MANUFACTURERS ALLIANCE Legal Analysis & Regulations

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Pension Reform

Pension Benefits Guaranty Corporation Issues Final Rule on Disclosure of Pension Underfunding to Participants

On June 30, 1995, the Pension Benefits Guaranty Corporation (PBGC) published a final rule requiring the sponsors of underfunded single-employer defined-benefit pension plans to notify plan beneficiaries about the funding status of the plans and the extent of the federal guarantee of pension benefits.[1]

The Retirement Protection Act of 1994 (subtitle F of title VII of the Uruguay Round Agreements Act, P.L. 103-465) amended the Employee Retirement Income Security Act (ERISA) by strengthening the controls on underfunded defined-benefit pension plans. Section 775 of the new legislation (now Section 4011 of ERISA) requires the sponsors of certain underfunded plans to send an annual notice to the plan's beneficiaries notifying them of the amount of underfunding and of the limits on the government's guarantee should the plan terminate. The final rule sets out the requirements for this notice.

A plan administrator who fails to provide the required notice may be fined up to $1,000 each day for which the failure continues. Plans that issued a notice that complied with the proposed rule issued on March 28, 1995 are not required to issue a new notice for the 1995 plan year.

What Plans Are Covered

A single-employer defined-benefit plan must provide notice to its beneficiaries if it is required to pay a variable premium for pension insurance, unless it meets the deficit reduction contribution (DRC) exemption test as defined in the rule. In general, a plan meets this test if it is not required to make a DRC for either the current or the past plan year because its current liability percentage is at least 90 percent. This means that the plan is complying with the normal funding requirements. Although the plan's liabilities may still exceed its assets, these liabilities are being funded according to the amortization schedules required by law. For example, in order to determine whether a notice is needed during the 1995 plan year, an administrator would look at whether the plan had to make a DRC during either the 1994 or 1995 plan year.[2]

Another separate provision applies to small pension plans (those with 100 or fewer participants). For 1995, a small plan does not have to provide a notice if it qualified as a small plan for either the 1994 or 1995 plan year. However, small plans must provide the notice for plan years beginning after 1995. Because small plans seldom perform the complicated actuarial calculations required under the DRC rules, the PBGC has provided simpler tests for them to determine whether their plan is sufficiently funded to avoid having to provide a notice. These rules are listed in Section 2627.5(b) of the new regulations.

[1] Disclosure to Participants, Federal Register, June 30, 1995, p. 34412 to be codified at 29 C.F.R §§2627.1-2627.9

[2] A special rule applies for the 1994 plan year. A plan qualifies for the DRC exception if it meets the test for any two of the plan years beginning in 1992, 1993, and 1994.

Initial distribution of LAR-339 is being made to financial and legal officers and human resources officials of Manufacturers Alliance member companies.

Requirements for Notice

If a plan is required to provide a notice, that notice must go to all participants, beneficiaries, and alternate payees, as of a certain date chosen by the plan administrator. The administrator may choose a different date each year for determining who should be sent a notice, provided the change of date does not exclude a substantial number of participants. Notice also must be sent to any employee organization that represents participants in collective bargaining.

The notice must be sent within two months of the deadline, including extensions, for filing the annual report (Form 5500) on the plan's financing. This is the same deadline that applies to furnishing the summary annual report for the prior plan year. This deadline may be extended by the PBGC in cases of a major disaster.

Notice must be sent in a manner reasonably calculated to ensure actual receipt. It is not sufficient to merely post the notice at work-site locations. The notice may be sent with other documents, such as the summary annual report, provided that the notice is a separate document. Any additional information not required by the regulation also must be placed in a separate document rather than in the notice itself.

Plans that are required to provide a notice have two choices. They can draft their own language meeting the requirements set out in the regulation. Alternatively, they may use the safe harbor language provided by the PBGC (see Appendix). PBGC will view the use of this language as complying with the requirements.

Plan administrators who draft their own language must ensure that it is readable and written in a manner calculated to be understood by the average plan participant. The notice must include the following:

- Identifying information, including the name and number of the plan, the name and employer identification number of the contributing sponsor, and the date on which the notice is issued. The notice also must give the name, title, address, and telephone number of a person who can provide information about the plan's funding;
- A statement that the notice is required by law;
- Information on the plan's funded current liability percentage under Section 302(d)(9)(C) of ERISA. Small plans may use the simplified rules of Section 2627.4(b) to determine this percentage. The notice may state the percentage for either the prior or the current plan year;
- A statement that, in order to pay pension benefits, the employer is required to contribute money to the plan over a period of years, that the funding percentage does not take into consideration the financial strength of the employer, and that the employer, by law, must pay for all pension benefits, but benefits may be at risk if the employer faces a severe financial crisis or is in bankruptcy;
- A statement identifying any plan years during the five immediately preceding plan years for which the Internal Revenue Service granted a minimum funding waiver which was not fully repaid by the end of the previous plan year. The statement must also explain what a minimum funding waiver is;
- A statement identifying the due date for any late payments required under Section 302 of ERISA. The statement must include the due date for the payment, state whether the payment has since been made, and list the date on which the payment was made. This statement is required for (1) any minimum funding payment required under Section 302(a) of ERISA for a plan year beginning on or after January 1, 1994, if not paid by the earlier of the due date for that payment or the date of issuance of the notice, and (2) any installment or other payment required by Section 302 of ERISA for a plan year beginning on or after January 1, 1995 that was not paid within 60 days of the due date. Note that notice of late payments is generally required even if the payment has been made by the notice date. However, once participants have been notified of a missed payment, subsequent notices do not have to repeat payments that have been paid since the last notice;
- A statement that, if a plan terminates before all pension benefits are fully funded, the PBGC pays most persons all pension benefits, but that some persons may lose certain benefits that are not guaranteed;
- Information on the PBGC's guarantee, including the nature of the guarantee, a summary of the types of benefits that are guaranteed, and the limitations on the guarantee; and
- A statement that the participants may obtain additional information on the guarantee by requesting and paying for the booklet "Your Guaranteed Pension" from Box YGP, Pueblo, Colorado 81009.

When either 500 participants or at least 10 percent of participants are literate only in the same

non-English language, the plan administrator must provide them with either an English notice that prominently displays a legend in their common foreign language offering them assistance in that language, or a copy of the notice in their own language.[3]

Current law requires a plan administrator of a plan that is less than 70 percent fully funded to disclose the plan's funding percentage in the annual report and the summary annual report. The Department of Labor will treat notice provided according to the above rule as complying with this requirement with respect to the summary annual report. However, the administrator must still include the information in the annual report.

[3] For plans with few than 100 participants the test is whether at least 25 percent of the participants are literate only in the same non-English language.

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Appendix A to 29 CFR Part 2627

Model Participant Notice

Notice to Participants of [Plan Name]

The law requires that you receive information on the funding level of your defined benefit pension plan and the benefits guaranteed by the Pension Benefit Guaranty Corporation (PBGC), a federal insurance agency.

YOUR PLAN'S FUNDING

As of [DATE], your plan had [INSERT NOTICE FUNDING PERCENTAGE] percent of the money needed to pay benefits promised to employees and retirees.

To pay pension benefits, your employer is required to contribute money to the pension plan over a period of years. A plan's funding percentage does not take into consideration the financial strength of the employer. Your employer, by law, must pay for all pension benefits, but your benefits may be at risk if your employer faces a severe financial crisis or is in bankruptcy.

[INCLUDE THE FOLLOWING PARAGRAPH ONLY IF, FOR ANY OF THE PREVIOUS FIVE PLAN YEARS, THE PLAN HAS BEEN GRANTED AND HAS NOT FULLY REPAID A FUNDING WAIVER.]

Your plan received a funding waiver for [LIST ANY OF THE FIVE PREVIOUS PLAN YEARS FOR WHICH A FUNDING WAIVER WAS GRANTED AND HAS NOT BEEN FULLY REPAID]. If a company is experiencing temporary financial hardship, the Internal Revenue Service may grant a funding waiver that permits the company to delay contributions that fund the pension plan.

[INCLUDE THE FOLLOWING WITH RESPECT TO ANY UNPAID OR LATE PAYMENT THAT MUST BE DISCLOSED UNDER 29 CFR 2627.10(b)(6):]

Your plan was required to receive a payment from the employer on [LIST APPLICABLE DUE DATE(S)]. That payment [has not been made] [was made on [LIST APPLICABLE PAYMENT DATE(S)]].

PBGC GUARANTEES

When a pension plan ends without enough money to pay all benefits, the PBGC steps in to pay pension benefits. The PBGC pays most people all pension benefits, but some people may lose certain benefits that are not guaranteed.

The PBGC pays pension benefits, up to certain maximum limits.

- The maximum guaranteed benefit is [INSERT FROM TABLE IN APPENDIX B] per month or [INSERT FROM TABLE IN APPENDIX B] per year for a 65-year-old person in a plan that terminates in [INSERT APPLICABLE YEAR].
- The maximum benefit may be reduced for an individual who is younger than age 65. For example, it is [INSERT FROM TABLE IN APPENDIX B] per month or [INSERT FROM TABLE IN APPENDIX B] per year for an individual who starts receiving benefits at age 55. [IN LIEU OF AGE 55, YOU MAY SUBSTITUTE ANY AGE(S) RELEVANT UNDER THE PLAN. IF THE PLAN PROVIDES FOR NORMAL RETIREMENT BEFORE AGE 65, YOU MUST INCLUDE THE NORMAL RETIREMENT AGE. IF THE PLAN DOES NOT PROVIDE FOR COMMENCEMENT OF BENEFITS BEFORE AGE 65, YOU MAY OMIT THIS PARAGRAPH.]

- The maximum benefit will also be reduced when a benefit is provided for a survivor.

The PBGC does not guarantee certain types of benefits. [INCLUDE THE FOLLOWING GUARANTEE LIMITS THAT APPLY TO THE BENEFITS AVAILABLE UNDER YOUR PLAN.]

- The PBGC does not guarantee benefits for which you do not have a vested right when a plan ends, usually because you have not worked enough years for the company.
- The PBGC does not guarantee benefits for which you have not met all age, service, or other requirements at the time the plan ends.
- Benefit increases and new benefits that have been in place for less than a year are not guaranteed. Those that have been in place for less than 5 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 does not pay lump sums exceeding $3,500.

WHERE TO GET MORE INFORMATION

Your plan, [EIN-PN], is sponsored by [CONTRIBUTING SPONSOR(S)]. If you would like more information about the funding of your plan, contact [INSERT NAME, TITLE, BUSINESS ADDRESS AND PHONE NUMBER OF INDIVIDUAL OR ENTITY].

For more information about the PBGC and the benefits it guarantees, you may request a copy of "Your Guaranteed Pension" for $1.25 by writing to Box YGP, Pueblo, Colorado 81009.

[THE FOLLOWING SENTENCE MAY BE INCLUDED:]

"Your Guaranteed Pension" is also available through electronic access to the Consumer Information Center via the World Wide Web at http://www.gsa.gov/staff/pa/cic/money.htm.

Issued: [INSERT AT LEAST MONTH AND YEAR]

APPENDIX B TO PART 2627 — TABLE OF MAXIMUM GUARANTEED BENEFITS

If the plan terminates in --	The maximum guaranteed benefit for an individual starting to receive benefits at the age listed below is the amount (monthly or annual) listed below:							
	Age 65		Age 62		Age 60		Age 55	
	Monthly	Annual	Monthly	Annual	Monthly	Annual	Monthly	Annual
1995	$2,573.86	$30,886.32	$2,033.35	$24,400.20	$1,673.01	$20,076.12	$1,158.24	$13,898.88