



**FIELD ASSISTANCE BULLETIN NO. 2009- 01**

Date: February 10, 2009

MEMORANDUM FOR: VIRGINIA C. SMITH, DIRECTOR OF ENFORCEMENT  
REGIONAL DIRECTORS

FROM: ROBERT J. DOYLE  
DIRECTOR OF REGULATIONS AND INTERPRETATIONS

SUBJECT: DEFINED BENEFIT PLAN ANNUAL FUNDING NOTICE – PENSION  
PROTECTION ACT OF 2006

**BACKGROUND:**

Section 101(f) of the Employee Retirement Income Security Act (ERISA) sets forth requirements applicable to furnishing annual funding notices. Before the Pension Protection Act of 2006 (PPA), section 101(f) applied only to multiemployer defined benefit plans. Section 501(a) of the PPA amended section 101(f) of ERISA, making significant changes to the annual funding notice requirements. These amendments require administrators of all defined benefit plans that are subject to title IV of ERISA, not only multiemployer plans, to provide an annual funding notice to the Pension Benefit Guaranty Corporation (PBGC), to each plan participant and beneficiary, to each labor organization representing such participants or beneficiaries, and, in the case of a multiemployer plan, to each employer that has an obligation to contribute to the plan. An annual funding notice must include, among other things, the plan's funding percentage, a statement of the value of the plan's assets and liabilities and a description of how the plan's assets are invested as of specific dates, and a description of the benefits under the plan that are eligible to be guaranteed by the PBGC.

The PPA amendments to section 101(f) apply to plan years beginning after December 31, 2007, with special rules for disclosing "funding target attainment percentage" or "funded percentage" with respect to any plan year beginning before January 1, 2008. Section 501(c) of the PPA requires the Department to develop a model annual funding notice within one year of the date of enactment of the PPA.

Recently, concerns have been expressed about the imminent compliance date of the new annual funding notice requirements, the absence of regulatory guidance from the Department, and the cost and burdens attendant to annual funding notice compliance efforts prior to the adoption of annual funding notice regulations and the issuance of a model annual funding notice by the Department. In recognition of the foregoing, this memorandum provides guidance to the Employee Benefits Security Administration's national and regional offices concerning good faith compliance with the new annual funding notice requirements.

#### **GOOD FAITH COMPLIANCE:**

The Department has not yet issued regulations or other guidance concerning compliance with the annual funding notice requirements under section 101(f) of ERISA, as amended by section 501(a) of the PPA. Pending further guidance, the Department will, as a matter of enforcement policy, treat a plan administrator as satisfying the requirements of section 101(f), if the administrator has complied with the guidance contained in this memorandum and has acted in accordance with a good faith, reasonable interpretation of those requirements with respect to matters not specifically addressed in this memorandum.

#### **MODEL ANNUAL FUNDING NOTICE:**

This memorandum contains two model notices and related questions and answers. The model in Appendix A is for single-employer defined benefit plans and the model in Appendix B is for multiemployer defined benefit plans. Use of the models is not mandatory and plans may use other notice forms to satisfy the new annual funding notice content requirements. However, pending further guidance, use of an appropriately completed model notice will, as a matter of Department enforcement policy, satisfy the content requirements of section 101(f) of ERISA.

#### **QUESTIONS AND ANSWERS:**

##### **Q1: When must plans first comply with the new annual funding notice requirements?**

The new annual funding notice requirements apply to plan years beginning on or after January 1, 2008. Plans generally must furnish funding notices no later than 120 days after the close of each plan year. Thus, many plans are required to furnish their first annual funding notice no later than Thursday, April 30, 2009 (120 days after the close of their 2008 plan year). Section 101(f)(3)(B) of ERISA provides a timing exception for small plans. For these plans notices must be provided not later than the earlier of the date on which the annual report is filed under section 104(a) of ERISA or the latest date

the annual report must be filed under that section (including extensions). A plan is a small plan if it is described in section 303(g)(2)(B) of ERISA (generally, if it had 100 or fewer participants on each day during the plan year preceding the year to which the notice relates) regardless of whether it is a single-employer or multiemployer plan.

**Q2: What is the benefit to plan administrators of using the model notices?**

Pending further guidance, use of an appropriately completed model notice will satisfy the content requirements of section 101(f) of ERISA.

**Q3: May the plan administrator of a multiemployer plan use the model in the Appendix to 29 C.F.R. 2520.101-4 for purposes of compliance with section 101(f) for plan years beginning on or after January 1, 2008?**

No. Consistent with the effective date of the new annual funding notice requirements, the model in the Appendix to § 2520.101-4 may be used only for plan years beginning on or before December 31, 2007. For plan years beginning on or after January 1, 2008, administrators of multiemployer plans may instead use the model in Appendix B to this memorandum to discharge their notice obligations under section 101(f) of ERISA. The Department intends to remove § 2520.101-4 from the Code of Federal Regulations in conjunction with the promulgation of a final rule under section 101(f), as amended.

**Q4: Must a plan administrator furnish an annual funding notice to the Pension Benefit Guaranty Corporation?**

Yes. Section 101(f)(1) states that the “administrator of a defined benefit pension plan to which title IV applies shall for each plan year provide a plan funding notice to the Pension Benefit Guaranty Corporation, to each plan participant and beneficiary, to each labor organization representing such participants or beneficiaries, and, in the case of a multiemployer plan, to each employer that has an obligation to contribute to the plan.”

However, pending further guidance, the Department will not take any enforcement action regarding the failure to furnish an annual funding notice to the PBGC for a single-employer plan with liabilities that do not exceed plan assets by more than \$50 million, provided that the administrator furnishes the latest available annual funding notice to the PBGC within 30 days of receiving a written request from the PBGC. The PBGC has informed the Department that, in light of the extended annual funding notice due date for small plans, it will have electronic access to the information included on the annual funding notice for most single-employer plans as a result of ERISA’s annual reporting requirement under section 104(a) at or around the time it would receive a copy of an annual funding notice under section 101(f). In addition, 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 section 101(f) or 104(a) of ERISA.

**Q5: Are all ERISA-covered defined benefit pension plans subject to the new annual funding notice requirement?**

The new requirements apply to any defined benefit plan to which title IV of ERISA applies. However, the Department will not take enforcement action in the case of a multiemployer plan that is insolvent and that, as of the due date for the annual funding notice, is in compliance with the insolvency notice requirements under title IV of ERISA. In such cases, disclosure of information under section 101(f) may be redundant given the notice requirements under title IV of ERISA. The annual funding notice would be of little, if any, value to recipients in light of the PBGC's authority and responsibility under title IV of ERISA with respect to insolvent multiemployer plans. See 71 FR 1904, n.1 (Jan. 11, 2006). See also 70 FR 6306, n.1 (Feb. 4, 2005). A plan that emerges from insolvency or ceases to comply with the insolvency notice requirements under title IV of ERISA is not thereafter entitled to the relief provided in this memorandum.

**Q6: Section 101(f)(2)(B)(i)(I) of ERISA states that an annual funding notice must include, "in the case of a single-employer plan, a statement as to whether the plan's funding target attainment percentage (as defined in section 303(d)(2)) for the plan year to which the notice relates, and for the 2 preceding plan years, is at least 100 percent (and, if not, the actual percentages)[.]" How should plan administrators calculate this percentage for the model?**

The term "funding target attainment percentage" is defined in section 303(d)(2) of ERISA, which corresponds to Internal Revenue Code ("Code") section 430(d)(2). IRS guidance under Code section 430 also applies for purposes of section 303 of ERISA. IRS proposed regulations 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 plan assets for the plan year (after subtraction of the prefunding balance and the funding standard carryover balance under section 430(f)(4)(B) of the Code) and the denominator of which is the funding target of the plan for the plan year (determined without regard to section 430(i) of the Code). See IRS Proposed Regulation 26 C.F.R. § 1.430(i)-1; 72 FR 74215, 74231 (Dec. 31, 2007). Pending further guidance, for purposes of the model, the administrator of a single-employer plan should calculate this percentage for a plan year by dividing the value of the plan's assets for that year (after subtracting the balances, if any, mentioned above) by the funding target of the plan for that year.

**Q7: Section 101(f)(2)(B)(ii)(I)(bb) of ERISA states that an annual 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)[.]” How should plan administrators calculate year-end assets and liabilities for the model?**

Plan administrators should report the fair market value of assets as of the last day of the plan year. For this purpose, the value 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, pending further guidance, plans should use 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. The Department recognizes that in their annual funding notices plans may need to estimate their year-end liability for the plan year to which the notice relates. Therefore, pending further guidance, plan administrators may, in a reasonable manner, project liabilities to year-end using standard actuarial techniques.

**Q8: Section 101(f)(2)(B)(i)(II) of ERISA states that an annual funding notice must include, “in the case of a multiemployer plan, a statement as to whether the plan’s funded percentage (as defined in section 305(i)) for the plan year to which the notice relates, and for the 2 preceding plan years, is at least 100 percent (and, if not, the actual percentages)[.]” How should plan administrators calculate this percentage for the model?**

The term “funded percentage” is defined in section 305(i) of ERISA, which corresponds to section 432(i) of the Code. IRS guidance under Code section 432 also applies for purposes of section 305 of ERISA. IRS proposed regulations 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. See IRS Proposed Regulation 26 C.F.R. § 1.432(a)-1(b)(7); 73 FR 14417, 14423 (March 18, 2008). Pending further guidance, for purposes of the model, the administrator of a multiemployer plan should calculate this percentage for a plan year 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.

**Q9: Section 101(f)(2)(B)(ii)(II) of ERISA, as amended by the Worker, Retiree, and Employer Recovery Act of 2008, Pub. L. No. 110-458, states that an annual funding**

**notice must include, "in the case of a multiemployer plan, a statement, for the plan year to which the notice relates and the preceding 2 plan years, of the value of the plan assets (determined both in the same manner as under section 304 and under the rules of subclause (I)(bb)) and the value of the plan liabilities (determined in the same manner as under section 304 except that the method specified in section 305(i)(8) shall be used)[.]" How should plan administrators calculate these assets and liabilities for the model?**

As explained in Q8, a plan's funded percentage for a plan year is determined based on the actuarial value of the plan's assets and the accrued liability of the plan using the unit credit funding method. The model, therefore, requires plans to disclose the assets and liabilities underlying the plan's funded percentage for each of the relevant plan years, as of the valuation date for that year, thus showing the mathematical relationship between a plan's assets and liabilities and its funded percentage. In addition, pursuant to the reference to subclause (I)(bb) in section 101(f)(2)(B)(ii)(II) of ERISA, the model also requires plans to disclose a separate measurement of the fair market value of plan assets held by the plan (as defined in section 4006(a)(3)(E)(iii)(II)) on the last day of the plan year to which the notice relates, and on the same date for each of the preceding two plan years.

**Q10: Section 101(f)(2)(B)(iii) of ERISA states that an annual funding notice must include "a statement of the number of participants who are (I) retired or separated from service and are receiving benefits, (II) retired or separated participants entitled to future benefits, and (III) active participants under the plan[.]" What is the meaning of the terms "active" and "retired or separated" for purposes of section 101(f)(2)(B)(iii) of ERISA? On what day of the plan year must the administrator focus when counting participants for purposes of this statement?**

Pending further guidance, the terms "active" and "retired or separated" in relation to participants 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 6 and 7 of the 2008 Form 5500 Annual Return/Report). The statute does not specify which day of the plan year is relevant for this count. A plan administrator should provide this count as of the plan's valuation date for the plan year.

**Q11: Section 101(f)(2)(B)(iv) of ERISA states that an annual 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[.]" How should a plan administrator state the asset allocation on the model?**

Both models have a section, entitled Funding & Investment Policies, which sets forth a chart with various investment asset categories and, with respect to each such category, the chart includes a line item on which the plan administrator should insert an

appropriate percentage. For this purpose, the plan administrator should use the same valuation and accounting methods as for Form 5500 reporting purposes. 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.

In addition, 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, plan administrators should include in the model, immediately following the asset allocation chart, the statement below 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):

For information about the plan's investment in any of the following types of investments as described in the chart above – 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*].

**Q12: Section 101(f)(2)(B)(vi) states that an annual funding notice must include, “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, scheduled 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.” When does an amendment, scheduled increase, or other known event have a “material effect” on plan liabilities or assets for purposes of section 101(f)(2)(B)(vi)?**

The Department has determined, as a matter of enforcement policy and pending further guidance, that a plan amendment, scheduled benefit increase, or other known event has a material effect on plan liabilities or assets for the current plan year if the amendment, scheduled increase, or other known event results, or is projected to result, in either a change of five percent or more in plan liabilities or a change of five percent or more in the value of plan assets, from the prior plan year. Assets and liabilities should be measured in the same manner that they are measured when calculating the plan's funding target attainment percentage or funded percentage. In addition, an amendment, scheduled benefit increase, or other known 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, as applicable, without regard to the five percent threshold. The term “current plan year” means the plan year following the plan year to which the notice relates (e.g., the plan year in which the annual funding notice is furnished to recipients). In addition, as part of this enforcement policy, if an otherwise

disclosable event first becomes known to the plan administrator 120 days or less before the due date of the notice, such event is not required to be included in the notice.

**Q13: May plan administrators add additional or explanatory information to a model?**

Yes. Section 101(f)(2)(C)(ii) of ERISA permits plan administrators to include in a notice “any additional information which the plan administrator elects to include to the extent not inconsistent with regulations prescribed by the Secretary.” Accordingly, pending further guidance, a plan administrator who decides to use a model may elect to add to the model any additional information that is necessary or helpful to understanding the mandatory information and that does not have the effect of misleading or misinforming participants. Plans are not required to add such information at the end of the model under a separate heading, as is the case under 29 C.F.R. § 2520.101-4(b)(9) for multiemployer plans with respect to notices relating to plan years beginning on or before December 31, 2007. In addition, a plan administrator may furnish other notices required by ERISA along with the model. For example, a plan administrator may include the notice of endangered or critical status as required by section 305(b)(3)(D)(i) in the same mailing as the annual funding notice and explain the relationship between these two notices in the annual funding notice.

**Q14: May the annual funding notice be furnished to recipients electronically?**

Yes. Section 101(f)(4)(C) of ERISA provides that an annual funding notice may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to persons to whom the notice is required to be provided. The Department has issued a regulation, 29 C.F.R. § 2520.104b-1(c), setting forth a safe harbor under which plan administrators will be deemed to satisfy their disclosure requirements. While compliance with this safe harbor would constitute good faith compliance with ERISA § 101(f)(4)(C), the Department notes that the safe harbor is not the exclusive means by which plan administrators could, in the absence of other guidance, satisfy their obligation to furnish information to participants and beneficiaries. This guidance does not foreclose the use of other means by which documents may, consistent with ERISA and the E-SIGN Act, be furnished to participants and beneficiaries electronically.

**Q15: For multiemployer plans, how is “each employer that has an obligation to contribute to the plan” defined for purposes of furnishing a model notice?**

Section 101(f)(1) provides that persons entitled to an annual funding notice include “each employer that has an obligation to contribute to the plan” in the case of a multiemployer plan. Multiemployer plan administrators should furnish notice to contributing employers as defined in 29 C.F.R. § 2520.101-4(f)(4).



**Q16: Section 101(f) of ERISA requires the disclosure of plan funding information not only for the plan year to which the notice relates, but also for the two plan years preceding that year. Thus, for example, an annual funding notice for the 2008 plan year must include PPA funding information pertaining to the 2007 and 2006 plan years (both pre-PPA years). What funding information for these pre-PPA years should the plan administrator include in its model?**

For a plan year beginning in 2006, the notice must include the funded current liability percentage (as defined in section 302(d)(8) of ERISA, as in effect prior to the PPA) of the plan for such plan year. See section 501(d)(2)(A) of the PPA. Pending further guidance, for a plan year beginning in 2007, in the case of a single-employer plan, the notice should include the plan's funding target attainment percentage determined in accordance with IRS proposed regulations at 72 FR 74215, 74232 (Dec. 31, 2007). In the case of a multiemployer plan, for a plan year beginning in 2007, the Department of the Treasury has advised that the plan's funded current liability percentage (as defined in section 302(d)(8) of ERISA, as in effect prior to the PPA) is treated as the plan's estimated funded percentage. Pending further guidance, the notice with respect to a multiemployer plan should therefore include the plan's funded current liability percentage for the plan year beginning in 2007.

The models in Appendix A and Appendix B reflect PPA funding concepts, not the transitional data described in this Q16. Accordingly, for plan years 2008 and 2009, plans using a model should insert "not applicable" in the relevant cells in the Funding Target Attainment Percentage chart (single-employer plans) or the Funded Percentage chart (multiemployer plans) and also complete and include in the model the additional model language set forth in Appendix C. The language in Appendix C, entitled "Transition Data," should be inserted in the model directly below the Funding Target Attainment Percentage chart or the Funded Percentage chart.

**Q17: Do the new annual funding notice requirements apply to plans for which the effective date of the PPA funding rules is delayed in accordance with sections 104 through 106 of PPA, or that are subject to special funding rules in accordance with section 402 of the PPA? May such plans use the model notice in Appendix A?**

None of these delayed effective date provisions (sections 104, 105, 106 and 402 of the PPA) affects the applicability to these plans of the amendments to section 101(f) of ERISA. Accordingly, the new annual funding notice requirements in section 101(f) of ERISA apply to these plans for plan years beginning on or after January 1, 2008. These plans should disclose their funding target attainment percentage (and related asset and liability information) determined in accordance with guidance provided by the Secretary of the Treasury. In the absence of such guidance, plans subject to the delayed effective date provisions in sections 104, 105, and 106 of the PPA (rural cooperatives'

plans, settlement agreement plans, and government contractors' plans) do not subtract credit balances from plan assets in calculating their funding target attainment percentage. The model in Appendix A is available to such plans, but the portions of the model entitled "Credit Balances" and "At-Risk Status" should be deleted from the model before use.

**PAPERWORK REDUCTION ACT (PRA):**

The public reporting burden for this collection of information is estimated to average approximately one minute per response with an average annual burden of 33 hours per respondent, including time for gathering and maintaining the data needed to complete the required disclosure.

This FAB revises the collections of information contained in 29 CFR 2520.101-4. According to the Paperwork Reduction Act of 1995 (Pub. L. 104-13), no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The Department is planning to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB) requesting a revision of OMB Control Number 1210-0126. The Department notes that a federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the PRA, and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. *See* 44 U.S.C. § 3507. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. *See* 44 U.S.C. § 3512. The Department intends to publish a notice announcing OMB's decision upon review of the Department's ICR.

Questions concerning this memorandum may be directed to Stephanie Ward at 202.693.8500.

## APPENDIX A

### ANNUAL FUNDING NOTICE

For

[insert name of pension plan]

#### Introduction

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

#### Funding Target Attainment Percentage

The funding target attainment percentage of a plan is a measure of how well the plan is funded on a particular date. This percentage for a plan year is obtained by dividing the Plan’s Net Plan Assets by Plan Liabilities on the Valuation Date. In general, the higher the percentage, the better funded the plan. The Plan’s funding target attainment percentage for the Plan Year and 2 preceding plan years is shown in the chart below, along with a statement of the value of the Plan’s assets and liabilities for the same period.

	[insert Plan Year, e.g., 2011]	[insert plan year preceding Plan Year, e.g., 2010]	[insert plan year 2 years preceding Plan year, e.g., 2009]
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 insert "not applicable" in the appropriate box. Round off all amounts in this notice to the nearest dollar.*

### Credit Balances

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

### At-Risk Status

If a plan's funding target attainment percentage for the prior plan year is below a specified legal threshold, the plan is considered under law to be in "at-risk" status. "At-risk" plans are required to use actuarial assumptions that result in a higher value of plan liabilities and, consequently, require more funding by the employer. For example, plans in "at-risk" status are required to assume that all workers eligible to retire in the next 10 years will do so as soon as they can, and that they will take their distribution in whatever form would create the highest cost to the plan, without regard to whether those workers actually do so. The Plan has been determined to be in "at-risk" status in [enter year or years covered by the chart above]. The increased liabilities to the Plan as a result of being in "at-risk" status are reflected in the At-Risk Liabilities row in the chart above.

*{Instructions: Include the preceding discussion, entitled At-Risk Status, only in the case of a plan required to report At-Risk Liabilities.}*

### Fair Market Value of Assets

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

Participant Information

The total number of participants in the plan as of the Plan’s valuation date was [insert number]. Of this number, [insert number] were active participants, [insert number] were retired or separated from service and receiving benefits, and [insert number] were retired or separated from service and entitled to future benefits.

Funding & Investment Policies

The law requires that every pension plan have a procedure for establishing a funding policy to carry out the plan objectives. A funding policy relates to the level of contributions needed to pay for promised benefits. The funding policy of the Plan is [insert a summary statement of the Plan’s funding policy].

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

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

<b>Asset Allocations</b>	<b>Percentage</b>
1. Interest-bearing cash	_____
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	_____

### Events with Material Effect on Assets or Liabilities

Federal law requires the plan administrator to provide in this notice a written explanation of events, taking effect in the current plan year, which are expected to have a material effect on plan liabilities or assets. For the plan year beginning on [*insert beginning of plan year for year after plan year to which notice relates*] and ending on [*insert end of plan year for year after plan year to which notice relates*], the following events are expected 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 year, as well as a projection to the end of the current plan year of the effect of the amendment, scheduled increase or reduction, or event on plan liabilities*].

*{Instructions: Include the preceding discussion, entitled Events with Material Effect on Assets or Liabilities, only if applicable.}*

### Right to Request a Copy of the Annual Report

A pension plan is required to file with the US Department of Labor an annual report (i.e., Form 5500) containing financial and other information about the plan. Copies of the annual report are available from 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 Form also may be obtained through that website and include the website address.*]

### Summary of Rules Governing Termination of Single-Employer Plans

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

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

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

### Benefit Payments Guaranteed by the PBGC

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

The PBGC pays pension benefits up to certain maximum limits. The maximum guaranteed benefit is *[insert amount from PBGC web site, www.pbgc.gov, applicable for the current plan year]* per month, or *[insert amount from PBGC web site, www.pbgc.gov, applicable for the current plan year]* per year, payable in the form of a straight life annuity, for a 65-year-old person in a plan that terminates in *[insert current plan year]*. The maximum benefit may be reduced for an individual who is younger than age 65. *[If the Plan does not provide for commencement of benefits before age 65, you may omit this sentence.]* The maximum benefit will also be reduced when a benefit is provided to a survivor of a plan participant.

The PBGC guarantees “basic benefits” earned before a plan is terminated, which includes *[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.

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

Even if certain benefits are not guaranteed, participants and beneficiaries still may receive some

of those benefits from the PBGC depending on how much money the terminated plan has and how much the PBGC collects from the employer.

### Corporate Information on File with PBGC

The law requires a plan sponsor to provide the PBGC with financial information about the sponsor and 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], and each member of its controlled group, if any, was subject to this requirement to provide corporate financial information and plan actuarial information to the PBGC. The PBGC uses this information for oversight and monitoring purposes.

*{Instructions: Insert the preceding paragraph entitled "Corporate Information on File with PBGC" only if a reporting under section 4010 of ERISA was required for the Plan Year.}*

### 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 employer identification number or "EIN" is [enter EIN of plan sponsor]. For more information about the PBGC and benefit guarantees, go to PBGC's website, [www.pbgc.gov](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).



## APPENDIX B

### ANNUAL FUNDING NOTICE

For  
[insert name of pension plan]

#### Introduction

This notice includes important funding information about your pension plan (“the Plan”). This notice also provides a summary of federal rules governing multiemployer plans in reorganization and 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] (referred to hereafter as “Plan Year”).

#### Funded Percentage

The funded percentage of a plan is a measure of how well that plan is funded. This percentage is obtained by dividing the Plan’s assets by its liabilities on the valuation date for the plan year. In general, the higher the percentage, the better funded the plan. The Plan’s funded percentage for the Plan Year and 2 preceding plan years is set forth in the chart below, along with a statement of the value of the Plan’s assets and liabilities for the same period.

	[insert Plan Year, e.g., 2011]	[insert plan year preceding Plan Year, e.g., 2010]	[insert plan year 2 years preceding Plan Year, e.g., 2009]
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 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 (determined in the same manner as under section 304(c)(3) of ERISA, but taking into account section 305(i)(8) of ERISA). Report the value of the plan’s assets and liabilities in the same manner as under section 304 of ERISA (but taking into account section 305(i)(8) of ERISA with respect to liabilities) as of the plan’s valuation date for the plan year.}*

#### Fair Market Value of Assets

Asset values in the chart above are actuarial values, not market values. Market values tend to show a clearer picture of a plan’s funded status as of a given point in time. However, because market values can fluctuate daily based on factors in the marketplace, such as changes in the stock market, pension law allows plans to use actuarial values for funding purposes. While actuarial values fluctuate less than market values, they are estimates. As of [enter the last day and

year of the Plan Year], the fair market value of the Plan's assets was [enter amount]. As of [enter the last day and year of the plan year preceding the Plan Year], the fair market value of the Plan's assets was [enter amount]. As of [enter the last day and year of the plan year two years preceding the Plan Year], the fair market value of the Plan's assets was [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.}*

Participant Information

The total number of participants in the plan as of the Plan's valuation date was [insert number]. Of this number, [insert number] were active participants, [insert number] were retired or separated from service and receiving benefits, and [insert number] were retired or separated from service and entitled to future benefits.

Funding & Investment Policies

The law requires that every pension plan have a procedure for establishing a funding policy to carry out the plan objectives. A funding policy relates to the level of contributions needed to pay for benefits promised under the plan currently and over the years. The funding policy of the Plan is [insert a summary statement of the Plan's funding policy].

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

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

<b>Asset Allocations</b>	<b>Percentage</b>
1. Interest-bearing cash	_____
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	_____

### Critical or Endangered Status

Under federal pension law a plan generally will be considered to be in “endangered” status if, at the beginning of the plan year, the funded percentage of the plan is less than 80 percent or in “critical” status if the percentage is less than 65 percent (other factors may also apply). 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, the trustees of the plan are required to adopt a rehabilitation plan. Rehabilitation and funding improvement plans establish steps and benchmarks for pension plans to improve their funding status over a specified period of time.

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

*{Option one}*

The Plan was not in endangered or critical status in the Plan Year.

*{Option two}*

The Plan was in *[insert “endangered” or “critical”]* status in the 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 Plan’s funding improvement or rehabilitation plan, including when adopted and expected duration, and a description of any update to the plan adopted during the plan year to which the notice relates]*.

You may obtain a copy of the Plan’s funding improvement or rehabilitation plan and the actuarial and financial data that demonstrate any action taken by the plan toward fiscal improvement 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)].”]*

### Events with Material Effect on Assets or Liabilities

Federal law requires trustees to provide in this notice a written explanation of events, taking effect in the current plan year, which are expected to have a material effect on plan liabilities or assets. For the plan year beginning on *[insert date]* and ending on *[insert date]*, the following events are expected 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 and assets for the year, as well as a projection to the end of the current plan year of the effect of the amendment, scheduled increase or reduction, or event on plan liabilities]*.

*{Instructions: Include the preceding discussion, entitled Events with Material Effect on Assets or Liabilities, only if applicable.}*

### Right to Request a Copy of the Annual Report

A pension plan is required to file with the US Department of Labor an annual report (i.e., Form 5500) containing financial and other information about the plan. Copies of the annual report are available from 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 Form also may be obtained through that website and include the website address.]*

### Summary of Rules Governing Plans in Reorganization and Insolvent Plans

Federal law has a number of special rules that apply to financially troubled multiemployer plans. Under so-called "plan reorganization rules," a plan with adverse financial experience may need to increase required contributions and may, under certain circumstances, reduce benefits that are not eligible for the PBGC's guarantee (generally, benefits that have been in effect for less than 60 months). If a plan is in reorganization status, it must provide notification that the plan is in reorganization status and that, if contributions are not increased, accrued benefits under the plan may be reduced or an excise tax may be imposed (or both). The law requires the plan to furnish this notification to each contributing employer and the labor organization.

Despite the special plan reorganization rules, a plan in reorganization nevertheless could become insolvent. 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 maximum benefit that the PBGC guarantees is set by law. Only vested benefits are guaranteed. 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 \$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 ( $\$17.75 \times 10$ ).

The PBGC guarantees pension benefits payable at normal retirement age and some early retirement benefits. In calculating a person's monthly payment, the PBGC will disregard any benefit increases that were made under the 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 pre-retirement death benefits to a spouse or beneficiary (e.g., a qualified pre-retirement survivor annuity) if the participant dies after the plan terminates, 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 and insert email address if appropriate]. For identification purposes, the official plan number is [enter plan number] and the plan sponsor's employer identification number or "EIN" is [enter EIN of plan sponsor]. For more information about the PBGC and benefit guarantees, go to PBGC's website, [www.pbgc.gov](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).

## APPENDIX C

### Transition Data

For a brief transition period, the Plan is not required by law to report certain funding related information because such information may not exist for plan years before 2008. The plan has entered “not applicable” in the chart above to identify the information it does not have. In lieu of that information, however, the Plan is providing you with comparable information that reflects the funding status of the Plan under the law then in effect. For [enter plan year], the Plan’s “funded current liability percentage” was [insert ratio of actuarial value of assets to current liability, as of the valuation date, expressed as a percentage. If the percentage is equal to or greater than 100 percent, you may insert “at least 100 percent”]., the Plan’s assets were [enter amount], and Plan liabilities were [enter amount]. {Instructions: repeat the preceding sentence for each year for which the plan does not have information. Such sentence may need to be modified for single employer plans to reflect guidance issued by the Secretary of the Treasury, i.e., for single-employer plans, use “funding target attainment percentage determined under IRS transitional rules” rather than “funded current liability percentage,” as appropriate.}