

February 2009

### **Department of Labor (“DOL”) Issues Guidance Regarding Defined Benefit Plan Annual Funding Notice**

Among the many changes to tax-qualified plan administration made by the Pension Protection Act of 2006 (“PPA”) was the elimination of the summary annual report for defined benefit pension plans and the substitution of a detailed notice effective for plan years beginning on or after January 1, 2008. Specifically, the PPA requires administrators of almost all defined benefit plans to provide an annual funding notice to the Pension Benefit Guaranty Corporation (“PBGC”), each plan participant and beneficiary, and each union representing plan participants and beneficiaries. The annual funding notice must include among other things:

- the plan’s funding percentage;
- a statement of the value of the plan’s assets and liabilities;
- a description of how the plan’s assets are invested as of specific dates; and
- a description of the benefits under the plan that are eligible to be guaranteed by the PBGC.

In Field Assistance Bulletin (“FAB”) 2009-01, the DOL announced that in the absence of regulatory or other guidance, the DOL will treat a plan administrator as satisfying the PPA if the administrator complies with the guidance in FAB 2009-01. FAB 2009-01 contains two model notices - one for single employer plans and one for multiemployer plans. The use of these models is not mandatory, but using them will be treated as satisfying the PPA’s notice requirements.

Note:

- plans must generally furnish notices no later than 120 days after the close of the 2008 plan year, so for the 2008 calendar year plans, the initial annual funding notice must be furnished by April 30, 2009. There is, however, a delayed effective date for small plans ( a plan with 100 or fewer participants on each day during the plan year preceding the year to which the notice relates);
- the DOL will not take any enforcement action with respect to a failure to furnish an annual funding notice to the PBGC for a single employer plan with liabilities that do not exceed plan assets by more than \$50 million, provided that the plan administrator furnishes the latest available funding notice to the PBGC within 30 days of receiving a written request from the PBGC;
- an explanation of the manner in which the notice’s “funding target attainment percentage” is calculated;

- the manner in which year-end assets and liabilities should be reported, including the month that is to be used for determining the interest rate assumption;
- the meaning of “active participants” and “retired and separated participants”;
- the manner in which the plan’s asset allocation should be set forth in the notice;
- an amendment, scheduled increase, or other known event that will result, or is projected to result, in either a change of five percent or more in plan liabilities, or five percent or more in the value of plan assets, from a prior plan year, will be regarded as having a “material effect.” An amendment, scheduled increase, or other known event will also be regarded as having a material effect if, in the judgment of the plan’s actuary, the event is material for purposes of the plan’s funding status under Code Section 430 or 431. However, if an otherwise disclosable event under these rules first becomes known to the plan administrator within 120 days or less before the due date of the notice, the event need not be included in the notice;
- a plan administrator may add additional or explanatory information to a model notice, so long as such information does not mislead or misinform plan participants;
- the notice may be provided electronically;
- the funding information that the notice must include for the 2006 and 2007 plan years.

If you have any questions, please call us.

Manes M. Merrit	212-451-2330
Barry L. Salkin	212-451-2212
Annette Messano	212-451-2370

This publication is issued by Olshan Grundman Frome Rosenzweig & Wolosky LLP for informational purposes only and does not constitute legal advice or establish an attorney-client relationship. To ensure compliance with requirements imposed by the IRS, we inform you that unless specifically indicated otherwise, any tax advice contained in this publication was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing, or recommending to another party any tax-related matter addressed herein. In some jurisdictions, this publication may be considered attorney advertising.