AMERICAN ACADEMY *of* ACTUARIES

October 3, 2013

Office of Regulation and Interpretations
Attention: Annual Funding Notice for Defined Benefit Plans (RIN 1210-AB18)
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Ave. NW
Washington, DC 20210

Re: Comments on Annual Funding Notice

To Whom It May Concern:

The American Academy of Actuaries[1] Pension Committee is pleased to provide comments to the Employee Benefits Security Administration regarding certain disclosures on the Annual Funding Notice for Defined Benefit Plans (AFN), issued in accordance with the Employee Retirement Security Act of 1974 Section 101(f). Our comments pertain in large part to the disclosure of events having a material impact, but also relate to certain other additional disclosures that we believe should be specifically permitted.

Disclosure of Events Having a Material Impact

ERISA Section 101(f)(2)(B)(vi) requires that the AFN must disclose, if material, the impact of "any plan amendment, scheduled benefit increase or reduction, or other known event taking effect in the current plan year." In Field Assistance Bulletin (FAB) 2009-01, DOL has interpreted the "current plan year" to be the year in which the notice is distributed, not the year to which the notice relates.

We believe this interpretation leads to AFNs that may confuse or mislead participants, as the plan sponsor may omit discussion of many material events. The relevant facts are:

- The AFN must be distributed to participants no later than 120 days after the close of the plan year to which the notice relates
- FAB 2009-01 exempts from the disclosure requirements any event that first becomes known to the plan administrator 120 days or less before the notice is due
- There are no disclosure requirements for events occurring in the year to which the notice relates

[1] The American Academy of Actuaries is a 17,500-member professional association whose mission is to serve the public and the U.S. actuarial profession. The Academy assists public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

The following examples show how the rules above miss many events:

> *Example 1*: A plan sponsor decides in July 2013 to amend the plan in September 2013 to provide additional past service credits to all active employees. The amendment increases the plan's liabilities by 10 percent. The event is not disclosed on the 2012 AFN, distributed by April 30, 2013, because it was not known to the plan administrator by the time the AFN was distributed. The event is also not disclosed on the 2013 AFN, distributed by April 30, 2014, because it is not a current plan year event for this purpose. However, the 10 percent increase in liabilities may be reflected in the 2013 beginning-of-year liabilities (if an IRC Section 412(d)(2) election was made) and will be reflected in the 2013 estimated end-of-year liability.
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> *Example 2*: A plan sponsor undertakes an asset sale in March 2014, and all active participants are deemed to have terminated. The plan offers a lump sum to deferred vested participants, and many of the newly terminated participants elect to take the single payment, reducing the plan's assets and liabilities by substantially more than 5 percent. The event is not disclosed on the 2013 AFN, because it was not known to the plan administrator more than 120 days before the AFN was due on April 30, 2014. The event is also not disclosed on the 2014 AFN because it is not a current plan year event for this purpose.

Under the FAB's interpretation of "current plan year," the only events that must be disclosed as material are those that are known to the plan administrator prior to the end of the plan year to which the notice relates, but that take effect in the plan year in which the notice is distributed. (For example, a January 1, 2014 amendment that was adopted in 2013 would be disclosed on the 2013 AFN.) Although this interpretation captures some plan amendments or other events already scheduled to take effect in the plan year in which the notice is distributed, it misses all other events occurring during the plan year. While other ERISA notification requirements, such as a Summary of Material Modifications or ERISA Section 204(h) notice, may provide some participants with information regarding the occurrence of the event, none of the other ERISA notices require a quantification of the financial impact of the event.

Projection to Year-End is not Meaningful

The statute also requires a projection to year-end of the impact of any disclosed events. This does not provide useful information to participants if the "current plan year" is defined as the year following the notice year, due to the following:

- The event's estimated impact is projected two years past the date at which the comparable liabilities – that is, the liabilities measured using the same actuarial basis – are disclosed
- The event's estimated impact is projected a full year past the latest date of any other liabilities on the AFN
- The event's estimated impact cannot be compared to the latest liabilities because they are calculated on different actuarial bases

Example 3. Consider the following information:

Funding target at 1/1/2013	$100
Target normal cost at 1/1/2013	20
Increase in liabilities at 12/31/2013 due to 8/1/2013 amendment (using funding assumptions)	10
Projected liabilities at 12/31/2013 using funding assumptions	135
Projected liabilities at 12/31/2013 using statutory assumptions	147
Projected increase in liabilities at 12/31/2014 due to 2/1/2014 amendment using 2013 funding assumptions	8

The 2013 AFN will show the following numbers:

Funding target at 1/1/2013:	$100
Estimated liability at 12/31/2013:	$147

Plan participants have no way to meaningfully compare these results. The difference between the 1/1/2013 and 12/31/2013 liabilities is attributable to the normal cost, interest, benefit payments, the August amendment and the change in actuarial basis – none of which are quantified on the AFN. The AFN will include a paragraph explaining the February 2014 amendment and will disclose the $8 impact, but participants also have no way to meaningfully compare this result to either of the two disclosed liabilities.

Recommendations

ERISA 101(f) requires disclosure in the case of an event, "taking effect in the current plan year and having a material effect on plan liabilities or assets for the year (as defined in regulations by the Secretary), an explanation of the […] event […] and a projection to the end of such plan year of the effect" of the event. The term "current year" appears nowhere else in the statute. As noted, we believe the interpretation of this term as the year following the notice year leads to disclosures that are not helpful and may even be misleading to participants. Therefore, we respectfully suggest that the Department of Labor amend its interpretation of "current plan year" to mean the year to which the AFN relates.

Further, we suggest that a material event's impact be disclosed using the same basis as the estimated year-end liabilities. Under this interpretation:

Example 4. A plan is amended in August 2013. The amendment is disclosed on the 2013 AFN, distributed to participants by April 30, 2014. The 2013 AFN includes the plan's liabilities at January 1, 2013, calculated using the actuarial basis for the 2013 funding valuation, and also estimated liabilities at December 31, 2013 using the statutorily required basis. The AFN also includes the estimated impact of the August 2013 amendment projected to December 31, 2013, using the statutorily required basis for year-end liabilities. Participants can therefore compare the impact of the amendment to the estimated year-end liabilities.

Since the guidance regarding the interpretation of "current plan year" was released in a

FAB, DOL might provide an alternative interpretation in another FAB or in the annual Enrolled Actuaries "Green Book." Alternatively, DOL should explicitly permit sponsors to disclose material events during the plan year to which the plan year relates by providing suggested language for such a disclosure. Such explicit permission would ease the concerns of plan sponsors who are reluctant to add any material to the AFN for fear of losing safe harbor protection. (Although sponsors may add material that is necessary or helpful to understanding the mandated information, that material must not have the effect of misleading or misinforming participants. Many sponsors are uncomfortable drawing that distinction and do not include any information that is not on the model.)

Similarly, DOL should also provide suggested language for sponsors to explain the difference between actuarial bases used for beginning-of-year and end-of-year disclosures of liabilities and assets, or provide safe harbor alternatives to the statutory required basis for the end-of-year disclosures. For example, if the plan's actual funding target for the current plan year is known at the time the AFN is prepared, the actual funding target would provide more meaningful and consistent information to the participants. Alternatively, the use of the assumptions for the plan year to which the notice relates would also greatly simplify the administrative burden and provide more consistent information to the participants. Finally, many plans use the "alternate method" for determining their PBGC premium and therefore the requirement to use the statutory required basis for the end-of-year disclosures requires plan sponsors to create a set of assumptions and determine an estimated liability solely for the purpose of a participant disclosure.

The inconsistency between the assumption sets used for the beginning-of-year liabilities and the estimated end-of-year liabilities is magnified by the passage of MAP-21. Because the estimated end-of-year liabilities are based on the statutorily required basis, they can be as much as 10 percent to 20 percent higher than the actual funding target that will appear on next year's AFN. This may lead to significant confusion when the participants compare AFNs from consecutive years.

Lastly, we are aware that some plan sponsors have included the ERISA Section 101(d) notice of failure to meet minimum funding standards with the AFN. Other sponsors are reluctant to include this notice for fear of losing safe harbor protection. DOL should explicitly provide permission to include the Section 101(d) notice with the AFN.

The Pension Committee appreciates the opportunity to comment on this matter and would be happy to discuss any of these items with you at your convenience. Please contact David Goldfarb, the Academy's pension policy analyst (202-785-7868, goldfarb@actuary.org), if you have any questions or would like to discuss these items further.

Sincerely,

Michael F. Pollack, FSA, MAAA, EA, FCA
Chairperson, Pension Committee
American Academy of Actuaries