JANUARY 31, 2015

Final Annual Funding Notice Requirements for Defined Benefit Plans

On January 30, 2015, the DOL issued final regulations implementing the annual funding notice requirements for defined benefit pension plans under ERISA Section 101(f). The final rule is applicable to notices for plan years beginning on or after January 1, 2015 (that is, for calendar year plans, the annual funding notice provided in 2016). However, plan administrators may elect to comply with the final requirements prior to this date. Overall, the final regulations are substantially similar to the proposed regulations (issued in November 2010), but there are some changes and modifications. Some of the highlights of the final regulations are as follows:

• Plan Mergers or Consolidations. The final regulations confirm that a plan that is merged or consolidated into another plan does not have a funding notice requirement for its final plan year. Only the surviving plan is required to issue a notice for the year in which the assets are transferred into the surviving plan, and this notice will provide an explanation of the merger or consolidation.

• Good Faith Errors or Changes in Actuarial Assumptions. In the preamble, the DOL indicated that in its view, when there is a change in the funding percentage due to a good faith error or changes in actuarial assumptions between issuance of the annual funding statement and filing of the Form 5500, a plan administrator is not required to reissue the funding notice for that year. Because this position was expressed in the preamble rather than the regulations, it does not necessarily have the effect of law, but it provides informal guidance to consider should a difference arise between what is reported on the annual funding notice and the Form 5500..

• Investment Policy. While ERISA does not explicitly require plans to have a formal investment policy, DOL reaffirmed that it would be “rare” for a plan not to have one, which reflects a a de-facto requirement to have such an investment policy.

• Material Event Administrative Guidance. As in the proposed regulations, the annual funding notice must disclose events occurring after the end of the plan year that have a material impact on funding. This generally includes an event that either results in an at least a 5% increase or decrease in assets or liabilities from the valuation date, or in the judgment of the plans’ actuary, has a material impact on the plan’s funded status. Generally, material events result from plan amendments, like increasing benefits. The final regulations clarify some aspects of the material event disclosures:

o The final regulations clarify that they do not result from market fluctuations.

o The final regulations also add a rule of administrative convenience under which a material event will not be required to be disclosed unless it is known by the plan administrator at least 120 days before the due date of the notice.

o Where an actuary has determined that a material event has occurred, the final regulations give plan administrators the option of including an explanation of why the actuary considers an event to be "material" rather than projecting the effect on plan liabilities to the end of the current plan year.