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**Re: Helpful Guidance on Defined Benefit Pension Plan Annual Funding Notices –
DOL Field Assistance Bulletin 2009-1**

Dear Clients and Other Friends:

On February 10, the Department of Labor (DOL) issued helpful guidance on defined benefit pension plan annual funding notices. Field Assistance Bulletin 2009-1 (FAB 2009-1) serves as a good faith standard for complying with the new notice requirements under the Pension Protection Act (PPA) and clarifies the expanded financial disclosure requirements.

The new PPA notice provisions went into effect for plan years beginning after December 31, 2007. Defined benefit pension plans must generally distribute annual funding notices within 120 days of the end of the applicable plan year. For calendar year plans, this means that the annual funding notice for 2008 is due on April 30, 2009.

Prior to the PPA, only multiemployer defined benefit pension plans were required to furnish annual funding notices to the Pension Benefit Guarantee Corporation (PBGC), participants, beneficiaries, labor organizations and participating employers. The PPA extended annual funding notice requirements to single employer plans insured by the PBGC. The new notice replaces the summary annual report, which is no longer required to be given to participants in defined benefit plans.

Model notices for single and multiemployer plans are provided in the appendices to FAB 2009-1. Although not mandatory, the models, if properly completed, will satisfy the content requirements. The annual funding notice may be given electronically, provided that the notice is reasonably accessible to participants, beneficiaries and other required recipients.

FAB 2009-1 also clarifies the expanded financial disclosure requirements for the annual funding notices. Under the PPA, plan administrators must report the plan's "funding target attainment percentage" for this and the two previous plan years. This percentage is calculated by dividing the plan's assets by the plan's funding target for the plan year. Plan assets must be reported at market value. To assist with this requirement, FAB 2009-1 provides guidance on asset and liability valuation methodologies.

The notice must also include: a statement of the number and employment status of plan participants; a statement of the plan's funding and investment policies; and notification of any amendments, scheduled increases, or any other event that would have a "material effect" on plan liabilities or assets. Most of this information is already required to be disclosed on Form 5500.

Defined benefit pension plans that cover 100 or fewer participants each day of the plan year are granted an extended filing period by FAB 2009-1. For these plans, the annual funding notice can be filed by the Form 5500 deadline, including extensions.

Some small defined benefit plans are exempt from providing annual funding notices because they are not entities subject to the PBGC. These plans may still be required, however, to provide summary annual reports. For example:

- Defined benefit pension plans maintained by professional service employers who have never covered more than 25 participants are exempt from PBGC coverage and do not have to file annual funding notices. Individuals providing professional services include accountants, physicians, dentists, other licensed health care practitioners, attorneys, architects, actuaries, performing artists and other professionals. Although exempt from annual funding notice requirements, plan administrators will still be required to furnish summary annual reports to participants.
- Small plans maintained and established for substantial owners are exempt from PBGC coverage and are not required to provide annual funding notices. A substantial owner is an individual who owns the entire interest of an unincorporated business, more than 10% of the capital interests or profit interests in a partnership, more than 10% of the voting stock of a corporation, or more than 10% of the shares of a corporation. Plans maintained for one participant (or one participant and his or her spouse) do not have to provide a summary annual report.

To assist with the transition, the DOL stated in FAB 2009-1 that it will not take any enforcement action against single-employer defined benefit pension plans that fail to furnish an annual funding notice to the PBGC. This relief is available only if liabilities do not exceed plan assets by more than \$50 million. The PBGC may, however, request the latest available annual funding notice. Multiemployer defined benefit pension plans must still furnish funding notices to the PBGC.

The full text of Field Assistance Bulletin 2009-1 and the model notices is available on the Department of Labor's website at: <http://www.dol.gov/ebsa/regs/fab2009-1.html>.

For sponsors of defined benefit pension plans, our recommendation is to use the model notices provided with the FAB 2009-1. If you have questions about the annual funding notice requirements, please contact us.

Very truly yours,

Holly A. Fistler