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Mr. Jeffrey Turner
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U.S. Department of Labor
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Mr. Turner:

On behalf of the Pension Committee (Committee) of the American Academy of Actuaries,[1] I respectfully submit the following comments on the guidance issued by the Department of Labor (DOL or Department) in Field Assistance Bulletin 2025-02 (FAB 2025-02) including the model notices provided in its Appendices.

First and foremost, the Pension Committee thanks the Department for its guidance as to Section 343 of the SECURE 2.0 Act of 2023 (SECURE 2.0) which made revisions to the annually required participant notices specified in §101(f) of ERISA (Annual Funding Notices or AFNs) applicable to most qualified defined benefit plans. The notices reach tens of millions of plan participants every year and serve to enhance transparency regarding the status of these benefit programs that provide so many with a stable source of lifetime income. The Committee appreciates Congress' and the DOL's ongoing efforts to enhance these notices.

The changes initiated by SECURE 2.0 were effective for plan years beginning after December 31, 2023. For most large plans (generally those with more than 100 participants), Annual Funding Notices must be issued to all participants no later than 120 days after the end of the plan year. By far the most common of such plan years are those that began Jan. 1, 2024, and ended Dec. 31, 2024. Consequently, notices were required to be furnished by April 30, 2025, for most covered participants.

Although grateful for the formal guidance provided in FAB 2025-02, the timing was challenging for many plan sponsors. Prior to the issuance of FAB 2025-02 on April 3, 2025, sponsors were preparing these notices within the expectation of "reasonable, good faith compliance." The average number of participants in a plan subject to the April 30 deadline is well over 5,000. As a result, most plans sponsors necessarily begin the preparation and production process for the AFNs during February or early March. The Committee's experience is that most calendar year plans were likely very far along, if not already complete and in print production. Based on advice from ERISA counsel, many sponsors felt obligated to revise completed AFNs in order to comply with the published models, which was an incremental plan expense that provided negligible, if any, participant value.

[1] The American Academy of Actuaries is a 20,000-plus member professional association whose mission is to serve the public and the U.S. actuarial profession. For more than 60 years, the Academy has assisted 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 Committee respectfully requests that the DOL provide future pieces of significant guidance with additional lead time (for example, two months) in advance of a critical deadline. If this is not possible, the Department might consider including a clear safe harbor for plans whose statutory notice deadline falls within 90 days following the issuance of a new model notice or guidance. Plans falling inside this safe harbor would retain the "good faith compliance" standard applicable prior to the issuance of the guidance.

As to the guidance itself, the Committee is appreciative of the practicality in certain aspects, such as the acceptance of estimates for the year-end liabilities for the notice year under Q5 and reasonable estimates for participant counts for large plans in Q8.

However, both Q5 and Q8 further elaborate that estimates are not acceptable for years prior to the notice year. While it is accurate that actual values will be available for years prior to the notice year, participants may find it confusing if the funding percentages and participant counts shown in prior year columns change from those shown in the previous year's AFN. In most cases, those changes will be small and not adversely impact the participants' understanding of their plans' funded positions.

In addition, the specific requirement in Q5 to use the values shown on the Form 5500, Schedule H, for the asset values introduces potential inconsistencies in pension information reporting. For example, under the requirements of Treasury Regulation §1.430(g)-1(d), for purposes of determining the market value of assets on Line 2a of Schedule SB, the actuary would discount contributions paid after the valuation date using the prior year's effective interest rate. The information disclosed on Schedule H does not include any interest discounting, so using the Schedule H value would result in a higher value of assets (and thus higher funded status) than you would see, for example, in the actuarial valuation report. An alternative approach could be to require the use of the asset value as disclosed in the prior year's Schedule SB attachment. If the requirement to tie to Schedule H is retained, we suggest that guidance be given that any contributions receivable for the notice year be included without an interest discount to better align with how prior years will be reported.

Perhaps more importantly, consistent with the guidance in Q7 of FAB 2009-01, the asset value for the notice year will only include contributions receivable that were paid before the date the notice was furnished in a timely manner to participants, which for large plans operating on a calendar-year basis would be no later than April 30 after the end of the notice year. For many plans, the largest (or only) contribution paid for the plan year might be paid up to 8.5 months after the close of the plan year. For plans where contributions are a significant portion of the overall assets, the notice would thus tend to show a distorted picture of the progress of funding by displaying in tabular form a series of figures with inconsistent contributions receivable. We believe that there would be minimal risk in revising Q7 of FAB 2009-01 to allow (but not require) the inclusion of any contributions receivable for the prior plan year that are expected to be paid prior to the end of the contribution grace period. A footnote could be added to note that some or all of the contributions receivable are scheduled to be paid but have not yet been received by the plan. To the extent that a contribution that was previously expected to be paid was not paid, a disclosure could be required in the following year's AFN. Alternatively, the permissive inclusion of receivables could be limited to only those that were both expected and required to be paid under minimum funding rules, which would nearly eliminate the cases where contributions included on the AFN would not be paid by the furnishing of the following year's notice.

Lastly with respect to the anchoring of the asset disclosure for the AFNs to the values in Schedule H, there is a need for guidance on exactly how to use the Schedule H information. There is often inconsistency as to which line of the Schedule H ties to the actuarial results. In particular, if Schedule H, Line 1g, includes an accrual of benefit payments on the next day, as some auditors prefer, the actuarial results (which explicitly include that first payment as a liability) may exclude the liability in Line 1g when calculating the asset. Furthermore, if a plan maintains an account for retirees' medical benefits as allowed in IRC §401(h), the values on Form 5500 Schedule H would include the value of that account, but we believe it would be inappropriate to consider the assets set aside under §401(h) in determining the percentage of plan liabilities funded.

Per the guidance on liabilities in Q5 of FAB 2025-02, “Plan administrators may use reasonable estimates, based on standard actuarial techniques, to determine year-end plan liabilities for the notice year, but not the 2 preceding years.” If this guidance is interpreted as requiring “actual results” rather than estimates for prior years’ values, it creates a requirement to calculate an additional liability measure using a slightly different method, assumptions, and population than any other required liability determinations. The above differences create a potentially significant additional level of valuation activity in order to determine these actual values for the prior years’ entries in the tables. We would suggest consideration of allowing the notices to continue to show the prior years’ estimates in the table values for prior years.

The Department provided guidance in Q8 of FAB 2025-02 that requires small plans to use the actual participant counts for their AFNs. While we agree that small plans that issue notices later in the plan year should be able to reflect actual participant counts in their notices, some employers sponsor both small and large plans. Many such sponsors choose to issue all of their AFNs at the same time and reconcile participant data for all plans through the same process. As such, the guidance in FAB 2025-02 would require such small plans to postpone issuance of their notices in order to reflect the final participant count information. Such a delay to provide more accurate participant count information would not seem to be of clear benefit to those plans’ participants. Therefore, we would recommend that the guidance allow any AFN issued prior to the 120-day deadline to use estimated participant data regardless of whether the plan meets the small-plan definition in 29 CFR 2520.101-5(d)(2).

Thank you for the opportunity to provide feedback on Field Assistance Bulletin 2025-02. If you have any questions or would like to discuss these comments further, please contact Janae Nelson, the Academy’s policy project manager, retirement, at nelson@actuary.org.

Sincerely,

Grace Lattyak, MAAA, EA, FCA, FSA
Chairperson, Pension Committee