Subject

(d) Air Transport Association of America (ATA) Code 53: Fuselage.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

The TC Holder received from operators, whose fleets are operated in demanding operating-conditions and with very frequent Short Take-Off and Landing (STOL) operations, reports of cracks located in the web of fuselage frame 19. On 05 February 2007, EASA issued Airworthiness Directive (AD) 2007–0028 which mandated Alert Service Bulletin (ASB) 228–266 and required an inspection of the frame 19 on all Dornier 228 aeroplanes. In addition, the TC Holder also initiated a flight-test campaign including strain measurements as well as finite element modelling and fatigue analyses to better understand the stress distribution onto the frame 19 and the associated structural components.

The results of these investigations confirmed that STOL operations diminish extensively the fatigue life of the frame 19.

Fuselage frame 19 supports the rear attachment of the Main Landing Gear (MLG). This condition, if not corrected, could cause rupture of frame 19, leading to subsequent collapse of a MLG.

For the reasons described above, this new AD requires installation of reinforcements and butt straps on frame 19 at the lower part of the fuselage for aeroplanes used in operations where this frame may be subject to high stress and recurring inspections of that frame for all aeroplanes.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) For all airplanes, within 25 hours time-in-service (TIS) after June 26, 2007 (the effective date of AD 2007–11–03), visually inspect the affected fuselage frame 19 using the instructions in Dornier 228 RUAG Alert Service Bulletin No. ASB–228–266, dated December 1, 2006.

(2) If any crack is found during the inspection required in paragraph (f)(1) of this AD, before further flight, contact RUAG Aerospace Services GmbH, Dornier 228 Customer Support, P.O. Box 1253, 82231 Wessling, Germany; *telephone:* +49-(0)8153–30–2280; *fax:* +49-(0)8153–30–3030; *e-mail: customersupport.dornier228@ruag.com* for FAA-approved repair instructions and incorporate the repair on the airplane.

(3) After accomplishment of paragraph (f)(1) or (f)(2) of this AD, as applicable, repetitively thereafter do Structural Significant Item (SSI) Task No. 53.37 of Structure Inspection Program of Dornier 228 Time Limits/Maintenance Checks Manual, Temporary Revision No. 05–27, dated August 4, 2008, at intervals not to exceed 2,400 landings or 72 months, whichever occurs first.

(g) If the number of landings is unknown, calculate the compliance times of landings in this AD by using hours TIS. Multiply the number of hours TIS by 0.8 to come up with the number of landings. For the purpose of this AD:

(1) 800 landings equals 1,000 hours TIS; and

(2) 1,600 landings equals 2,000 hours TIS.

FAA AD Differences

NOTE: This AD differs from the MCAI and/or service information as follows:

(1) The MCAI requires different compliance times for airplanes operated in different conditions. The FAA is not able to enforce compliance times based on airplane operations since there is no way of determining the amount of operations in different conditions. To ensure the unsafe condition is addressed adequately and timely, we are requiring the inspection for all airplanes following a guideline combining number of landings and life limits.

(2) The service information allows flight with known cracks provided they do not exceed a certain limit. FAA policy does not allow flight with cracks in primary structure. Since the fuselage is considered primary structure, we are mandating repair before further flight after any crack is found.

Other FAA AD Provisions

(h) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Greg Davison, Glider Program Manager, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4130; *fax:* (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave., SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

Related Information

(i) Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2009–0085, dated April 14, 2009; RUAG Alert Service Bulletin No. ASB–228–266, dated December 1, 2006; and Dornier 228 Time Limits/Maintenance Checks Manual, Temporary Revision No. 05–27, dated August 4, 2008, for related information. For service information related to this AD, contact RUAG Aerospace Services GmbH, Dornier 228 Customer Support, P.O. Box 1253, 82231 Wessling, Germany; telephone: + 49 (0) 8153–302280; fax: + 49 (0) 8153–303030. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

Issued in Kansas City, Missouri, on November 10, 2010.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–29110 Filed 11–17–10; 8:45 am]

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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: Proposed rule.

SUMMARY: This document contains a proposed regulation that, on adoption, would implement the annual funding notice requirement in the Employee Retirement Income Security Act of 1974 (ERISA), as amended by the Pension Protection Act of 2006 (PPA) and the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA). As amended, section 101(f) of ERISA generally requires the administrators of all defined benefit plans, not just multiemployer defined benefit plans, to furnish an annual funding notice to the Pension Benefit Guaranty Corporation (PBGC), participants, beneficiaries, and certain other persons. A funding notice must include, among other information, the plan's funding target attainment percentage or funded percentage, as applicable, over a period of time, as well as other information relevant to the plan's funded status. This document also contains proposed conforming amendments to other regulations under ERISA, such as the summary annual report regulation, which became

necessary when the PPA amended section 101(f) of ERISA. The proposed regulation would affect plan administrators and participants and beneficiaries of defined benefit pension plans, as well as labor organizations representing participants and beneficiaries and contributing employers of multiemployer plans.

DATES: Written comments on the proposed regulation should be received by the Department of Labor on or before January 18, 2011.

ADDRESSES: You may submit comments, identified by RIN 1210–AB18, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: e-ORI@dol.gov.* Include RIN 1210–AB18 in the subject line of the message.
- *Mail:* Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5655, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Annual Funding Notice for Defined Benefit Plans.

Instructions: All submissions received must include the agency name and Regulation Identifier Number (RIN) for this rulemaking. Comments received will be posted without change to *http://www.regulations.gov* and *http://www.dol.gov/ebsa,* and made available for public inspection at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Washington, DC 20210, including any personal information provided. Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. Comments posted on the Internet can be retrieved by most Internet search engines. Comments may be submitted anonymously. Persons submitting comments electronically are encouraged not to submit paper copies.

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

SUPPLEMENTARY INFORMATION:

A. Background

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 Pension Benefit Guaranty Corporation (PBGC).[1]

In 2006, section 501(a) of the Pension Protection Act of 2006, Public Law 109–280 (PPA), significantly amended section 101(f) of ERISA. For example, section 101(f) of ERISA now requires administrators of all defined benefit plans that are subject to title IV of ERISA, not only multiemployer plans, to furnish annual funding notices. In addition, the PPA shortened the time frame for providing funding notices and enhanced the notice content requirements. These changes 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.[2]

On February 10, 2009, the Department issued Field Assistance Bulletin 2009–01 (FAB 2009–01) as interim guidance under section 101(f) of ERISA in order to assist plan administrators in discharging their obligations under the new annual funding notice requirements. FAB 2009–01 provides question and answer guidance on a number of issues under section 101(f) of ERISA. It also includes model funding notices. Much of the guidance in FAB 2009–01 has been incorporated into the proposed regulation contained in this document. That guidance remains in effect until the Department adopts final regulations under section 101(f) of ERISA (or if the Department were to publish any other guidance under section 101(f) other than final regulations).[3]

[1] On January 11, 2006, the Department of Labor published a final regulation implementing the requirements of section 101(f) of ERISA as amended by PFEA '04. *See* 29 CFR 2520.101–4.

[2] Prior to the applicability date of the PPA amendments to section 101(f) of ERISA, a multiemployer plan was required to furnish a funding notice consistent with § 2520.101–4 (for plan years beginning prior to January 1, 2008). For plan years beginning after December 31, 2007, multiemployer plans must comply with section 101(f) as amended, and when final, the regulations under § 2520.101–5, rather than § 2520.101–4. The Department will remove § 2520.101–4 from the Code of Federal Regulations in conjunction with the promulgation of a final rule.

[3] FAB 2009–01 is available on the Department's Web site at *http://www.dol.gov/ebsa/regs/fab2009-1.html.*

B. Overview of Proposed 29 CFR 2520.101–5—Annual Funding Notice for Defined Benefit Pension Plans

1. Scope

Paragraph (a) of the proposed regulation implements the requirements set forth in section 101(f) of ERISA. This section in general requires the administrator of a defined benefit plan to which title IV of ERISA applies to furnish annually a funding notice to the 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. Those persons entitled to the funding notice are further clarified in paragraph (f) of the proposed regulation.

Paragraphs (a)(2) and (3) of the proposed regulation provide limited exceptions to the requirement to furnish a funding notice.

Under the exception in paragraph (a)(2)(i) of the proposal, 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. This exception is effectively the same as the exception that currently exists in § 2520.101–4(a)(2) for multiemployer plans receiving financial assistance from the PBGC. The rationale for the exception was articulated in the final regulation under § 2520.101–4.[4] The exception in the proposal is phrased slightly differently than the exception in § 2520.101–4 at the request of the PBGC. Inasmuch as this exception is predicated on sufficient alternative notification under sections 4245(e) and 4281(d)(3), 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.

Under the exception in paragraph (a)(2)(ii) of the proposal, 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, or the plan has distributed assets in

[4] 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).

satisfaction of all benefit liabilities in a standard termination pursuant to section 4041(b) or 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 believes, 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.[5]

Under the exception in paragraph (a)(3) of the proposal, relief is provided in the case of a merger or consolidation of two or more plans. In such circumstances, the plan administrator of the plan that has legally transferred control of its assets to a successor plan (hereafter the "non-successor plan") shall not be required to furnish a funding notice for its final plan year that ends coincident with or immediately prior to the merger. Thus, for example, if plan A were to merge with plan B in 2010 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 that ends upon the occurrence of the merger in 2010. 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 proposed regulation and, in addition, contain a general explanation of the merger. 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.

2. Content Requirements

a. Identifying Information (Proposed § 2520.105–1(b)(1))

Paragraph (b)(1) of the proposed regulation provides that a funding notice must include the name of the plan 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). A funding notice also must include each plan sponsor's name and employer identification number and the plan number. For purposes of this requirement, employer identification numbers, name of plan sponsor, and plan numbers are the same as those used in the annual report filed in accordance with section 104(a) of ERISA.

b. Funding Percentage (Proposed § 2520.105–1(b)(2))

Paragraph (b)(2) of the proposed regulation requires disclosure of a plan's funding percentage. Specifically, in the case of a single-employer plan, paragraph (b)(2)(i) of the proposal provides that a notice must include a statement as to whether the plan's funding target attainment percentage for the plan year to which the notice relates (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 Internal Revenue Code (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 plan assets for the plan year (determined under the rules of 26 CFR 1.430(g)–1) after subtraction of the prefunding balance and the funding standard carryover balance 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).[6] Thus, this percentage for a plan year is calculated by dividing the value of the plan's assets for that year (after subtracting the prefunding and funding standard carryover balances, if any) by the funding target of the plan for that year (disregarding the at-risk rules).

Similarly, in the case of a multiemployer plan, paragraph (b)(2)(ii) of the proposed regulation 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.[7] 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.

c. Assets and Liabilities (Proposed § 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 proposed regulation 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 the statute, under section 101(f)(2)(B)(ii)(I)(aa), the proposed regulation provides that assets and liabilities are to be determined "in the same manner as under section 303" of ERISA. The Department interprets this reference to mean the assets and liabilities used to determine a plan's

[5] 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* 26 CFR 1.430(d)–1(b)(3)(i); 74 FR 53004, 53036 (Oct. 15, 2009).

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

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). This approach makes transparent the assets and liabilities used to determine the funding target attainment percentage of the plan, as well as the plan's liabilities (*i.e.,* funding target) actually used for funding purposes.

(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 proposed regulation provides 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 section 303. The interest rate assumption is the segment 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.

The Department recognizes that in their funding notices some plans may need to estimate their year-end liability for the notice year. In this regard, the statute does not specifically set forth any standards to govern such estimations. Therefore, pending further guidance, plan administrators may, in a reasonable manner, project liabilities to year-end using standard actuarial techniques. The Department, however, specifically invites comment on this issue.

(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 proposed regulation 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 proposed regulation. Thus, the recipients of a funding notice will receive not only their plans' funded percentage, pursuant to paragraph (b)(2)(ii) of the proposal, 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.

(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 proposed regulation 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.[8]

(v) Year-End Statement of Plan Assets

As discussed above, all 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. Inclusion is permissive; the proposed regulation does not require these contributions to be included in the year-end asset statement. If they are included, however, they may be included only if they are attributable to the notice year for funding purposes.

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. 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.[9] For example: Plan X is a calendar year plan. The plan's funding notice for 2011 was timely furnished in 2012. The year-end statement of assets was based on December 31, 2011, fair market value. The plan administrator included the present value of contributions made to the plan on February 14, 2012, in the year-end statement of assets. The "effective interest rate" for the plan was five percent in 2011 and four percent in 2012. The contributions would be discounted from February 14, 2012, to December 31, 2011, using a discount rate of five percent per annum, which was the "effective interest rate" for 2011.

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 the 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.

[8] *See* Joint Committee on Taxation Technical Explanation (JCX 85–08, Dec. 11, 2008) of H.R. 7327, the "Worker, Retiree, and Employer Recovery Act of 2008" explaining that section 105 of this Act amended section 101(f)(2)(B)(ii)(II) of ERISA to conform the asset and liability information provided for a multiemployer plan to the information that must be provided for a single-employer plan.

[9] This approach is consistent with the position taken by the PBGC regarding the treatment of subsequent contributions in determining the fair market value of assets under section 4006(a)(3)(E)(iii). *See* page 18 of the PBGC's 2010 Comprehensive Premium Payment Instructions.

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

Paragraph (b)(4) of the proposed regulation provides for disclosure of a plan's participant population based on the employment status of those participants. Specifically, it 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 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" in relation to participants shall 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 2009 Form 5500 Annual Return/Report).

Neither section 101(f) of ERISA nor paragraph (b)(4) of the proposed regulation specifically address whether, or how, to account for deceased participants who have one or more beneficiaries who are receiving or are entitled to receive benefits under a plan. For purposes of the annual funding notice requirements, however, these participants would appear to be similar to retired or separated participants who are themselves receiving, or are entitled to receive, benefits under the plan in that the plan retains liability for benefits accrued by such deceased participants. Accordingly, the Department solicits comments on whether such individuals should be reflected in the participant count required under paragraph (b)(4) of the proposal and, if so, how. For example, such individuals could be included in the respective "retired or separated" categories under paragraph (b)(4) of the proposal or in a stand-alone category.[10]

The statute does not specify the date for counting the participants required by paragraph (b)(4) of the proposed regulation. The Department has chosen the valuation date of the notice year to provide consistency with the measurement date of the plan's funding target attainment percentage or funded percentage, as applicable. The Department solicits comments on whether a different date would be more appropriate, such as the last day of the notice year. Comments should explain why a different date would be more appropriate.

As explained above, the demographic information required by paragraph (b)(4) of the proposal is limited to the notice year. The Department solicits comments on whether, and to what extent, notice recipients would benefit from demographic information covering a longer period of time, such as the notice year and two preceding plan years. Commentary is requested on whether such information, in conjunction with other information required by section 101(f) and the proposed regulation would assist notice recipients in fully understanding the financial health and condition of the plan.

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

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[.]" Paragraph (b)(5) of the proposal directly incorporates these requirements. *See* paragraphs (b)(5)(i) and (ii) of the proposal. Paragraph (b)(5) of the proposal adds the requirement that a notice also must set forth a general description of any investment policy of the plan as it relates to the funding policy and the asset allocation. *See* paragraph (b)(5)(iii) of the proposal. The purpose of this addition is to provide participants and beneficiaries with contextual information not explicitly required by section 101(f) of ERISA so that they may better understand and appreciate the plan's approach to funding benefits.[11] Use of the word "any" in paragraph (b)(5)(ii) 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. The Department specifically requests comment on the costs and benefits associated with the disclosure of such additional information.

A plan administrator may satisfy the asset allocation requirement in paragraph (b)(5)(ii) of the proposal by using the table of asset classes set forth in the model notice published in the appendices to this proposal. The asset classes identified in the model are based on the asset classes listed in Part 1 of the Asset and Liability Statement of the latest Schedule H of the Form 5500 Annual Return/Report (*see* Lines 1a, 1c(1)–(15), 1d(1)–(2) and 1(e) of the 2009 Schedule H).[12] With respect to each asset class, plan administrators should insert an appropriate percentage. For this purpose, a plan administrator should use the same valuation and accounting methods as for Form 5500 Schedule H 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 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). For this purpose, 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, in order to inform participants how to get additional investment information. The Department specifically requests comment on whether this approach (*i.e.,* based on the Schedule H) to stating the asset allocation of a plan's investments as of the last day of the notice year provides sufficient information to participants regarding the plan's investments, or whether there is a more effective way of communicating this required information in the funding notice, and if so, how.

f. Endangered or Critical Status (Proposed § 2520.101–5(b)(6))

Paragraph (b)(6) of the proposed regulation, which is limited to multiemployer plans, requires that the

[10] *See, e.g.,* line 6(e) of the 2009 Form 5500 Annual Return/Report (for listing the number of deceased participants whose beneficiaries are receiving or entitled to receive benefits).

[11] 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).

[12] 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 2009 Schedule H).

funding notice for such plans indicate whether the plan was in endangered or critical status for the notice year. For this purpose, "endangered or critical status" is determined in accordance with section 305 of ERISA, which corresponds to section 432 of the Code. Pursuant to paragraph (b)(6)(i) of the proposal, if the plan was in endangered or critical status for the notice year, the funding notice 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. Pursuant to paragraph (b)(6)(ii) of the proposal, if the plan was in endangered or critical status for the notice year, the notice must contain a summary of the plan's funding improvement or rehabilitation plan. This summary is required to include, when applicable, a description of any updates or modifications to such funding improvement or rehabilitation plan adopted during the notice year. Paragraph (b)(6)(ii) clarifies that a summary is required not only for the notice year in which the funding improvement or rehabilitation plan was adopted, but for every plan year thereafter until the funding improvement or rehabilitation plan ceases to be in effect. This proposed clarification resolves any ambiguity in section 101(f)(2)(B)(v)(II) regarding whether a summary is only required to be included for the notice year in which the funding improvement or rehabilitation plan is first adopted and then again if subsequently modified, as opposed to every plan year the funding improvement or rehabilitation plan is in effect.

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

Paragraph (b)(7) of the proposed regulation directly incorporates the requirements of section 101(f)(2)(B)(vi) of ERISA. That section of ERISA requires an 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 such plan year of the effect of the amendment, scheduled increase or reduction, or event on plan liabilities. The Department believes there is ambiguity with respect to the term "current plan year" in section 101(f)(2)(B)(vi) of ERISA. The question is whether this term refers to the notice year or the plan year following the notice year. The proposed regulation adopts 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. 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. On the other hand, the Department is interested in ensuring that the proposal results in all material effect events being disclosed and, therefore, specifically requests comments on the approach taken in the proposal.

Section 101(f)(2)(B)(vi) of ERISA also provides that the Department will define by regulations when an event (*i.e.,* plan amendment, scheduled benefit increase or reduction, or other known event) has a material effect on plan liabilities or assets for the year. Pursuant to this provision, paragraph (g)(1) of the proposed regulation provides 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. Alternatively, 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. Paragraph (g)(3) of the proposal provides that, for purposes of paragraph (g)(1), assets and liabilities should be measured in the same manner that assets and liabilities are measured for purposes of establishing the plan's funding target attainment percentage or funded percentage under paragraph (b)(2) of the proposal.

Paragraph (g)(2) of the proposal provides guidance on the type of events that could constitute an "other known event" for purposes of paragraph (b)(7) of the regulation. Such events include, but are 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 Code; 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; an offer by the plan for a temporary period to permit participants to retire at benefit levels greater than that to which they would otherwise be entitled; or a cost-of-living adjustment for retirees.

In FAB 2009–01 (February 10, 2009), the Department provided interim guidance under section 101(f) of ERISA in the form of an enforcement policy. With respect to the material effect event provision in section 101(f)(2)(B)(vi) of ERISA, the Department, in addressing when an amendment, scheduled increase, or other known event would have a "material effect" on plan liabilities or assets, stated that "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 for furnishing the notice, such event is not required to be included 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. While the Department has not included this policy in the proposed regulation, the Department nonetheless requests comments on whether it or a similar approach should be included in the final regulation.

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

Paragraph (b)(8) of the proposed regulation requires a summary of the rules under title IV of ERISA relating to plan termination, reorganization, or insolvency, as applicable. Specifically, in the case of single-employer plans, the proposal 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* proposed § 2520.101–5(b)(8)(i). In the case of multiemployer plans, the proposed regulation provides that a notice shall include a summary of the rules governing reorganization or insolvency, including limitations on benefit payments. *See* proposed § 2520.101–5(b)(8)(ii).

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

Paragraph (b)(9) of the proposed regulation 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.

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

Paragraph (b)(10) of the proposed regulation provides that a funding notice shall include a statement that a person, including, in the case of a multiemployer plan, any labor organization representing plan participants and beneficiaries and any employer that has an obligation to contribute to the plan, 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 (*http://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). Under paragraph (b)(10), a plan administrator must furnish, on request, only copies of filed annual reports. Thus, for example, if, following the receipt of a funding notice in April 2011 for the 2010 plan year a plan participant requests a copy of the plan's 2010 annual report, which is completed, but not yet filed, the plan administrator is not required under section 101(f) of ERISA to furnish the 2010 report to the requesting participant. Consistent with paragraph (b)(12) of the proposed regulation, plans may include language in a funding notice explaining that the annual report for the plan for the notice year has not yet been filed and when such report is expected to be filed.

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

Paragraph (b)(11) of the proposed regulation, which applies only to single-employer plans, provides that, if applicable, a funding notice must include a statement that the contributing sponsor of the plan, and each member of the contributing sponsor's controlled group (other than an exempt entity within the meaning of 29 CFR 4010.4(c)), was required to provide to the PBGC the information under section 4010 of ERISA for the notice year. However, if the contributing sponsor of the plan is itself an exempt entity within the meaning of 29 CFR 4010.4(c), paragraph (b)(11) instead requires a statement that each member of the contributing sponsor's controlled group (other than an exempt entity) was required to provide the information under section 4010 of ERISA for the notice year. Section 4010 of ERISA generally requires sponsors (and each member of their controlled group) of certain underfunded plans (*e.g.,* a plan with a funding target attainment percentage of less than 80 percent, a plan with a minimum funding waiver in excess of $1 million any portion of which is still outstanding, or a plan that 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) to report identifying, financial, and actuarial information about themselves and their plans to the PBGC. The statement required by paragraph (b)(11) of the proposed regulation is required only if there was a reporting obligation under section 4010 of ERISA for the notice year. In this regard, the Department specifically requests comment on whether, and to what extent, the differences in the timing requirements under sections 4010 and 101(f) of ERISA present any compliance problems for plan administrators, *e.g.,* circumstances where, because of the potential differences between a plan year and an information year, as defined in 29 CFR 4010.5, a plan administrator will not know of the plan sponsor's 4010 reporting obligation for a particular information year by the deadline for furnishing the annual funding notice for a plan year that ends within such information year. Commenters are encouraged to provide specific examples of any compliance problems presented by paragraph (b)(11) of the proposal, as well as suggestions on how to address such problems.

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

Paragraph (b)(12) of the proposed regulation 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. Paragraph (b)(12) of the proposal does not include the rule in 29 CFR 2520.101–4(b)(9) (the Department's regulation implementing the pre-PPA annual funding notice requirements for multiemployer plans, which ceased being effective for plan years beginning after December 31, 2007) that required additional information, even if necessary or helpful, to be posted at the end of the funding notice under the heading "Additional Explanation." This rule is not being included in the proposed regulation because of negative feedback received by the Department on the former rule following its promulgation. Representatives of plans commented that placing additional or explanatory information at the end of a funding notice disconnects the information being explained from the explanation itself, often making it more difficult, instead of making it easier, for participants to understand the information being explained. These individuals also commented that the rule is being viewed by some as an obstruction to furnishing a funding notice along with, or as part of, other plan disclosures or communications, resulting in stand-alone disclosure of the annual funding notice and increased administrative expenses to the plan.

In addition to information that is "necessary or helpful," paragraph (b)(12) of the proposed regulation also provides for inclusion of information that is "otherwise permitted by law." This clause 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. 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. *See* section C of this preamble discussing § 2520.104–46, as amended.

3. Form and Manner Requirements (Proposed § 2520.101–5(c) and (e))

Paragraphs (c) and (e) of the proposed regulation, respectively, set forth the style and format requirements and the manner of furnishing requirements relating to the funding notice. Paragraph (c) of the proposed regulation 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. Thus, 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.

Paragraph (e) of the proposal relates to how annual 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. The Department, however, has decided to reserve paragraph (e)(1) of the proposal for the same reason the Department reserved the manner of furnishing requirements in the recently published final participant-level disclosure regulation, § 2550.404a–5 (75 FR 64910, October 20, 2010). In the preamble to the final participant-level disclosure regulation, the Department explained that, given the differing views on the use of and standards for electronic disclosure, it would be undertaking a review of the safe harbor applicable to the use of electronic media for furnishing information to plan participants and beneficiaries (29 CFR 2520.104b–1(c)). The Department further indicated that, in the very near future, it will be publishing a **Federal Register** notice requesting public comments, views, and data relating to the electronic distribution of plan information to plan participants and beneficiaries.

Accordingly, as with the final participant-level disclosure regulation, pending the completion of its review and the issuance of further guidance, the general disclosure regulation at 29 CFR 2520.104b–1 applies to annual funding notices required to be furnished to participants and beneficiaries, including the safe harbor for electronic disclosures at paragraph (c) of the general disclosure regulation. The Department anticipates that resolution of the issues involved with the electronic disclosure of plan information will directly affect the manner in which the annual funding notice may be furnished to participants and beneficiaries. Accordingly, interested persons are encouraged to participate in the Department's forthcoming solicitation of comments on the use of electronic media for furnishing plan information.

Paragraph (e)(2) of the proposal provides that funding notices shall be furnished to the PBGC consistent with the requirements of 29 CFR part 4000. The PBGC has advised the Department that it will accept electronic or hard copies of funding notices at the following postal and e-mail addresses: (1) For single-employer plans, hard copies of funding notices may be mailed to Pension Benefit Guaranty Corporation, ATTN: Single-Employer AFN Coordinator, 1200 K Street, NW., Suite 270, Washington, DC 20005–4026. Electronic copies of funding notices may be e-mailed to *Single-employerAFN@PBGC.gov.* (2) For multiemployer plans, hard copies of funding notices may be mailed to Pension Benefit Guaranty Corporation, ATTN: Multiemployer Data Coordinator, 1200 K Street, NW., Suite 930, Washington, DC 20005–4026. Electronic copies of funding notices may be e-mailed to *Multiemployerprogram@PBGC.gov.*

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

Paragraph (d) of the proposed regulation describes when a funding notice must be furnished to recipients. Paragraph (d)(1) of the proposal provides that notices generally must be furnished not later than 120 days after the end of the notice year. However, paragraph (d)(2) of the proposal 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 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.

5. Persons Entitled to Notice (Proposed § 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.

6. Model Notices (Proposed § 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 section 101(f) of ERISA purposes. 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 proposed 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. To the extent a plan administrator elects to include in a model notice additional information described in paragraph (b)(12) of the proposed regulation, such additional information must be consistent with the style and format requirements in paragraph (c) of the proposed regulation. Thus, such additional information should not have the effect of misleading or misinforming recipients.

In drafting the models, the Department attempted to develop and organize the models in a manner that will help the average plan participant understand and comprehend the information mandated by section 101(f) of ERISA, some of which is technical in nature. Nonetheless, the Department solicits comments on whether, and if so, how, the organization of the proposed models could be improved to enhance understandability and comprehensibility. For example, if a plan's funding percentage is the most important information for participants, does the chart format of the model adequately highlight this information or could other presentation techniques more effectively highlight this information?

7. Limited Alternative Method of Compliance for Furnishing Notice to PBGC (Proposed § 2520.101–5(i))

Section 101(f)(1) of ERISA provides that a plan administrator of a defined benefit plan to which title IV of ERISA applies shall, for each plan year, provide a funding notice to the 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 with an obligation to contribute to the plan. Pursuant to section 110 of ERISA, paragraph (i) of the proposed regulation includes an alternative method of compliance pertaining to the requirement to furnish

notice 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. In determining whether a plan's liabilities exceed its assets by more than $50 million, the proposed regulation provides that plan administrators 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 proposed regulation.

The Department has created this alternative method of compliance after consulting with the PBGC. The PBGC has determined that, in light of the extended funding notice 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 and the proposed regulation. 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 ERISA section 101(f) or 104(a). Also, the Department believes the alternative method of compliance will reduce administrative burden for plans that meet the conditions of paragraph (i) of the proposed regulation.

At the request of the PBGC, the Department has limited the scope of the alternative method of compliance to single-employer plans. Because multiemployer plans are not subject to ERISA section 4043 and because very few multiemployer plans will qualify for the extended annual funding notice due date, the annual funding notice will provide a useful and non-duplicative source of information to the PBGC. 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.

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 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. Based on the discussion above, the Department finds these three conditions to be satisfied in this context.

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

Sections 104, 105, and 106 of the PPA defer the effective date of the amendments made by title I of the PPA for certain plans described in those sections, *i.e.* certain plans of cooperatives, plans affected by settlement agreements with the PBGC, and plans of government contractors.[13] Section 402 of the PPA applies special funding rules to certain plans of commercial passenger airlines and airline caterers. Section 402 of the PPA was amended by the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, Public Law 110–28. None of these provisions affects the applicability of the PPA amendments to section 101(f) of ERISA. Accordingly, the funding notice requirements of 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) in accordance with guidance provided by the Secretary of the Treasury. For example, for a plan described in section 104, 105, or 106 of the PPA, the funding target attainment percentage of such plan is determined in accordance with paragraph (b)(2)(i) of the proposed regulation, except that the value of plan assets is determined without subtraction of the funding standard carryover balance or prefunding balance (credit balance under the funding standard account). *See* 26 CFR 1.430(d)–1(b)(3)(ii). 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 for notice years beginning prior to the delayed effective date.

The Department requests comment on whether, and to what extent, these plans would need special rules under section 101(f) of ERISA, if applicable, to reflect the delayed effective dates (in sections 104, 105, or 106 of the PPA) or special funding rules (in section 402 of the PPA). Comments on this issue should explain why the delayed effective dates or special funding rules under the PPA necessitate a special rule or rules under section 101(f) of ERISA and the regulation being adopted herein, and whether, and how, the model notices in the appendices to the regulation could be modified for use by these plans.

9. Multiemployer Plans Terminated by Mass Withdrawal

The proposed regulation does not provide an exemption or other relief for multiemployer plans that terminate by mass withdrawal pursuant to section 4041A(a)(2) of 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.

Plans that terminate in this fashion typically continue to pay benefits from a declining trust as payments come due and have no new contributions other than withdrawal liability payments. Therefore, the Department recognizes that some information required by the regulation may not be relevant (*e.g.,* the plan's funded percentages) for plans that have terminated by mass withdrawal. Other mandated information, such as PBGC benefit guarantee levels, assets and liabilities, numbers and status of participants, and insolvency information, however, may be very important to participants and beneficiaries receiving benefits from such plans. Accordingly, the Department solicits comment on whether the final regulation should provide special rules for such plans. Comments should be specific regarding what, if any, information otherwise required by the regulation should not be included in the funding notice, and why, and what, if any, alternative information might be disclosed in its place. Comments should provide any data that would demonstrate cost savings to such plans as a result of alternative reporting under special rules.

10. Code Section 412(e)(3) Insurance Contract Plans

The proposed regulation does not provide an exemption or any other relief

[13] 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, Public Law 109–280, by expanding the group of plans that is eligible for a deferred effective date under section 104 to include eligible charity plans.

for certain insurance contract plans to which section 412(e)(3) of the Code applies. "Code section 412(e)(3) insurance contracts" are contracts that provide retirement benefits under a plan 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. If a plan is funded exclusively by the purchase of such contracts, the otherwise applicable minimum funding requirements of section 412 of the Code and section 302 of ERISA do not apply for the year and neither the Schedule MB nor the Schedule SB is required to be filed.[14]

Therefore, the Department recognizes that information regarding a plan's funded status required in the proposed regulation (*e.g.,* the plan's funding target attainment percentage or funded percentage) may not be applicable to certain of these plans. Other required information, such as PBGC benefit guarantee levels, termination rules, fair market value of assets, and numbers and status of participants, however, may be important to participants and beneficiaries receiving benefits from such plans. Other information not required by section 101(f) of ERISA and this proposed regulation could be important to persons receiving the funding notice of these plans. Accordingly, the Department solicits comment on whether the final regulation should provide special rules for such plans. Comments should be specific regarding what information otherwise required by the proposed regulation should not be included in the funding notice, and why, and what, if any, alternative information might be disclosed in its place. Comments should explain the benefit to plan participants and provide any data that would demonstrate cost savings to such plans as a result of alternative reporting under special rules.

11. 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 does not contain any special rules for multiple employer pension plans. Nonetheless, comments are requested 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. Thus, a participant in a multiple employer pension plan could have his benefits restricted even though the plan as a whole has a funding target attainment percentage well above what one would consider to be close to a percentage that would trigger a benefit restriction under Code section 436.

C. 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 (IQPA) 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.[15] Therefore, in conjunction with the annual funding notice regulation (29 CFR 2520.101–5), discussed in section B 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 must include the information in § 2520.104–46(b)(1)(i)(B)(1)–(4) in the plan's annual funding notice. Model language is included in the Appendix to § 2520.104–46 and provided on the Department's Web site at *http://www.dol.gov/ebsa/faqs/faq_auditwaiver.html.*

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

As discussed in section C 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, a new paragraph (g)(9) is being added to provide that an SAR is not required to be furnished with respect to a plan to which title IV of ERISA applies. In this rulemaking, the Department is not making conforming changes to the form prescribed in paragraph (d)(3) of § 2520.104b–10, or to the appendix of the regulation, to reflect paragraph (g)(9), because such form and appendix continue to be applicable for plans not subject to title IV of ERISA. Nonetheless, the Department recognizes that some items and language in the form and appendix became irrelevant on and after the effective date of the repeal and, therefore, is requesting comments on how best to revise the form and appendix to eliminate unnecessary information.

E. Regulatory Impact Analysis

Summary

The proposed rule contains a model notice and other guidance necessary to implement section 101(f) of ERISA as amended by PPA and WRERA. Section 101(f) and the proposed 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

[14] *See* the Instructions to the latest Form 5500 Annual Return/Report of Employee Benefit Plan.

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

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. 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 proposed rule is expected to amount to $57.2 million in the year of implementation, and $52.8 million in each subsequent year.[16] 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.[17] 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 estimates regarding the cost of the proposal:

—The total mailing costs are estimated to be about $20.0 million annually in the first three years;

—In addition to the mailing costs, the Department estimates that firms will spend about $37.2 million in the year of implementation and $32.9 million in subsequent years on labor costs.[18]

The Department has attempted to provide guidance in the proposed 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.

The cost estimates of the proposal are based on the informational content requirements in paragraph (b) of the proposal. The Department is accepting comment on whether there is information or indicators, not already included in paragraph (b) of the proposal, that help explain a plan's financial condition and that may be helpful to notice recipients, *e.g.,* the ratio of plan assets to the present value of retired participants' benefits. Comments should be specific as to what other information or indicators could be included in the funding notice, the reasons why, and a cost/benefit analysis.

Executive Order 12866

Under Executive Order 12866 (58 FR 51735), the Department must determine whether a regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB). Section 3(f) of the Executive Order 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 the Executive Order; therefore, OMB has reviewed this regulatory action pursuant to the Executive Order.

Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, EBSA is soliciting comments concerning the information collection request (ICR) included in the Proposed Rule on the Annual Funding Notice for Defined Benefit Plans. A copy of the ICR may be obtained by contacting the PRA addressee shown below.

The Department has submitted a copy of the proposed rule to OMB in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Department and OMB are particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Employee Benefits Security Administration. OMB requests that comments be received within 30 days of publication of the proposed rule to ensure their consideration.

PRA Addressee: Address requests for copies of the ICR to 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 proposed rule implements the disclosure requirements of section

[16] All numbers used in this Regulatory Impact Analysis have been rounded to the nearest thousand.

[17] As discussed earlier in this preamble, this proposed regulation, when finalized, 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.

[18] The total hour burden is estimated to be about 1,046,000 hours in the year of implementation and 1,003,000 hours in each subsequent year.

101(f) of ERISA, as amended by section 501 of the PPA. As described earlier in the preamble, section 101(f) of ERISA requires 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 information collection provisions of the proposed rule are found 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 proposed 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 proposed 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 PBGC Pension Insurance Data Book 2008 indicates that there are about 1,500 multiemployer defined benefit plans with approximately 10.1 million participants and beneficiaries receiving benefits. These estimates are based on premium filings with PBGC for 2007, projected by PBGC to 2008, generally the most recent information currently available. 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.[19] The PBGC Pension Insurance Data Book 2008 also indicates that there are approximately 28,000 single-employer defined benefit plans with approximately 33.8 million participants.

The Department is not aware of a direct source of information as to the number of labor organizations that represent participants of multiemployer defined benefit plans and that would be entitled to receive notice under section 101(f). As a proxy for this number, the Department has relied on information supplied by the Department's Employment Standards Administration, Office of Labor Management Standards, as to the number of labor organizations that filed required annual reports for their most recent fiscal year, generally 2008, at this time. The Department adjusted the number provided by excluding labor organizations that appeared to represent only State, local, and Federal governmental employees to account for the fact that such employees are generally unlikely to be participants in plans covered under title I of ERISA. The resulting estimate of labor organizations that could be entitled to receive notice is almost 18,500.

The Department also is unaware of a source of information for the current number of employers obligated to contribute to multiemployer defined benefit plans. PBGC assisted with development of an estimate of this number by providing the Department with a tabulation on their 1987 premium filings of the number of employers contributing to multiemployer defined benefit plans at that time. This was the last year this data element was required to be reported on the Form 5500. The Department has attempted to validate that 1987 figure by dividing the number of participants in multiemployer defined benefit plans in the industries in which these plans are most concentrated, such as construction, trucking, and retail food sales,[20] by the average number of employees per firm in those industries based on data published by the Office of Advocacy, U.S. Small Business Administration for 2001. This computation resulted in a figure that was similar in magnitude, but somewhat higher than the 277,600 employers reported in the 1987 PBGC premium filing data. As a result, the Department has used 300,000 for its conservative estimate of the number of contributing employers to whom the required notice will be sent.

For purposes of its estimates of regulatory impact, the Department has assumed that each plan will develop a notice, and that each year approximately 44.3 million notices will be prepared and sent. The 44.3 million estimate breaks down as follows: 10.1 million notices to participants and beneficiaries of close to 1,500 multiemployer defined benefit plans; 33.8 million notices to participants and beneficiaries of close to 28,000 single employer plans; 39,000 notices to labor organizations; 300,000 notices to contributing employers of multiemployer plans; and 30,000 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 has made the following estimate regarding preparation of the notice: Actuaries will spend three hours in the first year and two hours in each succeeding year for single-employer plans and two hours in the first year and one hour in each succeeding year for multiemployer plans making specific calculations for information that must be provided in the notice; legal professionals will spend one hour in the first year and 0.5 hours in each succeeding year reviewing the notice; and financial professionals will spend one hour in the first year and thereafter drafting the notice for single-employer plans and two hours per year for multiemployer plans. The final preparation and distribution of the notice will be done by a clerical professional using an estimated two minutes per notice mailed. The Department welcomes comments regarding these estimates.

Assuming 44.3 million notices are distributed,[21] the burden hours for that initial year of implementation are 87,000 actuarial hours, 31,000 financial professional hours, and 29,000 legal professional hours. Total clerical professional hours are calculated based on the total number of notices mailed and the preparation time of 2 minutes per notice resulting in 915,000 hours. The total hour burden for the year of implementation is 1,061,000 hours.

[19] According to the PBGC Pension Insurance Data Book 2008, there were 1,513 multiemployer defined benefit plans in 2006. This number was reduced by 42 in order to account for the 42 plans that received financial assistance.

[20] *See* GAO–04–423 Private Pensions: Multiemployer Plans Face Short- and Long-Term Challenges. U.S. General Accounting Office, March 2004. The General Accounting Office's name changed to the Government Accountability Office effective July 7, 2004.

[21] The Department assumes that 38 percent of notices are sent electronically and result in only a de minimis cost.

Each subsequent year requires 57,000 actuarial hours, 915,000 clerical hours, 31,000 financial professional hours, and 15,000 legal professional hours for a total of 1,018,000 hours.[22]

Hourly labor rates were calculated using the rates based on the Bureau of Labor Statistics, National Occupational Employment Survey (May 2008) and the Bureau of Labor Statistics, Employment Cost Index (June 2009).[23] Calculations of the 2010 hourly labor costs were $26.14 for a clerical professional, $62.81 for a financial professional, $91.56 for an actuary, and $119.03 for plan legal counsel.

Based on the foregoing, the total equivalent cost for the initial year is estimated at approximately $7,937,000 for actuarial services, $23,915,000 for clerical services, $1,942,000 for financial professional services, and $3,409,000 for legal professional services. The total equivalent cost is approximately $37,203,000 in the initial year.

The total equivalent cost in each subsequent year is estimated at approximately $5,245,000 for actuarial services, $23,915,000 for clerical services, $1,942,000 for financial professional services, and $1,750,000 for legal professional services. The total equivalent cost is estimated at approximately $32,852,000 in each subsequent year.

The cost of mailing the notices was based on the assumption that each notice would be six pages for single-employer plans and five pages for multiemployer plans, with printing costs of 5 cents per page and postage of 44 cents resulting in an estimated 74 cent cost per paper notice for single-employer plans and a 69 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 e-mail 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 16.8 million notices being sent electronically by multiemployer and single-employer plans. Single-employer plans will mail out approximately 21.0 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 $20.0 million.

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: 29,000.

Responses: 44,269,000.

Frequency of Response: Annually.

Estimated Total Annual Burden Hours: 1,032,000 (average over first three years); 1,061,000 (first year) (1,018,000 subsequent years).

Estimated Total Annual Burden Cost: $19,988,000 (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 proposed rule is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities and seeking public comment on such impact.

For purposes of the RFA, the Department continues to consider a small entity to be an employee benefit plan with fewer than 100 participants.[24] 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 proposed 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.*). The Department therefore requests comments on the appropriateness of the size standard used in evaluating the impact of this proposed rule on small entities.

By this standard, data from the 2007 Form 5500 (the latest available data) indicates that for over 88 percent of small affected plans, the average per plan compliance cost would be $1,265 ($37 million/29,400 plans) plus plan specific mailing cost (74 cents per participant, which cannot exceed $74 per plan because small plans have less than 100 participants). This amount is less than one percent of plan assets.

Based on the foregoing, the Department has preliminarily 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. Therefore, pursuant to section 605(b) of RFA, the Assistant Secretary of the Employee Benefits Security Administration hereby certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The Department invites comments on this certification and the potential impact of the rule on small entities.

Congressional Review Act

The proposed 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, if finalized, will be transmitted to Congress and the Comptroller General for review. The proposed 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 proposed rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments in the aggregate of

[22] The average Total Annual Burden Hours over the first three years is 1,032,000.

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

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

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 proposed 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 proposed 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 proposes to amend 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 1–2003, 68 FR 5374 (Feb. 3, 2003). 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. 2520.101–4 also issued under sec. 103 of Pub. L. 108–218, 118 Stat. 596. Sec. 2520.101–5 also issued under sec. 503 of Pub. L. 109–280, 120 Stat. 780 and sec. 105(a), Pub. L. 110–458, 122 Stat. 5104.

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

(ii) In the case of a single-employer plan, for a plan year if the due date for such 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; or

(B) The plan has distributed assets in satisfaction of all benefit liabilities in a standard termination pursuant to section 4041(b) or 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 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 occurred, and

(ii) The funding notice of the successor plan, for the plan year in which the merger occurred, must, in addition to the requirements of paragraph (b) of this section, contain a general explanation, including the effective date, of the merger 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.

(4) *Demographic information.* A statement of the number of participants 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); and active participants under the plan. The statement shall indicate the number of participants in each such category and the sum of all such participants. 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 or critical status.* In the case of a multiemployer plan, a statement whether the plan was in endangered or critical 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, and

(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.

(7) *Events having a material effects on liabilities or assets.* 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 paragraph (g) of this section), 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.

(8) *Rules on termination, reorganization 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 reorganization or 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, and each member of the contributing sponsor's controlled group (other than an exempt entity within the meaning of 29 CFR 4010.4(c)), was required to provide the information under section 4010 of the Act for the notice year. If the contributing sponsor of the plan is itself an exempt entity within the meaning of 29 CFR 4010.4(c), in lieu of the preceding sentence, a statement that each member of the contributing sponsor's controlled group (other than an exempt entity within the meaning of 29 CFR 4010.4(c)) was required to provide the information under section 4010 of the Act for the notice year.

(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 this title. 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 labor organization representing participants under the plan on the last day of the notice year;

(4) 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

(5) The Pension Benefit Guaranty Corporation.

(g) *Material effect definition.* (1) For purposes of paragraph (b)(7) of this section, 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 (*i.e.,* plan year following the notice year) if such amendment, benefit increase (or reduction), or event—

(i) 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; or

(ii) In the judgment of the plan's enrolled actuary, is 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)(1)(i) of this section.

(2) For purposes of paragraph (b)(7) of this section, the term "other known event" includes, but is not limited to—

(i) An extension of coverage under the existing terms of the plan to a new group of employees;

(ii) A plan merger, consolidation, or spinoff pursuant to regulations under section 414(l) of the Internal Revenue Code;

(iii) 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;

(iv) An offer by the plan for a temporary period to permit participants to retire at benefit levels greater than that to which they would otherwise be entitled; or

(v) A cost-of-living adjustment for retirees.

(3) For purposes of paragraph (g)(1)(i) of this section, calculate assets and liabilities in the same manner as under paragraph (b)(2) of this section.

(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 (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) *Limited alternative method of compliance for furnishing notice to PBGC.* 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.

(j) *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.

BILLING CODE 4510–29–P

APPENDIX A TO §2520.101-5-- SINGLE-EMPLOYER PLANS

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

Introduction

This notice includes important information about the funding status of your pension plan ("the Plan") and 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 for the plan year beginning [*insert beginning date*] and ending [*insert ending date*] ("Plan Year").

How Well Funded Is Your Plan

Under federal law, the plan must report how well it is funded by using a measure called the "funding target attainment percentage." This percentage is obtained by dividing the Plan's Net Plan Assets by Plan Liabilities on the Valuation Date for the plan year. In general, the higher the percentage, the better funded the plan. Your Plan's funding target attainment percentage for the Plan Year and each of the two 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.

Funding Target Attainment Percentage			
	[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 delete the entire row designated as number 4. Round off all amounts in this notice to the nearest dollar.}

Plan Assets and Credit Balances

Total Plan Assets is the value of the Plan's assets on the Valuation Date (see line 2 in the chart above). Credit balances were subtracted from Total Plan Assets to determine Net Plan Assets (line 2 d) used in the calculation of the funding target attainment percentage shown in the chart above. While pension plans are permitted to maintain credit balances (also called "funding standard carryover balances" or "prefunding balances" see 2 b & c in the chart above) for funding purposes, they 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 to the plan above the minimum level required by law. Generally, the excess contributions are counted as "credits" and may be applied in future years toward the minimum level of contributions a plan sponsor is required to make by law.

Plan Liabilities

Plan Liabilities shown in line 3 of the chart above are the liabilities used to determine the Plan's Funding Target Attainment Percentage. This figure 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

If a plan's funding target attainment percentage for the prior plan year is below a specified legal threshold, the plan is considered under law to be in "at-risk" status. This means that the plan is required to use actuarial assumptions that result in a higher value of plan liabilities and, as a consequence, requires the employer to contribute more money to the plan. For example, plans in "at-risk" status are required to assume that all workers eligible to retire in the next 10 years will do so as soon as they can, and that they will take their distribution in whatever form would create the highest cost to the plan, without regard to whether those workers actually do so. The additional funding that results from "at-risk" status may then remove the plan from this status. 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 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 being 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 and are actuarial values. 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 that are designed to smooth out those fluctuations for funding purposes. The asset values below are market values and are measured as of the last day of the plan year. Market values tend to show a clearer picture of a plan's funded status as of 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 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 were [*enter amount*].

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

Every pension plan must have a procedure for establishing a funding policy to carry out plan objectives. A funding policy relates to the level of assets 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, who make specific investments 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 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:

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 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*].

Instructions: 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, 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, do not include the above paragraph.

Events Having a Material Effect on Assets or Liabilities

Federal law requires the plan administrator to provide in this notice a written explanation of events, taking effect in the current plan year, which are expected to have a material effect on plan liabilities or assets. Material effect events are occurrences that tend to have a significant impact on a plan's funding condition. An event is material if it, for example, is expected to increase or decrease Total Plan Assets or Plan Liabilities by five percent or more. 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 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 having a 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 called the Form 5500 that contains 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. For 2009 and subsequent plan years, you may obtain an electronic copy of the plan's annual report by going to www.efast.dol.gov and using the Form 5500 search function. 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.*] Individual information, such as the amount of your accrued benefit under the plan, is not contained in the annual report. If you are seeking information regarding your benefits under the plan, contact the plan administrator identified below under "Where To Get More Information."

Summary of Rules Governing Termination of Single-Employer Plans

If a plan is terminated, 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 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. Under a standard termination, the 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 your 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) 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.

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 and the bankruptcy proceeding began on or after September 16, 2006, 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, and the bankruptcy proceeding began on or after September 16, 2006, 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; the maximum guarantee by age can be found on PBGC's website, www.pbgc.gov. [*If the Plan does not provide for commencement of benefits before age 65, you may omit this sentence*.] 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 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 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.

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*], and members of its controlled group, if any, were subject to this requirement to provide corporate financial information and plan actuarial information to the PBGC. The PBGC uses this information for oversight and monitoring purposes.

{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 Plan Year. Modify the preceding paragraph, as appropriate, if the plan sponsor (as distinguished from the members of its controlled group) is exempt from the ERISA 4010 reporting requirement pursuant to 29 CFR 4010.4(c).}

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*]. For more information about the PBGC, go to PBGC's website, www.pbgc.gov.

APPENDIX B TO §2520.101-5--MULTIEMPLOYER PLANS

ANNUAL FUNDING NOTICE

For
[*insert name of pension plan]*

Introduction

This notice includes important information about the funding status of your pension plan ("the Plan") and 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 for the plan year beginning [*insert beginning date*] and ending [*insert ending date*] ("Plan Year").

How Well Funded Is Your Plan

Under federal law, the plan must report how well it is funded by using a measure called the "funded percentage." 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. Your Plan's funded percentage for the Plan Year and each of the two 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.

Funded Percentage			
	[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 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.}

Year-End Fair Market Value of Assets

The asset values in the chart above are measured as of the Valuation Date for the plan year and are actuarial values. 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 that are designed to smooth out those fluctuations for funding purposes. The asset values below are market values and are measured as of the last day of the plan year, rather than as of the Valuation Date. Substituting the market value of assets for the actuarial value used in the above chart would show a clearer picture of a plan's funded status as of the Valuation Date. The fair market value of the Plan's assets as of the last day of the Plan Year and each of the two preceding plan years is shown in the following table:

	[insert last day of Plan Year, e.g., 2011]	[insert last day of plan year preceding Plan Year, e.g., 2010]	[insert last day of plan year 2 years preceding Plan Year, e.g., 2009]
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.}

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 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 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 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)*].]

If the Plan is in endangered or critical 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 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

Every pension plan must have a procedure for establishing a funding policy to carry out plan objectives. A funding policy relates to the level of assets 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, who make specific investments 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 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:

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 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*].

Instructions: 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, 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, do not include the above paragraph.

Events Having a Material Effect on Assets or Liabilities

Federal law requires the plan administrator to provide in this notice a written explanation of events, taking effect in the current plan year, which are expected to have a material effect on plan liabilities or assets. Material effect events are occurrences that tend to have a significant impact on a plan's funding condition. An event is material if it, for example, is expected to increase or decrease Total Plan Assets or Plan Liabilities by five percent or more. 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 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 having a 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 called the Form 5500 that contains 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. For 2009 and

subsequent plan years, you may obtain an electronic copy of the plan's annual report by going to www.efast.dol.gov and using the Form 5500 search function. 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.*] Individual information, such as the amount of your accrued benefit under the plan, is not contained in the annual report. If you are seeking information regarding your benefits under the plan, contact the plan administrator identified below under "Where To Get More Information."

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. The plan administrator is required by law to include a summary of these rules in the annual funding notice. 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 plan is required to furnish this notification to each contributing employer and the labor organization.

Despite these special plan reorganization rules, a plan in reorganization 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 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. 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 benefits that you have earned a right to receive and that can not be forfeited (called 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 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 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 name and employer identification number or "EIN" is [*enter name and EIN of plan sponsor*]. For more information about the PBGC, go to PBGC's website, www.pbgc.gov.

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3. 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:

* * * * *

4. Amend § 2520.104b–10, by revising paragraphs (g)(7) and (g)(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 at Washington, DC, on November 8, 2010.

Phyllis C. Borzi,

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

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