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March 07, 2005

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P.O. Box 1000, H3-08
Richland, WA 99352

Office of Regulations and Interpretations,
Employee Benefits Security Administration
Room N-5669
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210
Attention: PFEA '04 Project

RECEIVED
OFFICE OF REGULATIONS
AND INTERPRETATIONS
2005 MAR - 7 PM 3: 06

(e-ORI@dol.gov)

Re: Annual Funding Notice for Multiemployer Defined Benefit Pension Plans
Department of Labor Proposed Regulations under ERISA § 101(f)

We have reviewed the proposed regulation implementing the disclosure requirements of ERISA Section 101(f) and have concluded that in settings such as ours, where the sole source of funding is a federal government agency, the regulations require costly disclosure to participants, participating employers, unions, and the PBGC which is not useful. We urge the Department of Labor to provide an exemption for plans such as ours, where the sole source of funding is a federal government agency.

I. The DOL should carve out an exemption for Plans funded solely by Federal government agencies.

The Hanford Multiemployer Pension Plan is funded solely by the Department of Energy under rules promulgated by the Federal Government (F.A.R. and C.A.S.). The only participating employers are government contractors and subcontractors. The Department of Energy contracts and Federal acquisition regulations govern appropriate, required minimum funding of the plan. There is no discretion on the part of participating employers as to the extent to which minimum required contributions are appropriately made to the plan. Providing a funding notice to plan participants, participating employers, unions, and the PBGC adds no value because it is the government that is ultimately required to meet the minimum funding requirements.

Further, based on a review of the regulations, we estimate that the new funding notice would result in an additional \$20,000 administrative expense to the plan during the first year. This is an expense of \$20,000, which will be paid by the Department of Energy.

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II. Information should be integrated into current disclosures.

If the Department of Labor does not provide an exemption for plans such as ours, where funding is not an issue, the regulations should provide that the information required to be disclosed under ERISA Section 101(f) can be integrated into the summary annual report and SPD.

An additional, separate notice is redundant. Qualified plans already provide participants with information annually regarding the assets and liabilities of the plan through the summary annual report, required under ERISA Section 104(b). The required disclosure of a plan's funded current liability percentage and of the ratio of assets to the payments and under 101(f)(2)(B)(i) (ii) should be integrated into the SAR.

In addition to the Summary Annual Report, participants receive a Summary Plan Description (SPD) which provides a detailed explanation of how the plan funding works, the role of the PBGC, and contact information if a participant wishes to request additional information. To the extent that a plan is permitted to suspend benefits or reduce benefits, or that benefits are guaranteed by the Pension Benefit Guaranty Corporation, this should already be explained in the Summary Plan Description. In our view, these express disclosure requirements relating to how plan funding operates and the role of the PBGC and the nature of the guarantee of the PBGC under ERISA Section 101(f)(2)(B)(iii) and (iv) should be added to the Summary Plan Description and not separately stated in an annual notice.

III. New Notice Requirement will be Ineffectual

A. New Notice will not enhance plan accountability.

The proposed new notice will not enhance plan accountability or ultimately lead to better plan funding because all the required information is already disclosed in one form or another. Defined benefit plans disclose their funding status annually to the IRS through the IRS Form 5500. An actuarial report is attached to each annual report and fully analyzes and discloses the funding status of the plan. Plan participants are informed on the SAR that they can request a copy of the IRS Form 5500 any time. With respect to the PBGC, a plan's annual premium payment to the PBGC is calculated based on the funding status and sent through the PBGC Form-1. The PBGC is apprised of the funding status of plans.

B. Minimum Funding Statutorily Required.

Both ERISA and the Internal Revenue Code require that a defined benefit plan make minimum required contributions. If a plan fails to make required minimum contributions, it is subject to excise taxes.

Additional disclosures to participants are not likely to impact the actual funding of any defined benefit plan, as participants have no standing to sue with regard to funding, the PBGC is already annually notified of the funding status of the plan. To the extent that a plan is not properly funded, mechanisms are in place already (excise taxes, current annual reporting) to enforce funding.

Particularly in our setting, where the funding is solely from a federal government agency, there will be no significance whatsoever to the required disclosures.

Conclusion

The notice requirements of ERISA Section 101(f) add no value to the participants, unions and participating employers of a plan, such as ours, where the sole source of funding is a federal government agency. The cost of this is unnecessary and will be borne by the Department of Energy. The DOL should carve out an exemption for plans funded through government agencies.

But, should the DOL decline an exemption, it is our belief that the imposition of a new and separate notice will result in unnecessary administrative obligations that will not enhance Plan participants' understanding of funding, will not better equip the PBGC in its oversight, nor ultimately result in fewer funding problems. At best, the additional notice is redundant, burdensome and ineffectual. At worst, the notice will be a costly communication that serves only to confuse and alarm Plan participants.

Disclosure to participants through the Summary Annual Report and the SPD would be just as effective, and less costly. Attached is a marked copy of the proposed Model Notice.

Please contact me on (509)372-3323 with any questions.

Sincerely,

Elaine M. Cone
Director, Benefits Accounting
Fluor Hanford

cc: EMCLB

discharging their notice obligations under this section. Use of the model notice is not mandatory. However, use of the model notice will be deemed to satisfy the requirements of paragraphs (b) and (c) of this section, except with respect to information referenced in paragraph (b)(9) of this section.

Appendix to § 2520.101-4—Annual Funding Notice for [Insert name of pension plan]

Introduction

This notice, which federal law requires all multiemployer plans to send annually, includes important information about the funding level of [insert name, number, and EIN of plan] (Plan). This notice also includes information about rules governing insolvent plans and benefit payments guaranteed by the Pension Benefit Guaranty Corporation (PBGC), a federal agency. This notice is for the plan year beginning [insert beginning date] and ending [insert ending date] (Plan Year).

Plan's Funding Level

The Plan's "funded current liability percentage" for the Plan Year was [insert percentage—see instructions below]. In general, the higher the percentage, the better funded the plan. The funded current liability percentage, however, is not indicative of how well a plan will be funded in the future or if it terminates.

(Instructions: For purposes of computing the "funded current liability percentage," insert ratio of actuarial value of assets to current liability, expressed as a percentage. If the percentage is equal to or greater than 100 percent, you may insert "at least 100 percent.")

Plan's Financial Information

The market value of the Plan's assets as of [insert valuation date] was [insert amount]. The total amount of benefit payments for the Plan Year was [insert amount]. The ratio of assets to benefit payments is [insert amount calculated by dividing the value of plan assets by the total benefit payments]. This ratio suggests that the Plan's assets could

provide for approximately [enter amount calculated above] years of benefit payments in annual amounts equal to what was paid out in the Plan Year. However, the ratio does not take into account future changes in total benefit payments or plan assets.

Rules Governing Insolvent Plans

The law has special rules governing insolvent multiemployer pension plans. A plan is insolvent for a plan year if its available financial resources are not sufficient to pay benefits when due for the plan year.

An insolvent plan must reduce benefit payments to the highest level that can be paid from the plan's available financial resources. If such resources are not enough to pay benefits at a level specified by law (see Benefit Payments Guaranteed by the PBGC, below), the plan must apply to the PBGC for financial assistance. The PBGC, by law, 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 notification of the insolvency 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 as a result of the insolvency, including loss of a lump sum option. This information will be provided for each year the plan is insolvent.

Benefit Payments Guaranteed by the PBGC

The PBGC guarantees only vested benefits. Specifically, it 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 maximum guaranteed payment for a vested retiree, therefore, is \$35.75 per month times each year of credited service.

Example 1: If a participant with 10 years of credited service has an accrued monthly benefit of \$500, 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 ($\$500/10$), which equals \$50. The guaranteed amount for a \$50 monthly accrual rate is equal to the sum of \$11 plus $\$24.75 (.75 \times \$33)$, or \$35.75. Thus, the participant's guaranteed monthly benefit is $\$357.50 (\$35.75 \times 10)$.

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 $\$6.75 (.75 \times \$9)$, or \$17.75. Thus, the participant's guaranteed monthly benefit would be $\$177.50 (\$17.75 \times 10)$.

In calculating a person's monthly payment, the PBGC will disregard any benefit increases that were made under the plan within 60 months before insolvency. Similarly, the PBGC does not guarantee pre-retirement death benefits to a spouse or beneficiary (e.g., a qualified pre-retirement survivor annuity), 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.

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]. For more information about the PBGC and multiemployer benefit guarantees, go to PBGC's Web site, <http://www.pbgc.gov>, or call PBGC toll-free at 1-800-400-7242 (TTY/TDD users may call the Federal relay service toll free at 1-800-877-8339 and ask to be connected to 1-800-400-7242).

Signed at Washington, DC, this 31st day of January, 2005.

Ann L. Combs,

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

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This could be added to both the SAR and the SPD.