to the application of the rule to small entities.

For purposes of the RFA, the Department continues to consider a small entity to be an employee benefit plan with fewer than 100 participants.[35] Further, while some large employers may have small plans, in general small employers maintain most small plans. Thus, the Department believes that assessing the impact of this final rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business that is based on size standards promulgated by the Small Business Administration (SBA) (13 CFR 121.201) pursuant to the Small Business Act (15 U.S.C. 631 *et seq.*).

By this standard, data from the 2011 Form 5500 indicates that for more than 90 percent of small affected plans, the average per plan compliance cost is $1,030 ($27.8 million/27,061 plans) plus plan specific mailing cost (84 cents per participant in single-employer plans, and 79 cents in multiemployer plans, which cannot exceed $84 per plan because small plans have less than 100 participants) is less than one percent of plan assets.

Based on the foregoing, the Department has determined that while the rule is likely to impact a substantial number of small entities, the economic impact on such entities will not be significant for most small entities. Therefore, pursuant to section 605(b) of RFA, the Assistant Secretary of the

[31] The Department assumes that 38 percent of notices are sent electronically resulting in a de minimis cost.

[32] The average Total Annual Burden Hours over the first three years is 575,700.

[33] EBSA estimates of labor rates include wages, other benefits, and overhead.

[34] The Department received a comment from the public expressing concern that the wage estimate for legal professionals is low. While the Department acknowledges that the labor rate of an outsourced legal professional could be higher than the reported average, many plans, service providers, and trade associations have legal professionals on staff that have a much lower labor rate and that the Department believes would do most of the work.

[35] The basis for this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants.

Employee Benefits Security Administration hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Congressional Review Act

The final rule is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and will be transmitted to Congress and the Comptroller General for review. The final rule is not a ''major rule'' as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), as well as Executive Order 12875, the final rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments in the aggregate of more than $100 million, adjusted for inflation, or increase expenditures by the private sector of more than $100 million, adjusted for inflation.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism, and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. The final rule does not have federalism implications because it has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements that would be implemented in the final rule do not alter the fundamental reporting and disclosure requirements of the statute with respect to employee benefit plans, and as such have no implications for the States or the relationship or distribution of power between the national government and the States.

List of Subjects in 29 CFR Part 2520

Accounting, Employee benefit plans, Employee Retirement Income Security Act, Pensions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Department of Labor amends 29 CFR part 2520 as follows:

PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

■ 1. The Authority citation for part 2520 is revised to read as follows:

Authority: 29 U.S.C. 1021–1025, 1027, 1029–31, 1059, 1134 and 1135; and Secretary of Labor's Order 1–2011 77 FR 1088 (Jan. 9, 2012). Sec. 2520.101–2 also issued under 29 U.S.C. 1132, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Secs. 2520.102–3, 2520.104b–1 and 2520.104b–3 also issued under 29 U.S.C. 1003, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Secs. 2520.104b–1 and 2520.107 also issued under 26 U.S.C. 401 note, 111 Stat. 788. Sec. 2520.101–5 also issued under sec. 501 of Pub. L. 109–280, 120 Stat. 780 and sec. 105(a), Pub. L. 110–458, 122 Stat. 5092.

§ 2520.101–4 [Removed and Reserved]

■ 2. Remove and reserve § 2520.101–4.

■ 3. Add § 2520.101–5 to subpart A to read as follows:

§ 2520.101–5 Annual funding notice for defined benefit pension plans.

(a) *In general.* (1) Except as provided in paragraphs (a)(2) and (3) of this section, pursuant to section 101(f) of the Act, the administrator of a defined benefit plan to which title IV of the Act applies shall furnish annually to each person specified in paragraph (f) of this section a funding notice that conforms to the requirements of this section.

(2) A plan administrator shall not be required to furnish a funding notice—

(i) In the case of a multiemployer plan, for a plan year if the due date for such notice is on or after the earlier of:

(A) The date the plan complies with the insolvency notice requirements of section 4245(e) or 4281(d)(3) of the Act and regulations thereunder; or

(B) The date the plan has distributed assets in satisfaction of all nonforfeitable benefits under the plan pursuant to section 4041A of the Act and the regulations thereunder.

(ii) In the case of a single-employer plan, for a plan year if the due date for the funding notice is on or after the date:

(A) The Pension Benefit Guaranty Corporation is appointed as trustee of the plan pursuant to section 4042 of the Act;

(B) The plan has distributed assets in satisfaction of all benefit liabilities in a distress termination pursuant to section 4041(c)(3)(B)(i) of the Act or of all guaranteed benefits in a distress termination pursuant to section 4041(c)(3)(B)(ii) of the Act; or

(C) The plan administrator filed a standard termination notice with the Pension Benefit Guaranty Corporation pursuant to 29 CFR 4041.25, provided that the proposed termination date is on or before the due date of the funding notice and a final distribution of assets in satisfaction of all benefit liabilities proceeds in accordance with section 4041(b) of the Act.

(3) In the case of a merger or consolidation of two or more plans—

(i) The plan administrator of a non-successor plan shall not be required to furnish a funding notice for the plan year in which the merger or consolidation occurred; and

(ii) The funding notice of the successor plan, for the plan year in which the merger or consolidation occurred, must, in addition to the requirements of paragraph (b) of this section, contain a general explanation, including the effective date, of the merger or consolidation and an identification of each plan (*e.g.,* name and plan number) involved in the merger or consolidation.

(b) *Content of notice.* A funding notice shall include the following information:

(1) *Identifying information.* The name of the plan, the name, address, and phone number of the plan administrator and the plan's principal administrative officer (if different than the plan administrator), each plan sponsor's name and employer identification number, and the plan number.

(2) *Funding percentage*—(i) *Single-employer plans.* For single-employer plans, a statement as to whether the plan's funding target attainment percentage (as defined in section 303(d)(2) of the Act) for the notice year, and for each of the two preceding plan years, is at least 100 percent (and, if not, the actual percentages).

(ii) *Multiemployer plans.* For multiemployer plans, a statement as to whether the plan's funded percentage (as defined in section 305(i) of the Act) for the notice year, and for each of the two preceding plan years, is at least 100

percent (and, if not, the actual percentages).

(3) *Assets and liabilities*—(i) *Single-employer plans.* For single-employer plans—

(A) A statement of the total assets (separately stating the prefunding balance and the funding standard carryover balance) and liabilities of the plan, determined in the same manner as under section 303 of the Act, as of the valuation date of the notice year and for each of the two preceding plan years, as reported in the annual report filed under section 104 of the Act for each such preceding plan year, and

(B) A statement of the value of the plan's assets and liabilities determined as of the last day of the notice year. For purposes of this statement, the value of the plan's assets is the fair market value of plan assets. Plan liabilities are equal to the present value of benefits accrued through the last day of the notice year determined in the same manner as liabilities are calculated under section 303 of the Act (including actuarial assumptions and methods), but using the interest rate under section 4006(a)(3)(E)(iv) of the Act in effect for the last month of the notice year.

(ii) *Multiemployer plans.* For multiemployer plans—

(A) A statement of the value of the plan's assets (determined in the same manner as under section 304(c)(2) of the Act) and liabilities (determined in the same manner as under section 305(i)(8) of the Act, using reasonable actuarial assumptions as required under section 304(c)(3) of the Act) as of the valuation date of the notice year and each of the two preceding plan years, and

(B) A statement of the fair market value of plan assets as of the last day of the notice year, and as of the last day of each of the two preceding plan years as reported in the annual report filed under section 104(a) of the Act for each such preceding plan year.

(iii) *Contributions receivable.* For purposes of determining the fair market value of plan assets as of the last day of the notice year under paragraphs (b)(3)(i)(B) and (b)(3)(ii)(B) of this section, the plan administrator may, but is not required to, include contributions made after the notice year and before the notice is furnished to recipients, but only to the extent such contributions are treated for funding purposes as having been made on account of the notice year under section 303(g)(4) of the Act, in the case of a single-employer plan, or under section 304(c)(8) of the Act, in the case of a multiemployer plan.

(4) *Demographic information.* A statement of the number of participants and beneficiaries who, as of the valuation date of the notice year, are: Retired or separated from service and receiving benefits; retired or separated from service and entitled to future benefits (but currently not receiving benefits); or active participants under the plan. The statement shall indicate the number of participants and beneficiaries in each category and the sum of all such participants and beneficiaries. The terms ''active'' and ''retired or separated'' shall have the same meaning given to those terms in instructions to the annual report filed under section 104(a) of the Act.

(5) *Funding policy.* A statement setting forth—

(i) The funding policy of the plan;

(ii) The asset allocation of investments under the plan (expressed as percentages of total assets) as of the end of the notice year; and

(iii) A general description of any investment policy of the plan as it relates to the funding policy in paragraph (b)(5)(i) of this section and the asset allocation of investments under paragraph (b)(5)(ii) of this section.

(6) *Endangered, critical, or critical and declining status.* In the case of a multiemployer plan, a statement whether the plan was in endangered, critical, or critical and declining status under section 305 of the Act for the notice year and, if so—

(i) A statement describing how a person may obtain a copy of the plan's funding improvement plan or rehabilitation plan, as appropriate, adopted under section 305 of the Act and the actuarial and financial data that demonstrate any action taken by the plan toward fiscal improvement;

(ii) A summary of the plan's funding improvement plan or rehabilitation plan, including any update or modification of such funding improvement or rehabilitation plan adopted under section 305 of the Act during the notice year; and

(iii) In the case of a multiemployer plan in critical and declining status:

(A) The projected date of insolvency;

(B) A clear statement that such insolvency may result in benefit reductions; and

(C) A statement describing whether the plan sponsor has taken legally permitted actions to prevent insolvency.

(7) *Events having a material effect on liabilities or assets.* Subject to paragraph (g) of this section, in the case 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, an explanation of the amendment, scheduled benefit increase or reduction, or event, and a projection to the end of such plan year of the effect of the amendment, scheduled benefit increase or reduction, or event on plan liabilities.

(8) *Rules on termination or insolvency*—(i) *Single-employer plans.* In the case of a single-employer plan, a summary of the rules governing termination of single-employer plans under subtitle C of title IV of the Act.

(ii) *Multiemployer plans.* In the case of a multiemployer plan, a summary of the rules governing insolvency, including the limitations on benefit payments.

(9) *PBGC guarantees.* A general description of the benefits under the plan which are eligible to be guaranteed by the Pension Benefit Guaranty Corporation, along with an explanation of the limitations on the guarantee and the circumstances under which such limitations apply.

(10) *Annual report information.* A statement that a person entitled to notice under paragraph (f) of this section may obtain a copy of the annual report of the plan filed under section 104(a) of the Act upon request, through the Internet Web site of the Department of Labor, or through any Intranet Web site maintained by the applicable plan sponsor (or plan administrator on behalf of the plan sponsor).

(11) *Information disclosed to PBGC.* In the case of a single-employer plan, if applicable, a statement that the contributing sponsor of the plan or a member of the contributing sponsor's controlled group was required to provide information under section 4010 of the Act for the information year ending in the notice year (see 29 CFR 4010.5).

(12) *Additional information.* Any additional information that the plan administrator elects to include, provided that such information is necessary or helpful to understanding the mandatory information in the notice, or is otherwise permitted by law.

(c) *Style and format of notice.* Funding notices shall be written in a manner that is consistent with the style and format requirements of § 2520.102–2 of this chapter.

(d) *When to furnish notice.* (1) Except as provided in paragraph (d)(2) of this section, a funding notice shall be provided not later than 120 days after the end of the notice year.

(2) In the case of a small plan, a funding notice shall be provided not later than the earlier of the date on which the annual report is filed under section 104(a) of the Act or the latest date the annual report must be filed under that section (including extensions). For this purpose, a single-

employer plan is a small plan if it meets the exception in section 303(g)(2)(B) of the Act, and a multiemployer plan is a small plan if it had 100 or fewer participants on each day during the plan year preceding the notice year.

(e) *Manner of furnishing notice.* (1) [Reserved.]

(2) A funding notice must be furnished to the Pension Benefit Guaranty Corporation in a manner consistent with the requirements of part 4000 of title IV of the Act. The date that the notice is furnished to the Pension Benefit Guaranty Corporation is determined consistent with that part.

(f) *Persons entitled to notice.* Persons entitled to a funding notice under this section are:

(1) Each participant covered under the plan on the last day of the notice year;

(2) Each beneficiary receiving benefits under the plan on the last day of the notice year;

(3) Each alternate payee under the plan on the last day of the notice year;

(4) Each labor organization representing participants under the plan on the last day of the notice year;

(5) In the case of a multiemployer plan, each employer that, as of the last day of the notice year, is a party to the collective bargaining agreement(s) pursuant to which the plan is maintained or who otherwise may be subject to withdrawal liability pursuant to section 4203 of the Act; and

(6) The Pension Benefit Guaranty Corporation.

(g) *Special rules and definitions for material effect disclosures.* (1) The term ''current plan year'' means the plan year after the notice year. Thus, for example, if the notice year is January 1, 2017 through December 31, 2017, then the current plan year would be January 1, 2018 through December 31, 2018.

(2) An event described in paragraph (b)(7) of this section is recognized as ''taking effect'' in the current plan year if the effect of the event is taken into account for the first time for funding under section 430 or 431 of the Internal Revenue Code, as applicable, in such year.

(3) An event described in paragraph (b)(7) of this section has a ''material effect'' if it results, or is projected to result, in an increase or decrease of five percent or more in the value of assets or liabilities from the valuation date of the notice year. For this measurement, calculate assets and liabilities in the same manner as under paragraph (b)(2) of this section.

(4) An event described in paragraph (b)(7) of this section has a ''material effect'' if, in the judgment of the plan's enrolled actuary, the effect of the event is considered material for purposes of the plan's funding status under section 430 or 431, as applicable, of the Internal Revenue Code, without regard to paragraph (g)(3) of this section.

(5) An event described in paragraph (b)(7) of this section is ''known'' only if it is known by the plan administrator prior to 120 days before the due date of the notice. Thus, if an event otherwise described in paragraph (b)(7) first becomes known to a plan administrator 120 days or less before the due date of a notice, the plan administrator is not required to explain, or project the effect of, the event in that notice.

(6) The term ''other known event'' includes, but is not limited to, an extension of coverage under the existing terms of the plan to a new group of employees; a plan merger, consolidation, or spinoff pursuant to regulations under section 414(l) of the Internal Revenue Code; or, a shutdown of any facility, plant, store, or such other similar corporate event that creates immediate eligibility for benefits that would not otherwise be immediately payable for participants separating from service. The term does not include market fluctuations.

(7) With respect to events described in paragraph (g)(4) of this section, the plan administrator may, instead of projecting the effect on plan liabilities to the end of the current plan year, include an explanation why the event is considered material by the enrolled actuary.

(8)

Example. The following example illustrates the special rules and definitions of paragraph (g) of this section: Plan Y is a single-employer calendar year plan. Company X, the sponsor of Plan Y, adopts an amendment on June 1, 2017, offering a subsidized early retirement benefit to participants age 50 or older who retire on or after September 1, 2017 and before March 1, 2018. The amendment increases the liabilities of Plan Y by an amount greater than 5% of the value of Plan Y's liabilities on January 1, 2017. Company X does not make an election under Code section 412(d)(2) to accelerate recognition of the event for funding. The amendment is taken into account for the first time under section 430 of the Code as of the January 1, 2018 valuation date. Therefore, the amendment is recognized as taking effect under the final rule in 2018. Since the amendment adopted on June 1, 2017, is known more than 120 days prior to the April 30, 2018 due date of the 2017 funding notice, the amendment must be disclosed in the 2017 funding notice under paragraph (b)(7) of the final regulations as a material effect event taking effect in 2018 (*i.e.,* the current plan year).

(h) *Model notices.* (1) The appendices to this section contain a model notice for single-employer plans and a model notice for multiemployer plans. These models are intended to assist plan administrators in discharging their notice obligations under this section. Use of a model notice is not mandatory. However, subject to paragraph (h)(2) of this section, use of a model notice will be deemed to satisfy the requirements of paragraphs (b)(1) through (b)(11) and paragraph (c) of this section.

(2) To the extent a plan administrator elects to include in a model notice information described in paragraph (b)(12) of this section, such additional information must be consistent with the style and format requirements in paragraph (c) of this section.

(i) *Notice year.* For purposes of this section, the term ''notice year'' means the plan year to which the notice relates. For example, for a calendar year plan that must furnish its 2010 funding notice no later than the 120th day of 2011, the ''notice year'' is the 2010 plan year.

(j) *Alternative method of compliance for furnishing notice to PBGC for certain single-employer plans.* Notwithstanding any other provision of this section, the plan administrator of a single-employer plan is not required to furnish a notice to the Pension Benefit Guaranty Corporation annually if, based on the data described in paragraph (b)(3)(i)(A) of this section for the notice year, plan liabilities do not exceed total plan assets by more than $50 million, provided that the plan administrator furnishes the latest available funding notice to the Pension Benefit Guaranty Corporation within 30 days of a written request.

(k) *Alternative method of compliance for multiemployer plans terminated by mass withdrawal.* (1) Notwithstanding any other provision of this section, for plan years beginning after the date specified in section 4041A(b)(2) of the Act, an alternative method of compliance is available in the case of a multiemployer plan that terminates as a result of the withdrawal of every employer from the plan or the cessation of the obligation of all employers to contribute under the plan, as described in section 4041A(a)(2) of the Act. Under this alternative method, the plan administrator shall furnish annually to each person described in paragraph (f)(1) through (3) of this section a notice that complies with paragraphs (c), (d), (e), and (k)(2) of this section.

(2) The notice includes:

(i) A statement of the fair market value of the plan's assets as of the last day of the notice year, and as of the last day of each of the two preceding plan years as reported in the annual report filed under section 104(a) of the Act for each such preceding plan year;

(ii) A statement of the amount of benefit payments made during the notice year and each of the two preceding plan years;

(iii) If a notice has not already been furnished pursuant to 29 CFR 4281.32, a statement that benefits may be reduced pursuant to section 4281(c) of the Act and a summary of the rules governing such reductions;

(iv) A summary of the rules governing insolvency, including the limitations on benefit payments, pursuant to paragraph (b)(8)(ii) of this section;

(v) The information described in paragraphs (b)(1), (b)(9), and (b)(10) of this section; and

(vi) Any additional information that the plan administrator elects to include, subject to the requirements of paragraph (b)(12) of this section.

(l) *Alternative method of compliance for Internal Revenue Code section 412(e)(3) plans.* (1) Notwithstanding any other provision of this section, an alternative method of compliance is available in the case of an insurance contract plan described in section 412(e)(3) of the Internal Revenue Code of 1986. Under this alternative method, the plan administrator shall furnish annually to each person described in paragraph (f) of this section a notice that complies with paragraphs (c), (d), (e), and (l)(2) of this section.

(2) The notice includes:

(i) An explanation that the plan is funded exclusively by an insurance contract or contracts, that such contract or contracts provide for the benefit payments to participants and beneficiaries, that such benefit payments are guaranteed by a licensed insurance company or companies, and the name of the insurance company or companies;

(ii) A statement whether, as of the last day of the notice year, there were any delinquent premiums and, if so, the amount and date of the delinquency and the effect on the plan and on participants and beneficiaries in the event of a policy lapse;

(iii) The information described in paragraph (b)(1), (b)(9), and (b)(10) of this section; and

(iv) Any additional information that the plan administrator elects to include, provided that such information meets the standard in paragraph (b)(12) of this section.

(m) *CSEC plans. [Reserved].*

Appendix A to § 2520.101–5—Single-Employer Plan Model Annual Funding Notice

PAPERWORK BURDEN DISCLOSURE NOTICE
OMB Control Number 1210-0126; expires 04/17/2017

Behind this cover page is a model notice that may be used to satisfy the mandatory disclosure requirements set forth in 29 CFR 2520.101-5. The model notice is a collection of information instrument subject to the Paperwork Reduction Act. Use of the model notice to meet the disclosure requirements is optional. You may also develop your own notice, provided it contains all of the information required by 29 CFR 2520.101-5. The Department of Labor estimates that it will take an average of approximately 21 hours for plan administrators to complete the model. You may send comments on this collection of information, including suggestions for reducing burden to: US Department of Labor, Policy and Research, Attention: PRA Officer, 200 Constitution Avenue, NW, Room N-5718, Washington, DC 20210. The disclosure requirements in 29 CFR 2520.101-5, referenced above, are also a collection of information under the PRA. The public is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DO NOT INCLUDE THIS PAPERWORK REDUCTION ACT BANNER IN NOTICES TO PARTICIPANTS AND BENEFICIAIRES

ANNUAL FUNDING NOTICE
For
[*insert name of single-employer pension plan*]

Introduction

This notice includes important information about the funding status of your single-employer pension plan (the "Plan"). It also includes general information about the benefit payments guaranteed by the Pension Benefit Guaranty Corporation ("PBGC"), a federal insurance agency. All traditional pension plans (called "defined benefit pension plans") must provide this notice every year regardless of their funding status. This notice does not mean that the Plan is terminating. It is provided for informational purposes and you are not required to respond in any way. This notice is required by federal law. This notice is for the plan year beginning [*insert beginning date*] and ending [*insert ending date*] ("Plan Year").

How Well Funded Is Your Plan

The law requires the administrator of the Plan to tell you how well the Plan is funded, using a measure called the "funding target attainment percentage." The Plan divides its Net Plan Assets by Plan Liabilities to get this percentage. In general, the higher the percentage, the better funded the plan. The Plan's Funding Target Attainment Percentage for the Plan Year and each of the two preceding plan years is shown in the chart below. The chart also shows you how the percentage was calculated.

Funding Target Attainment Percentage			
	[insert Plan Year, e.g., 2015]	[insert plan year preceding Plan Year, e.g., 2014]	[insert plan year 2 years preceding Plan year, e.g., 2013]
1. Valuation Date	[insert date]	[insert date]	[insert date]
2. Plan Assets			
a. Total Plan Assets	[insert amount]	[insert amount]	[insert amount]
b. Funding Standard Carryover Balance	[insert amount]	[insert amount]	[insert amount]
c. Prefunding Balance	[insert amount]	[insert amount]	[insert amount]
d. Net Plan Assets (a) – (b) – (c) = (d)	[insert amount]	[insert amount]	[insert amount]

3. Plan Liabilities	[insert amount]	[insert amount]	[insert amount]
4. At-Risk Liabilities	[insert amount]	[insert amount]	[insert amount]
5. Funding Target Attainment Percentage (2d)/(3)	**[insert percentage]**	**[insert percentage]**	**[insert percentage]**

{Instructions: Report Valuation Date entries in accordance with section 303(g)(2) of ERISA. Report Total Plan Assets in accordance with section 303(g)(3) of ERISA. Report credit balances (i.e., funding standard carryover balance and prefunding balance) in accordance with section 303(f) of ERISA. Report Net Plan Assets, Plan Liabilities (i.e., funding target), and Funding Target Attainment Percentage in accordance with section 303(d)(2) of ERISA. The amount reported as "Plan Liabilities" should be the funding target determined without regard to at-risk assumptions, even if the plan is in at-risk status. At-Risk Liabilities are determined under section 303(i) of ERISA (taking into account section 303(i)(5) of ERISA). Report At-Risk Liabilities for any year covered by this chart in which the plan was in "at-risk" status within the meaning of section 303(i) of ERISA, only if At-Risk Liabilities are greater than Plan Liabilities; otherwise delete the entire row designated as number 4. Round off all amounts in this chart to the nearest dollar.}

Plan Assets and Credit Balances

The chart above shows certain "credit balances" called the Funding Standard Carryover Balance and Prefunding Balance. A plan might have a credit balance, for example, if in a prior year an employer contributed money to the plan above the minimum level required by law. Generally, an employer may credit the excess money toward the minimum level of contributions required by law that it must make in future years. Plans must subtract these credit balances from Total Plan Assets to calculate their Funding Target Attainment Percentage.

{Instructions: Include the preceding discussion, entitled Plan Assets and Credit Balances, only where such balances exist.}

Plan Liabilities

Plan Liabilities in line 3 of the chart above is an estimate of the amount of assets the Plan needs on the Valuation Date to pay for promised benefits under the Plan.

At-Risk Liabilities

The law considers a plan to be in "at risk" status if its funding target attainment percentage for the prior plan year was below a legal threshold. The sponsor of an at-risk plan must make certain assumptions and contribute more money to that plan. For example, plans in "at-risk" status must 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 contributions that result from "at-risk" status may then remove a plan from this status. The Plan was in "at-risk" status in [*enter year or years covered by the chart above*]. The At-Risk Liabilities row in the chart above shows the increased liabilities resulting from "at-risk" status.

{Instructions: Include the preceding discussion, entitled At-Risk Liabilities, only in the case of a plan required to report At-Risk Liabilities. Delete the entire row designated as number 4 in the chart above if the At-Risk Liabilities discussion is not included in the notice.}

Year-End Assets and Liabilities

The asset values in the chart above are measured as of the first day of the Plan Year. They also are "actuarial values." Actuarial values differ from market values in that they do not fluctuate daily based on changes in the stock or other markets. Actuarial values smooth out those fluctuations and can allow for more predictable levels of future contributions. Despite the fluctuations, market values tend to show a clearer picture of a plan's funded status at a given point in time. As of [*enter the last day of the Plan Year*], the fair market value of the Plan's assets was [*enter amount*]. On this same date, the Plan's liabilities, determined using market rates, were [*enter amount*].

{Instructions: Insert the fair market value of the plan's assets as of the last day of the plan year. You may include contributions made after the end of the plan year to which the notice relates and before the date the notice is timely furnished but only if such contributions are attributable to such plan year for funding purposes. A plan's liabilities as of the last day of the plan year are equal to the present value, as of the last day of the plan year, of benefits accrued as of that same date. With the exception of the interest rate assumption, the present value should be determined using assumptions used to determine the funding target under section 303. The interest rate assumption is the rate provided under section 4006(a)(3)(E)(iv), but using the last month of the year to which the notice relates rather than the month preceding the first month of the year to which the notice relates. If, consistent with section 303(g)(2) of ERISA, the plan's valuation date is not the first day of the plan year, make appropriate modifications to the preceding paragraph, e.g., replace "first day of" with "valuation date for."}

{Instructions: If, pursuant to section 303(g)(3) of ERISA, the value of the plan's assets in the chart above is fair market value, include the paragraph below rather than the paragraph above, but otherwise follow the instructions above.}

The asset values in the chart above are measured as of the first day of the Plan Year. As of [*enter the last day of the Plan Year*], the fair market value of the Plan's assets was [*enter amount*]. On this same date, the Plan's liabilities, determined using market rates, were [*enter amount*].

Participant Information

The total number of participants and beneficiaries covered by the Plan on the Valuation Date was [*insert number*]. Of this number, [*insert number*] were current employees, [*insert number*] were retired and receiving benefits, and [*insert number*] were retired or no longer working for the employer and have a right to future benefits.

Funding & Investment Policies

Every pension plan must have a procedure to establish a funding policy for plan objectives. A funding policy relates to how much money is needed to pay promised benefits. The funding policy of the Plan is [*insert a summary statement of the Plan's funding policy*].

Pension plans also have investment policies. These generally are written guidelines or general instructions for making investment management decisions. The investment policy of the Plan is [*insert a summary statement of the Plan's investment policy*].

Under the 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:

{Instructions: Insert and complete either Alternative 1 or Alternative 2, below.}

Alternative 1:

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

For information about the Plan's investment in any of the following types of investments – common/collective trusts, pooled separate accounts, master trust investment accounts, or 103-12 investment entities – contact [*insert the name, telephone number, email address or mailing address of the plan administrator or designated representative*].

{*Instructions: Percentages must total 100%. If a plan holds an interest in one or more of the direct filing entities (DFEs) noted above, i.e., MTIAs, CCTs, PSAs, or 103-12IEs and the administrator does not break out the DFE's investments among the other asset classes, immediately following the asset allocation chart include the paragraph above informing recipients how to obtain more information regarding the plan's DFE investments (e.g., the plan's Schedule D and/or the DFE's Schedule H). If a plan does not hold an interest in a DFE or the plan administrator breaks out the investments of all DFEs among the other asset classes, do not include the above paragraph. If the administrator knows the actual asset allocation of an MTIA, the MTIA entry (line 11) should not be competed and the investments of the MTIA should be reflected in the relevant asset classes.*}

Alternative 2

Asset Allocations	Percentage:
Stocks	_____
Investment grade debt instruments	_____
High-yield debt instruments	_____
Real estate	_____
Other	_____

{*Instructions: Percentages must total 100%. Follow the instructions for the latest Schedule R to Form 5500 to allocate investments to one of the above asset classes.*

Events Having a Material Effect on Assets or Liabilities

By law this notice must contain a written explanation of new events that have a material effect on plan liabilities or assets. This is because such events can significantly impact the funding condition of a plan. For the plan year beginning on [*insert the first day of the current plan year (i.e., the year after the notice year)*] and ending on [*insert the last day of the current plan year*], the Plan expects the following events to have such an effect: [*Insert 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 current plan year, as well as a projection to the end of the current plan of the effect of the amendment, scheduled increase or reduction, or event on plan liabilities*].

{*Instructions: Include the preceding discussion, entitled Events having a Material Effect on Assets or Liabilities, only if and to the extent applicable.*}

Right to Request a Copy of the Annual Report

Pension plans must file annual reports with the US Department of Labor. The report is called the "Form 5500." These reports contain financial and other information. You may obtain an electronic copy of your Plan's annual report by going to www.efast.dol.gov and using the search tool. Annual reports also are available from the US Department of Labor, Employee Benefits Security Administration's Public Disclosure Room at 200 Constitution Avenue, NW, Room N-1513, Washington, DC 20210, or by calling 202.693.8673. Or you may obtain a copy of the Plan's annual report by making a written request to the plan administrator. [*If the plan's annual report is available on an Intranet website maintained by the plan sponsor (or plan administrator on behalf of the plan sponsor), modify the preceding sentence to include a statement that the annual report also may be obtained through that website and include the website address.*] Annual reports do not contain personal information, such as the amount of your accrued benefits. You may contact your plan administrator if you want information about your accrued benefits. Your plan administrator is identified below under "Where To Get More Information."

Summary of Rules Governing Termination of Single-Employer Plans

If a plan terminates, there are specific termination rules that must be followed under federal law. A summary of these rules follows.

There are two ways an employer can terminate its pension plan. First, the employer can end a plan in a "standard termination" but only after showing the PBGC that such plan has enough money to pay all benefits owed to participants. Under a standard termination, a plan must either purchase an annuity from an insurance company (which will provide you with periodic retirement benefits, such as monthly for life or for a set period of time when you retire) or, if the plan allows, issue one lump-sum payment that covers your entire benefit. Your plan administrator must give you advance notice that identifies the insurance company (or companies) selected to provide the annuity. The PBGC's guarantee ends upon the purchase of an annuity or payment of the lump-sum. If the plan purchases an annuity for you from an insurance company and that company becomes unable to pay, the applicable state guaranty association guarantees the annuity to the extent authorized by that state's law.

Second, if the plan is not fully-funded, the employer may apply for a distress termination. To do so, however, the employer must be in financial distress and 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.

Benefit Payments Guaranteed by the PBGC

When the PBGC takes over a plan, it pays pension benefits through its insurance program. Only benefits that you have earned a right to receive and that cannot be forfeited (called vested benefits) are guaranteed. 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 amount of benefits that PBGC guarantees is determined as of the plan termination date. However, if a plan terminates during a plan sponsor's bankruptcy, then the amount guaranteed is determined as of the date the sponsor entered bankruptcy.

The PBGC maximum benefit guarantee is set by law and is updated each calendar year. For a plan with a termination date or sponsor bankruptcy date, as applicable in [*insert current calendar year*], the maximum guarantee is [*insert amount from PBGC web site, www.pbgc.gov, applicable for the current calendar year*] per month, or [*insert amount from PBGC web site, www.pbgc.gov, applicable for the current calendar year*] per year, for a benefit paid to a 65-year-old retiree with no survivor benefit. If a plan terminates during a plan sponsor's bankruptcy, the maximum guarantee is fixed as of the calendar year in which the sponsor entered bankruptcy. The maximum guarantee is lower for an individual who begins receiving benefits from PBGC before age 65 reflecting the fact that younger retirees are expected to receive more monthly pension checks over their lifetimes. [*If the plan does not provide for commencement of benefits before age 65, you may omit this sentence.*] Similarly, the maximum guarantee is higher for an individual who starts receiving benefits from PBGC after age 65. The maximum guarantee by age can be found on PBGC's website, www.pbgc.gov. The guaranteed amount is also reduced if a benefit will be provided to a survivor of the plan participant.

The PBGC guarantees "basic benefits" earned before a plan is terminated, which include [*Include the following guarantees that apply to benefits available under the plan.*]:

- 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 or the date the sponsor entered bankruptcy, as applicable.

The PBGC does not guarantee certain types of benefits [*Include the following guarantee limits that apply to the benefits available under the plan*.]:

- The PBGC does not guarantee benefits for which you do not have a vested right, usually because you have not worked enough years for the company.
- The PBGC does not guarantee benefits for which you have not met all age, service, or other requirements.
- 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.

In some circumstances, participants and beneficiaries still may receive some benefits that are not guaranteed. This depends on how much money the terminated plan has and how much the PBGC recovers from employers for plan underfunding.

For additional general information about the PBGC and the pension insurance program guarantees, go to the "General FAQs about PBGC" on PBGC's website at www.pbgc.gov/generalfaqs. Please contact your employer or plan administrator for specific information about your pension plan or pension benefit. PBGC does not have that information. See "Where to Get More Information About Your Plan," below.

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, [*enter name of plan sponsor*] or a member of its controlled group, was subject to this requirement to provide corporate financial information and plan actuarial information to the PBGC. The PBGC uses this information for monitoring and other purposes.

{Instructions: Insert the preceding paragraph entitled "Corporate and Actuarial Information on File with PBGC" only if a reporting under section 4010 of ERISA was required for the information year ending in the Plan Year. Modify the preceding paragraph, as appropriate, if the plan sponsor is the sole member of its controlled group.

Where to Get More Information

For more information about this notice, you may contact [*enter name of plan administrator and if applicable, principal administrative officer*], at [*enter phone number and address and insert email address if appropriate*]. For identification purposes, the official plan number is [*enter plan number*] and the plan sponsor's name and employer identification number or "EIN" are [*enter name and EIN of plan sponsor*].

Appendix B to § 2520.101–5—
Multiemployer Plan Model Annual Funding Notice

PAPERWORK BURDEN DISCLOSURE NOTICE
OMB Control Number 1210-0126; expires 04/17/2017

Behind this cover page is a model notice that may be used to satisfy the mandatory disclosure requirements set forth in 29 CFR 2520.101-5. The model notice is a collection of information instrument subject to the Paperwork Reduction Act. Use of the model notice to meet the disclosure requirements is optional. You may also develop your own notice, provided it contains all of the information required by 29 CFR 2520.101-5. The Department of Labor estimates that it will take an average of approximately 21 hours for plan administrators to complete the model. You may send comments on this collection of information, including suggestions for reducing burden to: US Department of Labor, Policy and Research, Attention: PRA Officer, 200 Constitution Avenue, NW, Room N-5718, Washington, DC 20210. The disclosure requirements in 29 CFR 2520.101-5, referenced above, are also a collection of information under the PRA. The public is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DO NOT INCLUDE THIS PAPERWORK REDUCTION ACT BANNER IN NOTICES TO PARTICIPANTS AND BENEFICIAIRES

ANNUAL FUNDING NOTICE

For
[*insert name of multiemployer pension plan*]

Introduction

This notice includes important information about the funding status of your multiemployer pension plan (the "Plan"). It also includes general information about the benefit payments guaranteed by the Pension Benefit Guaranty Corporation ("PBGC"), a federal insurance agency. All traditional pension plans (called "defined benefit pension plans") must provide this notice every year regardless of their funding status. This notice does not mean that the Plan is terminating. It is provided for informational purposes and you are not required to respond in any way. This notice is required by federal law. This notice is for the plan year beginning [*insert beginning date*] and ending [*insert ending date*] ("Plan Year").

How Well Funded Is Your Plan

The law requires the administrator of the Plan to tell you how well the Plan is funded, using a measure called the "funded percentage." The Plan divides its assets by its liabilities on the Valuation Date for the plan year to get this percentage. In general, the higher the percentage, the better funded the plan. The Plan's funded percentage for the Plan Year and each of the two preceding plan years is shown in the chart below. The chart also states the value of the Plan's assets and liabilities for the same period.

Funded Percentage			
	[insert Plan Year, e.g., 2015]	[insert plan year preceding Plan Year, e.g., 2014]	[insert plan year 2 years preceding Plan Year, e.g., 2013]
Valuation Date	[insert date]	[insert date]	[insert date]
Funded Percentage	[insert percentage]	[insert percentage]	[insert percentage]

Value of Assets	[insert amount]	[insert amount]	[insert amount]
Value of Liabilities	[insert amount]	[insert amount]	[insert amount]

{Instructions: The plan's "funded percentage" is equal to a fraction, the numerator of which is the actuarial value of the plan's assets (determined in the same manner as under section 304(c)(2) of ERISA) and the denominator of which is the accrued liability of the plan (under section 305(i)(8) of ERISA, using reasonable actuarial assumptions as required under section 304(c)(3) of ERISA). Report the value of the plan's assets and liabilities in the same manner as under section 304 of ERISA (but determining the plan's liabilities under section 305(i)(8) of ERISA, using reasonable actuarial assumptions as required under section 304(c)(3) of ERISA) as of the plan's valuation date for the plan year. Round off all amounts in this chart to the nearest dollar.}

Year-End Fair Market Value of Assets

The asset values in the chart above are measured as of the Valuation Date. They also are "actuarial values." Actuarial values differ from market values in that they do not fluctuate daily based on changes in the stock or other markets. Actuarial values smooth out those fluctuations and can allow for more predictable levels of future contributions. Despite the fluctuations, market values tend to show a clearer picture of a plan's funded status at a given point in time. The asset values in the chart below are market values and are measured on the last day of the Plan Year. The chart also includes the year-end market value of the Plan's assets for each of the two preceding plan years.

	[insert last day of Plan Year, e.g., 2015]	[insert last day of plan year preceding Plan Year, e.g., 2014]	[insert last day of plan year 2 years preceding Plan Year, e.g., 2013]
Fair Market Value of Assets	[insert amount]	[insert amount]	[insert amount]

{Instructions: Insert the fair market value of the plan's assets as of the last day of the plan year. You may include contributions made after the end of the plan year to which the notice relates and before the date the notice is timely furnished but only if such contributions are attributable to such plan year for funding purposes. For each of the two preceding plan years, you may use the fair market value of assets on the last day of the plan year as reported in the annual report for such plan year.}

Endangered, Critical, or Critical and Declining Status

Under federal pension law, a plan generally is in "endangered" status if its funded percentage is less than 80 percent. A plan is in "critical" status if the funded percentage is less than 65 percent (other factors may also apply). A plan is in "critical and declining" status if it is in critical status and is projected to become insolvent (run out of money to pay benefits) within 15 years (or within 20 years if a special rule applies). If a pension plan enters endangered status, the trustees of the plan are required to adopt a funding improvement plan. Similarly, if a pension plan enters critical status or critical and declining status, the trustees of the plan are required to adopt a rehabilitation plan. Funding improvement and rehabilitation plans establish steps and benchmarks for pension plans to improve their funding status over a

specified period of time. The plan sponsor of a plan in critical and declining status may apply for approval to amend the plan to reduce current and future payment obligations to participants and beneficiaries.

{Instructions: Select and complete the appropriate option below.}

{Option one}
The Plan was not in endangered, critical, or critical and declining status in the Plan Year.

{Option two}
The Plan was in [*insert* "endangered" *or* "critical"] status in the Plan Year ending [*insert last day of Plan Year*] because [*insert summary description of why plan was in this status based on statutory factors*]. In an effort to improve the Plan's funding situation, the trustees adopted [*insert summary of the plan's funding improvement or rehabilitation plan, including when adopted and expected duration, and a description of any modification or update to the plan adopted during the plan year to which the notice relates*]. You may get a copy of the Plan's [*insert* "funding improvement plan" *or* "rehabilitation plan"], any update to such plan and the actuarial and financial data that demonstrate any action taken by the Plan toward fiscal improvement. You may get this information by contacting the plan administrator. [*If applicable, insert:* "Or you may obtain this information at [*insert Intranet address of plan sponsor (or plan administrator on behalf of the plan sponsor)*].]

{Option three}
The Plan was in critical and declining status in the Plan Year ending [*insert last day of Plan Year*] because [*insert summary description of why plan was in this status based on statutory factors*]. The Plan is projected to be insolvent in the [*insert plan year*] Plan Year. Such insolvency may result in benefit reductions. In an effort to improve the Plan's funding situation, the trustees adopted a rehabilitation plan on [*insert date*]. The rehabilitation plan [*Insert a summary of the plan's rehabilitation plan, including expected duration and a description of any modification or update to the plan adopted during the plan year to which the notice relates*]. [*Insert the following if applicable*: The plan sponsor has taken the following legally permitted actions to prevent insolvency: [*Insert explanation of actions*]." You may get a copy of the Plan's rehabilitation plan, any update to such plan and the actuarial and financial data that demonstrate any action taken by the Plan toward fiscal improvement. You may get this information by contacting the plan administrator. [*If applicable, insert:* "Or you may obtain this information at [*insert Intranet address of plan sponsor (or plan administrator on behalf of the plan sponsor)*].]

If the Plan is in endangered, critical, or critical and declining status for the plan year ending [*insert the last day of the plan year following the Plan Year*], separate notification of that status has or will be provided.

Participant Information

The total number of participants and beneficiaries covered by the Plan on the valuation date was [*insert number*]. Of this number, [*insert number*] were current employees, [*insert number*] were retired and receiving benefits, and [*insert number*] were retired or no longer working for the employer and have a right to future benefits.

Funding & Investment Policies

Every pension plan must have a procedure to establish a funding policy for plan objectives. A funding policy relates to how much money is needed to pay promised benefits. The funding policy of the Plan is [*insert a summary statement of the Plan's funding policy*].

Pension plans also have investment policies. These generally are written guidelines or general instructions for making investment management decisions. The investment policy of the Plan is [*insert a summary statement of the Plan's investment policy*].

Under 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:

{Instructions: Insert and complete either Alternative 1 or Alternative 2, below.}

Alternative 1:

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

For information about the Plan's investment in any of the following types of investments– common/collective trusts, pooled separate accounts, or 103-12 investment entities – contact [*insert the name, telephone number, email address or mailing address of the plan administrator or designated representative*].

{Instructions: Percentages must total 100%. If a plan holds an interest in one or more of the direct filing entities (DFEs) noted above, i.e., CCTs, PSAs, or 103-12IEs and the administrator does not break out the DFE's investments among the other asset classes, immediately following the asset allocation chart include the paragraph above informing recipients how to obtain more information regarding the plan's DFE investments (e.g., the plan's Schedule D and/or the DFE's Schedule H). If a plan does not hold an interest in a DFE or the administrator breaks out the investments of all DFEs among the other asset classes, do not include the above paragraph.

Alternative 2

Asset Allocations	Percentage:
Stocks	_____
Investment grade debt instruments	_____
High-yield debt instruments	_____
Real estate	_____
Other	_____

{Instructions: Percentages must total 100%. Follow the instructions in the latest Schedule R to Form 5500 to allocate investments to one of the above asset classes.

Events Having a Material Effect on Assets or Liabilities

By law this notice must contain a written explanation of new events that have a material effect on plan liabilities or assets. This is because such events can significantly impact the funding condition of a plan. For the plan year beginning on [*insert the first day of the current plan year (i.e., the year after the notice year)*] and ending on [*insert the last day of the current plan year*], the Plan expects the following events to have such an effect: [*Insert 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 current plan year, as well as a projection to the end of the current plan of the effect of the amendment, scheduled increase or reduction, or event on plan liabilities*].

{*Instructions: Include the preceding discussion, entitled Events having a Material Effect on Assets or Liabilities, only if and to the extent applicable.*}

Right to Request a Copy of the Annual Report

Pension plans must file annual reports with the US Department of Labor. The report is called the "Form 5500." These reports contain financial and other information. You may obtain an electronic copy of your Plan's annual report by going to www.efast.dol.gov and using the search tool. Annual reports also are available from the US Department of Labor, Employee Benefits Security Administration's Public Disclosure Room at 200 Constitution Avenue, NW, Room N-1513, Washington, DC 20210, or by calling 202.693.8673. Or you may obtain a copy of the Plan's annual report by making a written request to the plan administrator. [*If the plan's annual report is available on an Intranet website maintained by the plan sponsor (or plan administrator on behalf of the plan sponsor), modify the preceding sentence to include a statement that the annual report also may be obtained through that website and include the website address.*] Annual reports do not contain personal information, such as the amount of your accrued benefit. You may contact your plan

administrator if you want information about your accrued benefits. Your plan administrator is identified below under "Where To Get More Information."

Summary of Rules Governing Insolvent Plans

Federal law has a number of special rules that apply to financially troubled multiemployer plans that become insolvent, either as ongoing plans or plans terminated by mass withdrawal. The plan administrator is required by law to include a summary of these rules in the annual funding notice. A plan is insolvent for a plan year if its available financial resources are not sufficient to pay benefits when due for that plan year. An insolvent plan must reduce benefit payments to the highest level that can be paid from the plan's available resources. If such resources are not enough to pay benefits at the level specified by law (see Benefit Payments Guaranteed by the PBGC, below), the plan must apply to the PBGC for financial assistance. The PBGC will loan the plan the amount necessary to pay benefits at the guaranteed level. Reduced benefits may be restored if the plan's financial condition improves.

A plan that becomes insolvent must provide prompt notice of its status to participants and beneficiaries, contributing employers, labor unions representing participants, and PBGC. In addition, participants and beneficiaries also must receive information regarding whether, and how, their benefits will be reduced or affected, including loss of a lump sum option.

Benefit Payments Guaranteed by the PBGC

The maximum benefit that the PBGC guarantees is set by law. Only benefits that you have earned a right to receive and that cannot be forfeited (called vested benefits) are guaranteed. There are separate insurance programs with different benefit guarantees and other provisions for single-employer plans and multiemployer plans. Your Plan is covered by PBGC's multiemployer program. Specifically, the PBGC guarantees a monthly benefit payment equal to 100 percent of the first $11 of the Plan's monthly benefit accrual rate, plus 75 percent of the next $33 of the accrual rate, times each year of credited service. The PBGC's maximum guarantee, therefore, is $35.75 per month times a participant's years of credited service.

Example 1: If a participant with 10 years of credited service has an accrued monthly benefit of $600, the accrual rate for purposes of determining the PBGC guarantee would be determined by dividing the monthly benefit by the participant's years of service ($600/10), which equals $60. The guaranteed amount for a $60 monthly accrual rate is equal to the sum of $11 plus $24.75 (.75 x $33), or $35.75. Thus, the participant's guaranteed monthly benefit is $357.50 ($35.75 x 10).

Example 2: If the participant in Example 1 has an accrued monthly benefit of $200, the accrual rate for purposes of determining the guarantee would be $20 (or $200/10). The guaranteed amount for a $20 monthly accrual rate is equal to the sum of $11 plus $6.75 (.75 x $9), or $17.75. Thus, the participant's guaranteed monthly benefit would be $177.50 ($17.75 x 10).

The PBGC guarantees pension benefits payable at normal retirement age and some early retirement benefits. In addition, the PBGC guarantees qualified preretirement survivor benefits (which are preretirement death benefits payable to the surviving spouse of a participant who dies before starting to receive benefit payments). In calculating a person's monthly payment,

the PBGC will disregard any benefit increases that were made under a plan within 60 months before the earlier of the plan's termination or insolvency (or benefits that were in effect for less than 60 months at the time of termination or insolvency). Similarly, the PBGC does not guarantee benefits above the normal retirement benefit, disability benefits not in pay status, or non-pension benefits, such as health insurance, life insurance, death benefits, vacation pay, or severance pay.

For additional information about the PBGC and the pension insurance program guarantees, go to the Multiemployer Page on PBGC's website at www.pbgc.gov/multiemployer. Please contact your employer or plan administrator for specific information about your pension plan or pension benefit. PBGC does not have that information. See "Where to Get More Information About Your Plan," below.

Where to Get More Information

For more information about this notice, you may contact [*enter name of plan administrator and if applicable, principal administrative officer*], at [*enter phone number and address and insert email address if appropriate*]. For identification purposes, the official plan number is [*enter plan number*] and the plan sponsor's name and employer identification number or "EIN" is [*enter name and EIN of plan sponsor*].

■ 4. Amend § 2520.104–46 by revising paragraph (b)(1)(i)(B) introductory text to read as follows:

§ 2520.104–46 Waiver of examination and report of an independent qualified public accountant for employee benefit plans with fewer than 100 participants.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(B) The summary annual report (described in § 2520.104b–10) or, in the case of plans subject to section 101(f) of the Act, the annual funding notice (described in § 2520.101–5), includes, in addition to any other required information:

* * * * *

■ 5. Amend § 2520.104b–10, by revising paragraphs (g)(7) and (8) and adding paragraph (g)(9) to read as follows:

§ 2520.104b–10 Summary Annual Report.

* * * * *

(g) * * *

(7) A dues financed welfare plan which meets the requirements of 29 CFR 2520.104–26;

(8) A dues financed pension plan which meets the requirements of 29 CFR 2520.104–27; and

(9) A plan to which title IV of the Act applies.

* * * * *

Signed this 23rd day of January, 2015.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2015–01884 Filed 1–30–15; 8:45 am]

BILLING CODE 4510–29–P