



January 18, 2011

Submitted via email at: e-ORI@dol.gov

Office of Regulations 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 Avenue N.W.
Washington, DC 20210

Dear Sir or Madam,

Subject: RIN 1210-AB18—Aon Hewitt Comments on Proposed Regulation Under ERISA Section 101(f) Annual Funding Notice

Aon Hewitt appreciates the opportunity to submit comments to the Department of Labor's Employee Benefits Security Administration on the proposed rule to implement the Annual Funding Notice requirement. The proposed regulation was published in the *Federal Register* on November 18, 2010.

Who We Are

Aon Hewitt is the global leader in human capital consulting and outsourcing solutions. The company partners with organizations to solve their most complex benefits, talent, and related financial challenges, and improve business performance. Aon Hewitt designs, implements, communicates, and administers a wide range of human capital, retirement, investment management, health care, compensation, and talent management strategies. With more than 29,000 professionals in 90 countries, Aon Hewitt makes the world a better place to work for clients and their employees.

The following are our comments on the proposed rule, organized according to order of the information contained in the preamble to the proposed regulation.

Plan Termination Exception to Provide Notice

Section 2520.101-5(a)(2)(ii) of the proposal provides that the plan administrator is not required to furnish a funding notice for a plan year if the due date of the notice is on or after the date the plan has distributed assets in satisfaction of all benefit liabilities in a standard plan termination. We appreciate the recognition that a notice should not be necessary after plan termination. However, in a standard plan termination, assets may not be distributed for some time after the plan termination date. Since a valuation of the plan (and corresponding Schedule SB) is required only through the plan year of termination, certain items of the Annual Funding Notice would not be available in plan termination situations.

For example, if a plan has a termination date of December 31, 2011, a valuation is not performed and a Schedule SB to the Form 5500 is not required for the 2012 plan year. (Note that the Annual Funding Notice for 2011 would be provided by April 30, 2012 for the 2011 plan year.) If the Internal Revenue Service (IRS) does not issue a determination letter with enough time to distribute assets in calendar year 2012, the plan will not actually distribute assets in 2012 and thus would be required to provide the Annual Funding Notice for 2011 no later than April 30, 2012 (if assets were not distributed by this date). However, no information for the Funding Target Attainment Percentage table, Credit balances, or year-end liabilities would be available.

We suggest that Section 2520.101-5(a)(2)(ii) state that a notice is not required in two situations regarding a plan termination: for any plan year following the plan year of termination or if the due date is on or after the plan has distributed assets in satisfaction of all liabilities. Under this approach, in the above example, the notice for the 2011 plan year would still be required to be provided. However, in the event asset distribution is delayed until 2013, a notice for the 2012 plan year would not be needed.

Alternatively, other Sections of the regulation could provide for exceptions to providing certain information if a Schedule SB was not provided as a result of a plan termination.

Ratio of the Plan Assets to Plan Liabilities Without Offset

Section 2520.105-5(b)(2) of the proposed regulation requires the disclosure of the plan's Funding Target Attainment Percentage. This percentage reflects the subtraction of the Funding Standard Carryover Balance and the Prefunding Balance (Credit balances). This measurement of a plan's funded position is used to determine the amount of necessary contributions to the plan, among other things. However, it is not a particularly good measurement of how well-funded a plan is. The measurement of the specific funded position of the plan should not subtract any existing credit balances.

We understand that ERISA Section 101(f)(2)(B)(i) specifically requires that the Funding Target Attainment Percentage be provided in the Annual Funding Notice. However, showing this ratio alone does not provide complete and accurate information about the plan's funded position.

We believe that participants would be better served by providing the Funding Target Attainment Percentage and specifically allowing voluntary disclosure of the ratio of Plan Assets to Plan Liabilities.

This ratio of Plan Assets to Plan Liabilities is a more meaningful disclosure of how well-funded a plan is. Also, such a ratio will provide information that is similar to information related to benefit restrictions under Internal Revenue Code (IRC) Section 436. For plans over 100% funded that have not recently purchased annuities, the ratio of Plan Assets to Plan Liabilities will be equal to the plan's Adjusted Funding Target Attainment Percentage which is used to determine if benefit restrictions under IRC Section 436 apply. For example, a plan could have a Funding Target Attainment Percentage of 75% resulting from the ratio of Plan Assets (e.g., \$1,000,000) less Credit balances (e.g., \$300,000) divided by the plan's Funding Target (e.g. \$933,333). Additionally, this amount is required to be shown (with no other percentage disclosure) on the Annual Funding Notice. However, the plan's Adjusted Funding

Target Attainment Percentage exceeds 100% (i.e., the ratio of Plan Assets (\$1,000,000) divided by the plan's Funding Target (\$933,333)). Thus, a participant could receive information stating the plan is only 75% funded yet the plan does not have any benefit restrictions (which apply when a plan is less than 80% funded) because the plan is actually over 100% funded.

This sort of discrepancy must be explained by plan sponsors that typically do so with an additional "cover letter" to the Annual Funding Notice. This requires additional time and cost to create the Annual Funding Notice.

Furthermore, we suggest the language in the model notice provide clearer information about the representations of these percentages. Participants should be informed that the Funding Target Attainment Percentage is required to be provided in the notice. The explanation should also state that this percentage is important because it is used to determine the amount of required contributions to the plan, among other things. Participants should then be optionally informed that the ratio of Plan Assets to Plan Liabilities (as suggested to be provided above) provides a measure of how well-funded the plan is where in general, the higher the percentage, the better funded the plan.

While the proposed regulation does allow for providing additional information that a plan sponsor believes would be helpful, we think it is important for the final regulation to specifically state that the ratio of Plan Assets to Plan Liabilities be allowed to be shown in the Funding Target Attainment Percentage chart at the plan sponsor's discretion.

Clarify the Description of Year-End Liabilities

ERISA Section 101(f)(2)(B)(ii)(II)(bb) requires that year-end assets and liabilities be provided in the Annual Funding Notice. However, the value of year-end liabilities is not comparable to the following year's Annual Funding Notice which provides beginning-of-the-year liabilities. Because some participants may want to compare end-of-year values from one notice to beginning-of-the-year values in a subsequent notice, we recommend that the model notice provide additional description of this liability to state that it is based on different assumptions than amounts provided in the Funding Target Attainment Percentage table and is only an estimate.

In addition, the year-end liability shown is only an estimated amount. The preamble to the proposed regulation recognizes this. Yet, the model notice requires amounts to be provided rounded to the nearest dollar. We believe that estimated amounts should not be required to be disclosed showing precision to the nearest dollar. Instead, we suggest the final regulation and model notice allow for rounding this amount as needed.

Demographic Information

The proposed regulation requires disclosure of the participant population in three categories: i) retired or separated from service and receiving benefits; ii) retired or separated and entitled to future benefits (but not currently receiving benefits); or iii) active participants. The Department requested comments on how plan sponsors should disclose beneficiaries. We believe that the plan sponsor should have the flexibility to disclose beneficiaries in either a stand-alone category or in any of the three required categories. This would allow plan sponsors to follow other plan participant count processes and not

add cost to the creation of the Annual Funding Notice. In addition, since this data is available on the valuation date and was used to determine the associated liabilities provided in the notice, we feel that the valuation date should be used to determine these participant counts.

In addition, we do not feel additional disclosures of participant counts would be useful. Information relating to the plan is already publicly available to plan participants. Also, participant count changes due to past mergers, spin-offs, or other potential plan changes may need to be explained, requiring additional time and cost to produce the notice.

Funding and Investment Policies

We believe that the disclosure of the investment policy is not required by statute and should not be required to be included in the Annual Funding Notice. Many times, an investment policy can be complex and variable. Providing this information in the notice requires additional time and effort to review the necessary language each year. The true investment policy of the plan also may be difficult to describe to participants.

In addition, the language provided in the model notice implies that the allocation percentages reflect the investment policy. Because the percentages are only one snapshot of information and may not accurately reflect the long-term investment policy, we suggest this language be modified to remove "Under the Plan's investment policy" from the model notice.

The model notice also provides a statement if the plan has interest in one or more direct filing entities (DFEs). We believe the model notice should allow for either the ability to describe who to contact for more information or to provide that the plan is invested in a DFE along with the specific asset allocation for the DFE in the asset allocation chart. Requiring that sponsors provide a contact name and phone number without modification doesn't allow for situations where sponsors may have information that can be broadly shared. Moreover, if information can be obtained from any other publicly available documents, that information (rather than a specific name and phone number) should be provided to allow the participant to gather more information.

Material Effect Events

ERISA Section 101(f)(2)(B)(vi) requires an explanation of an event having a material effect for the current plan year. We believe the interpretation of "current plan year" to be the year the notice is sent, which is provided for in the proposed regulation, is not appropriate and does not provide meaningful information. To understand why, it's important to review the information already provided in the notice.

The Plan Liabilities and assets as of the valuation date are provided, as well as the assets and liabilities as of the end of the plan year. However, there is no information in either of those values that describe any plan changes or "significant events" that cause a change in the values from the beginning of the year to the end of the year. Since liabilities are measured using different assumptions (including interest), there is no way for a participant to know if the change in amount is due to a plan change, event, or other situation. Thus, the statute requirement would seem to be providing that any changes from the beginning of the year to the end of the year be described.

This makes sense because by the time the notice is sent (four months after the end of the plan year for non-small plans), plan sponsors know of all situations and can quantify them. Thus, telling participants what happened during the plan year to which the notice applies can help a participant understand what plan amendments were applied or what other events happened. The fact that such disclosures must be provided projected to the end of the year does provide meaningful information to the participant if “current plan year” is interpreted as the year to which the notice relates (rather than to the year the notice is sent). It simply provides the participant a year-end value of a plan change just like a year-end value is provided for the Plan Liabilities.

Treating the following year (that is, the year the notice is sent) as the “current year” cannot provide meaningful information to participants. While some plan sponsors know of changes that will occur during that year, potential plan changes will not always have been adopted by the time the notice is provided. For example, plan sponsors would typically not know by April 30th that the plan will be merged later in the year. Nor will they know if a plant will be shut down in the month of June. Thus, participants will never have a plan amendment explained because every Annual Funding Notice will miss the event. The following year’s notice will reflect the change in the Plan Liabilities disclosed, but no mention of the change will ever be necessary based on the requirement provided in the proposed regulation.

In addition, as recognized by the Department, plan sponsors need sufficient time to create and send the Annual Funding Notice and must be able to feel comfortable that last minute plan changes will not change the notice intended to be sent. Thus, the preamble to the regulation requests comments on whether the final regulation should include information provided in Field Assistance Bulletin 2009-1 that would not require disclosure of events occurring 120 days or less before the due date of the notice. This 120-day period is needed by plan sponsors under any interpretation of “current plan year” and we encourage the Department to include it in the final regulation. However, if the disclosures were determined based on the plan year to which the notice relates, plan sponsors would have sufficient information to determine and calculate the impact of any changes. Additionally, sponsors would not need to be concerned about the following year plan changes which may not yet have been adopted.

We strongly encourage the Department to reconsider interpreting “current plan year” under ERISA Section 101(f)(2)(B)(vi) to be for the plan year to which the notice relates rather than for the year the notice is sent.

Effective Date of Final Regulation

When a final regulation is published, we encourage the Department to include a period of time during which the model notice under Field Assistance Bulletin 2009-1 or under the proposed regulation will continue to be deemed to meet the Annual Funding Notice requirements. This will allow sponsors to easily continue production of the notice when the final regulation is released without interruption, if the final regulation is issued close to the due date of a plan sponsor’s funding notice.

Closing

We appreciate the opportunity to submit these comments regarding the proposed regulation. If you have any questions regarding these comments, please contact the undersigned at the telephone number or electronic mail address provided below.

Sincerely,

Aon Hewitt

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cc: John H. Moore, Aon Hewitt