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November 21, 2019

Office of Regulations and Interpretations
Employee Benefits Security Administration, Room N-5655
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

RE: Default Electronic Disclosure by Employee Pension Benefit Plans Under ERISA, RIN 1210-AB90

To Whom It May Concern:

Formed in 2002 and based in Washington, D.C., the National Retiree Legislative Network (NRLN) is a non-partisan, grassroots coalition. As a non-profit organization, the NRLN is dedicated to representing the interests of more than 2 million retirees and future retirees who came to the NRLN from 200 different companies and public entities. They live in all 50 states and in 75% of the nation's Congressional districts. They affiliate with the NRLN through retiree associations, chapters and as individual members. The NRLN and its members are working to secure federal legislation for retirement income security and reduce the cost of health care along with preserving Social Security and Medicare.

We are writing today because we have deep concerns about the proposed regulation on Default Electronic Disclosure, which would undermine the retirement security of millions of workers and retirees who depend on their paper retirement disclosures to enable them to enforce their rights. While the world is changing, and more and more people use electronic media, this is not relevant when it comes to an effective system for consumer disclosures, particularly for seniors, and what should be the default method for making them. Besides, access to the internet, email and websites are not uniform or equitable. In fact, studies show that access to the internet and broadband still varies substantially by education, age, income, and geography. Making electronic delivery the default means of delivering retirement information would effectively weaken consumer protections for participants and beneficiaries, the very people whom the disclosures are intended to protect.

ERISA requires administrators of retirement plans to furnish several understandable, important disclosures to workers, retirees and spouses such as the Annual Funding Notice so that they know their rights, know what benefits they're entitled to, are aware of the fees they're being charged, and can be a watchdog that their plan is being managed to protect their interests. These disclosures are critical to helping workers plan for and achieve retirement income security.

Currently, longstanding regulations require plans to *furnish* disclosures and take steps to ensure *actual receipt* of the disclosure by participants and beneficiaries. Generally, plans must send paper disclosures by mail as the default means of delivery, but employers can send electronic disclosures to their employees who work with computers, or they can offer consumers the choice to *opt in* to electronic delivery. This system of delivery has worked well to ensure that consumers automatically receive paper – the more reliable method of delivery -- and those who prefer to receive information electronically may do so.

However, DOL's new proposed regulation would institute a new disclosure delivery system called "notice and access" that reverses the system from one of actual receipt of the default of paper disclosures sent by mail to a default system of electronic hide and seek. Under this new system, plans would not even need to send an electronic version of the disclosure to the consumer. They would only need to electronically notify (by email, text, phone, etc.) the participant that a disclosure document is available on a website, then the burden would entirely fall on the participant or beneficiary to take the many steps involved in finding it. The proposal also fails to provide adequate consumer protections, regardless of which delivery method is used.

The proposed rule contemplates that any deficiencies in its proposal are cured, or at least neutralized, by its provisions enabling participants and beneficiaries to receive one initial paper disclosure informing them of their ability to "globally" opt out of all electronic disclosures. They can also request a paper version of specific documents. But there are no requirements for how the opt-out process will work, or whether the significance of the failure to opt out must be adequately explained. Opting out to get paper should be easy; those who prefer paper should not be required to write a letter requesting paper.

The proposed regulation for "Notice and Access" has next to no protections to ensure that individuals actually receive these disclosures:

The proposed regulation allows notice by any technology: There is no requirement to use email. Plans would be allowed to notify consumers of the availability of a disclosure with a text message, or a phone call/robocall, which are not verifiable or easily preserved.

Email addresses can be made up: The proposed rule would allow plan administrators to assign or even make up email addresses for participants and beneficiaries.

No actual receipt required - There is no requirement whatsoever that the administrator confirm that an email notice was actually opened by the recipient. Thus, if the email goes to a spam folder, or gets buried or misfiled, the recipient never *actually receives* the notice or the disclosure. Nor is there any requirement that the recipient actually have accessed the document. This is despite the fact that both actions are easily determined by the plan administrator with this technology.

The Ability to get information on websites is an Alice in Wonderland scenario: *The proposed rule will send retirees down the rabbit hole in search of information.* Consumers should not be forced to wade through marketing communications or several webpages in order to find the disclosures.

Spousal rights not adequately protected – The proposed rule makes no exception for important action documents that are currently required to be in writing, such as notices to spouses of their right to a survivor annuity and that their consent is required to waive that right.

Finally, this new proposed regulation is a giveaway to the financial services industry and shifts costs on to consumers. According to the regulatory analysis, this new framework will save plan administrators \$2.4 billion over 10 years. As one plan administrator put it in *Plan Sponsor* magazine "Imagine if the agency had adopted this proposal, say, 10 years ago. We would all be \$2.4 billion richer." Plan sponsors and administrators have a fiduciary duty to make decisions for the benefit of the participants and beneficiaries. Yet, this NPRM imposes absolutely no requirement for plans to pass on those savings, e.g., by adding to the pension fund corpus, or by reducing 401(k) fees. It simply allows them to pocket the windfall and then shifts costs to retirees by requiring them to have purchased and maintain internet access and the hardware, software, supplies needed to access disclosures. That is deeply unfair.

This proposal is being promulgated in response to a decades-long lobbying effort of the financial services industry, without any serious attempt to grapple with the new framework's admitted adverse impact, and without any evidentiary support or reasonable explanation of how participants and beneficiaries will be at least as well-protected as the current, well-balanced framework. The proposed rule's framework and the specifics of the proposal impose all of the disadvantages of technology, but confer none of its advantages, for the benefit of participants and beneficiaries. Instead, it shifts all of the risks, burdens, and costs of ensuring adequate disclosure away from plan administrators and on to participants and beneficiaries. This proposal should be withdrawn, or at least extensively overhauled to ensure actual receipt of disclosures and adequate consumer protections.

- The NRLN not only objects to the automatic "opt in to electronic disclosure", but also urges the DOL to make common sense changes to the DOL Annual Funding Notice (AFN). The NRLN believes that a simplified AFN is needed so that the plan's actual funding status is understandable and relevant to retirees. One of the changes that we believe is needed to make sure retirees are fully informed is a simplified version of the Funding Target Attainment Percentage on Page 1 of the AFN.
- Additionally, we would like the Plan Funding Status table to use the fair market value of plan assets and liabilities as of the last day of the plan year to calculate the Percentage of Plan Liabilities Funded.
- We would like a table added to the PBGC section explaining distress terminations and benefit guarantees so that retirees know the "Percentage of PBGC Termination Liability Funded" as of the last day of the plan year.
- Finally, we are also proposing other simplified measures to ensure the retiree is fully informed. These are detailed in our Annual Funding Notice Whitepaper which is attached.

Thank you for your consideration of our views.

Sincerely,



Bill Kadereit, President,

National Retiree Legislative Network

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Attachment



Proposed Pension Annual Funding Notice Changes

2/1/2017

Executive Summary

Companies sponsoring defined benefit pension plans are required to provide a funding notice annually to all participants and beneficiaries. In the Pension Protection Act (PPA) of 2006, Congress defined the content of this Annual Funding Notice (AFN) and required that it be furnished by the 120th day following the end of the plan year. In the Bipartisan Budget Act of 2015 (BBA), Congress added a temporary supplemental notice that shows the impact on reported funding levels due to adjusted liability discount rates – the 25-year interest rate averaging initially enacted in 2012 (the MAP-21 Act) – that plan sponsors can use to reduce the minimum required contribution for a plan year.

Unfortunately, neither the PPA nor BBA required a disclosure of a pension plan's **actual funded status** in a manner that is both understandable and most relevant to plan participants and beneficiaries. Attached to this paper, the NRLN proposes several common-sense changes to the Department of Labor's model Annual Funding Notice that recast the AFN from the plan participant's perspective. DOL's model AFN provides a standardized format and legal safe harbor that most plan administrators follow. We agree with the DOL's stated goal, which is "ensuring that workers receive timely and accurate notification annually of the funded status of their defined benefit pension plans." To achieve that goal, several changes are needed to make the AFN "timely and accurate" from the *participant's* perspective, and not merely from the plan sponsor's perspective.

Most fundamentally, the NRLN proposes a few changes to the headline table, on page one, that is currently captioned "Funding Target Attainment Percentage," or FTAP. The main problem is that the FTAP is a regulatory construct that plan sponsors calculate for an entirely different purpose: to determine their minimum contribution at the beginning of each plan year. However, disclosing the plan's 16-month-old FTAP does not necessarily reflect the actual percentage of liabilities the plan is able to fund at the time of the notice – which is by far the most important information sought by retirees and other participants.

There are three key shortcomings of using the FTAP from a participant perspective:

- The table discloses Plan Assets and Liabilities as of the *first day* of the plan year – valuations 16 months out of date – even though the fair market value of plan assets and the plan's liabilities on the *last day* of the plan year are disclosed lower down in the AFN.
- The table discloses Plan Liabilities calculated, most commonly, using a 25-year average of interest rates (interest rate "smoothing") legislated for a different purpose (to determine minimum funding contributions). This rate does not necessarily reflect market rates, or the rates used by the Pension Benefit Guarantee Corporation when it values plan liabilities and assesses variable rate premium payments. This non-market "adjusted rate" is also not disclosed.

- Despite using the FTAP concept (which is unfamiliar to the typical retiree or participant), the table does not disclose the Minimum Required Contribution for the plan year.

The NRLN proposes a simplified version of the FTAP table that is the same number of lines, but which is recast and recaptioned as disclosing “**Plan Funding Status.**” This revised table discloses the “Percentage of Plan Liabilities Funded” (line 4) as a straightforward division of Total Plan Assets (line 2) and Total Plan Liabilities (line 3) as of the last day of the plan year and using market rates – both of which the DOL model AFN requires to be in the AFN, in what is now the “Year-End Assets and Liabilities” section, which our amended model deletes to avoid redundancy.

From a participant’s perspective, a more timely and accurate (market-based) disclosure of Plan Funding Status is both most appropriate and imposes no significant added burden on plan sponsors. Currently plans are valued as of the 1st day of the plan year, but AFNs are not received until 120 days after the end of that plan year, 16 months later. AFNs should disclose plan valuations effective on the final day of the plan year (typically December 31), which is more accurate and feasible considering that the fair market value of the plan’s assets and liabilities on the last day of the plan year are reported in the AFN (in narrative, although only for the current plan year).

The NRLN proposes three additional changes to DOL’s model AFN: First, the section of the AFN that explains the impact of a distress termination and PBGC benefit guarantees should include a short table showing the “**Percentage of PBGC Termination Liability Funded**” as of the last day of the plan year (and using the same assumptions as the Plan Funding Status table noted above). As the AFN should explain, the PBGC calculates termination liability using a discount rate derived from a periodic survey of insurance industry rates and published on the PBGC website. It is an indication of the downside risks of a “distress” plan termination. This same PBGC termination liability is currently estimated and reported to the PBGC by plans falling below the 80 percent funding threshold, along with other data.

Second, the NRLN proposes that the AFN’s current disclosure of “**Participant Information**” be displayed in tabular form and – like other AFN disclosures – show the Plan Year and the two previous plan years. Since the other funding disclosures allow a comparison over three years, providing comparable data with respect to changes in the number of covered participants by type (active, retired, separated but vested) can assist retirees and others understand or ask more informed questions about year-to-year changes in funding status.

Finally, the NRLN proposes adding one line to the Assets Allocation table showing the **Average Return on Assets for the Plan Year**. This can provide useful context, particularly where the AFN shows a large swing in a plan’s Percentage of Plan Liabilities Funded.

In sum, **retirees deserve a more relevant and timely disclosure of the Percentage of Plan Liabilities Funded**, both on a fair market value basis (using the non-adjusted PPA discount rate) and also based on the PBGC measure of Termination Liability. Congress can again improve the utility and relevance of the AFN for the average participant by authorizing the DOL to make the common sense changes proposed above.



Proposed Pension Annual Funding Notice Changes

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Proposed Pension Annual Funding Notice Changes

Introduction and Background

Companies sponsoring defined benefit pension plans are required to provide a funding notice annually to all participants and beneficiaries. Congress thought it adequately addressed pension plan funding and disclosure issues when it passed the Pension Protection Act (PPA) in 2006, but a decade later the disclosures provided to retirees and other participants show the PPA did not go far enough.

The PPA requires plan sponsors to provide each participant an Annual Funding Notice (AFN) that discloses the funded status of the plan, including detailed actuarial and financial data on plan assets and liabilities as of the beginning of each plan year, carryover and prefunding balances, at-risk liabilities and certain other data. The focal point of the AFN is the Funding Target Attainment Percentage (FTAP) table – typically displayed on page one – which claims to show how well the plan is funded based on this data.

Also included, further down in the text of each AFN, is an accounting of the Fair Market Value (FMV) of plan assets and estimated liabilities as of the *last day* of each plan year, information about the type and number of plan participants, funding investment policies including an asset allocation table, and an explanation of participant rights and Pension Benefit Guarantee Corporation (PBGC) benefit insurance protection. The AFN reports most of this data for the most recent plan year and for the two previous years.

PPA required that AFNs be furnished by the 120th day following the end of the plan year (typically April 30). In 2015 the Department of Labor adopted its final regulations on the content of AFNs, including separate Model Notices for single employer and multiemployer plans.¹ DOL's model AFN provides a standardized format and legal safe harbor that most plan administrators follow.

In the Bipartisan Budget Act of 2015 (BBA), Congress added a temporary supplemental notice that shows how reported funding levels (the plan's FTAP) vary based on the plan sponsor's decision to use a liability discount rate based on a 25-year average of interest rates, as first adopted in 2012 (the MAP-21 Act), rather than the three-year average provided in the Pension Protection Act. Averaging the liability discount rate over 25 years does not reduce a plan's liabilities, but it does allow plan sponsors to reduce the minimum required contribution for a plan year.

When Congress passed the PPA in 2006, it included preferential treatment intended to prop up balance sheets and the need for cash in the airline industry. The Airline Rate Relief exception authorized use of a fixed 8.25% liability discount rate for many industry companies. However, Congress did not require airline plan sponsors to disclose the true funding levels of plans without the use of the higher rate. This exception resulted in an obscuring of the true risk of these plans. Although airline companies may disclose calculations using the lower PPA rate in AFNs, they are not required to do so.

During the years after the Great Recession began in 2008, the entire economic base of our country and the viability of companies and their defined benefit pension plans came under pressure.

¹ "Final Regulation: Annual Funding Notice for Defined Benefit Plans," *Fact Sheet*, U.S. Department of Labor (Jan. 30, 2015), <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/fsafndefinedbenefitplans.pdf>. The DOL's model notice is available at <https://www.dol.gov/sites/default/files/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/SingleEmployerModelAnnualFundingNotice.doc>.

Corporate bankruptcies continued and the Federal Reserve's maintained, even as of year-end 2016, a monetary policy premised on historically-low interest rates to stimulate and sustain economic growth. Unfortunately, since a low discount rate results in substantially higher projected long-term pension liabilities, the corporate bond yield curve adopted in 2006 to calculate plan liabilities resulted in lower reported funding levels (FTAPs) and sharply higher minimum required contributions. Corporations appealed to Congress for temporary pension plan funding relief in the form of higher liability discount rates, at least temporarily, until unexpected low market rates returned to "normal."

Accordingly, in 2012, Congress passed "Moving Ahead for Progress in the 21st Century" (MAP 21), a transportation bill. Included in Title II – Revenue Provisions, is a section on Pension Funding Stabilization that contained the funding relief provisions sought by U.S. corporate plan sponsors. As the economy slowly recovered, this "temporary" option to use a discount rate based on a 25-year averaging of interest rates was extended twice, most recently as part of the 2015 Bipartisan Budget Act.

Unfortunately, neither the PPA nor BBA required a straightforward and up-to-date disclosure of the pension plan's **actual funded status** in a manner that is both understandable and most relevant to plan participants and beneficiaries. The National Retiree Legislative Network (NRLN) contends that the individuals most affected by changes in pension plan risk, the plan participants, deserve nothing less than full and open disclosure.

In this paper the NRLN proposes several common-sense changes to the Department of Labor's model notice that recast the AFN from the plan participant's perspective. Retirees agree with the DOL's stated goal, which is "ensuring that workers receive timely and accurate notification annually of the funded status of their defined benefit pension plans." But to achieve that goal, several changes are needed to make the AFN "timely and accurate" from the *participant's* perspective, and not merely from the plan sponsor's perspective.

Survey of AFNs Reveals the Need for Disclosure Changes

The NRLN's analysis of disclosure issues is based, in part, upon data collected from the 2012 Annual Funding Notices (AFNs) for 26 plans provided by retirees from 18 large corporations that number among the more than 175 employers whose retirees have affiliated with the NRLN. A summary profile of AFN data follows:

- 18 U.S. corporations from 13 different industries.²
- 26 Defined Benefit Pension Plans.
- 10 company plans are in Milliman's top 50, ranked by FMV of assets.
- 4 company plans are ranked in Milliman's top 10.
- More than **2,225,000 participants** are covered by these 26 plans, which is nearly 10 percent of the 28 million total participants in single-employer plans.³
- Total Plan Assets in these 26 plans were \$220 billion and total liabilities \$206 billion, on a beginning-of-year MAP 21 basis, leaving a \$14 billion surplus.

² Includes the General Motors management Plan AFN for 2011.

³ See Employee Benefit Security Administration, U.S. Dept. of Labor, "Private Pension Plan Bulletin Historical Tables and Graphs 1975-2014" (Sept. 2016), at p. 5, available at <https://www.dol.gov/sites/default/files/ebsa/researchers/statistics/retirement-bulletins/private-pension-plan-bulletin-historical-tables-and-graphs.pdf>

- On a year-end fair market value basis, total plan assets in these 26 plans were \$224 billion and liabilities were \$267 billion (calculated without MAP 21 relief), leaving a \$43 billion shortfall.

Although the BBA of 2015 – which extended the rate relief initially enacted in MAP-21 – requires a supplemental table comparing the FTAP calculated with adjusted and non-adjusted discount rates, the average plan participant focuses on the inflated value of the FTAP on page one, not even realizing it is calculated with non-market rates. Airline industry AFNs are the least accurate. The Airline Rate Relief exception in PPA authorized a fixed 8.25% liability discount rate for the industry. Airlines simply report inflated FTAPs on the headline, page one table as if they had a basis in reality. The following examples from the NRLN’s survey show how retirees who rely on the primary FTAP table as a measure of their plan’s funding level are being misled, since the non-adjusted FTAP (calculated using the Treasury Department’s corporate bond yield curve) is far more reflective of reality:

Examples:	Adjusted FTAP	Non-Adjusted FTAP (PPA Basis)	
Delta Air Lines	58.0%	42.1%	Voluntary Disclosure
American Airlines	86.3	Unknown	Airline exemption
Chrysler	89.3	76.5	Disclosed but misleading
DTE Energy	90.9	77.1	Disclosed but misleading
AT&T	96.1	83.2	Disclosed but misleading

In addition, the NRLN surveyed leadership at member retiree associations representing participants in these plans and others. These individual associations have received substantial feedback from retirees in particular about the relevance, timeliness and clarity of the AFNs they receive each year. The recommendations below represent a synthesis of the above data and feedback from retiree members.

Disclose the “Percentage of Plan Liabilities Funded”: More Relevant, More Timely

Most fundamentally, the NRLN proposes a few changes to the AFN’s headline table (on page one) that is currently captioned “Funding Target Attainment Percentage,” or FTAP. Section 101(f) of ERISA requires that Annual Funding Notices disclose, first and most critically, “whether the plan’s **Percentage of Plan Liabilities Funded** . . . for the plan year to which the notice relates, and for the 2 preceding plan years, is at least 100 percent (and, if not, the actual percentages).”⁴ In the Department of Labor’s model AFN, this disclosure is the focus of the table on page one – and includes estimates of the “total plan assets” and “total plan liabilities” used to calculate the plan’s funded status.

Unfortunately, Section 101(f) also directs plans to report the Funding Target Attainment Percentage (FTAP) as a proxy for “the plan’s Percentage of Plan Liabilities Funded.” The main problem is that the FTAP is calculated for an entirely different purpose than disclosure of the *actual* funded status of the plan at the end of the plan year. The FTAP is a regulatory construct that plan sponsors use for a different purpose: to determine their minimum contribution for that plan year. However, disclosing the plan’s 16-month-old FTAP does not necessarily reflect the actual percentage of liabilities the plan is able to fund at the time of the notice – which is by far the most important information sought by retirees and other participants.

There are three key shortcomings of using the FTAP from a participant perspective:

⁴ 29 U.S.C. 1021(f).

First, the current FTAP table discloses Plan Assets and Liabilities as of the *first day* of the plan year – valuations 16 months out of date – even though the fair market value of plan assets and the plan’s liabilities on the last day of the plan year are disclosed lower down in the AFN.

Second, the table discloses Plan Liabilities calculated, most commonly, using a 25-year average of interest rates (interest rate “smoothing”) legislated for a different purpose (to determine minimum funding contributions). This rate does not necessarily reflect market rates, or the rates used by the Pension Benefit Guarantee Corporation when it values plan liabilities and assesses variable rate premium payments. This non-market “adjusted rate” is also not disclosed.

Third, despite using the FTAP concept (which is unfamiliar to the typical retiree or participant), the table does not disclose the Minimum Required Contribution for the plan year.

The NRLN proposes a simplified version of the FTAP table that is the same number of lines, but which is recast and recaptioned as disclosing “**Plan Funding Status.**” This revised table (see below) discloses the “Percentage of Plan Liabilities Funded” (line 4) as a straightforward division of Total Plan Assets (line 2) and Total Plan Liabilities (line 3) as of the last day of the plan year and using market rates – both of which the DOL model AFN requires to be in the AFN, in what is now the “Year-End Assets and Liabilities” section, which our amended model deletes.

From a participant’s perspective, a more timely and accurate (market-based) disclosure of Plan Funding Status is both most appropriate and imposes no significant added burden on plan sponsors. Currently plans are valued as of the 1st day of the plan year, but AFNs are not received until 120 days after the end of that plan year, 16 months later. This delay causes untimely reporting and risk disclosure. This delay causes untimely reporting and risk disclosure. AFNs should disclose plan valuations effective on the final day of the plan year (typically December 31), which is more accurate and feasible considering that the fair market value of the plan’s assets and liabilities on the last day of the plan year are reported in the AFN (in narrative, although only for the current plan year). Even if the deadline for providing AFNs is extended to 180 days after the end of each plan year, this would be far more timely and relevant to participants than an AFN that is at best 16 months out of date.

Plan Funding Status			
	[insert Plan Year, e.g., 2011]	[insert plan year preceding Plan Year, e.g., 2010]	[insert plan year 2 years preceding Plan Year, e.g., 2009]
1. Valuation Date (last day of plan year)	[insert date]	[insert date]	[insert date]
2. Total Plan Assets (fair market value on last day of plan year)	[insert amount]	[insert amount]	[insert amount]
3. Plan Liabilities			
a. Total Plan Liabilities (last day of plan year)	[insert amount]	[insert amount]	[insert amount]
b. At-Risk Liabilities	[insert amount]	[insert amount]	[insert amount]
4. Percentage of Plan Liabilities Funded (2)/(3a)	[insert percentage]	[insert percentage]	[insert percentage]
5. Effective Average Liability Discount rate	[insert percentage]	[insert percentage]	[insert percentage]
6. Minimum Required Contribution for Plan year	[insert amount]	[insert amount]	[insert amount]
7. Credit Balances at Beginning of Plan Year	[insert amount]	[insert amount]	[insert amount]

Similarly, the disclosure of **Total Plan Liabilities** (line 3 in the model table above) should be calculated using the *non-adjusted* segment rates of the bond yield curve provided for in the Pension Protection Act. This is the same discount rate Congress requires for the calculation of variable rate PBGC premiums under ERISA section 1306(a)(3)(E)(iv).⁵ The Bipartisan Budget Act of 2015 requires this market-based (non-adjusted) measure of liability to be disclosed in a supplemental comparison table appended to AFNs. However, although it is useful in that context for plans to report the *adjusted FTAP* calculated using the 25-year interest rate averaging first enacted in 2012 (MAP-21), the table on page one disclosing the “percentage of plan liabilities funded” (as required under 29 U.S.C. 1021(f) of ERISA) should reflect current market interest rates regardless of whether plan sponsors use an adjusted rate to determine minimum contributions.⁶ As noted above, the FTAP calculated with a 25-year average discount rate is intended to temporarily reduce plan sponsors’ minimum required contribution, whereas the non-adjusted PPA measure of liability is the more accurate disclosure for the purposes of an AFN.

Finally, the plan sponsor’s “**Minimum Required Contribution for the Plan Year**” (line 6 in the model table above) should be added to table one. Somewhat unbelievably, AFNs are not required to disclose either the company’s minimum required contribution or actual company contributions for the

⁵ Section **4006(a)(3)(E)(iv)**.

⁶ Accordingly, the NRLN suggests changes to EBSA’s Model AFN that change the instructions to Table 1 to state: “*With the exception of the interest rate assumption, the present value should be determined using assumptions used to determine the funding target under section 303. The interest rate assumption is the rate provided under section **4006(a)(3)(E)(iv)**, but using the last month of the year to which the notice relates rather than the month preceding the first month of the year to which the notice relates.*”

current and preceding two plan years. This is important because if a plan is substantially underfunded, plan participants should see clearly what the company is required to contribute (and, ideally, what contributions have actually been made). The disclosure proposed above (line 6) is known to the company on the first day of the plan year since, as explained just above, the FTAP is calculated for that purpose using asset and liabilities as of the first day of the plan year. Understandably, this gives the plan sponsor at least 12 month’s advance notice of the current year’s minimum contribution. Since that number (on line 6 above) is known 16 months prior to the AFN disclosure, it is no burden to add it to the AFN. Participants deserve to know what the plan sponsor is actually contributing toward restoration of the plan.

AFNs Should Disclose the Percentage of PBGC Termination Liability Funded

Over the past two decades corporate mergers, spin offs and the race to globalize have led to the closing of plants in the U.S. and employee terminations. The 2001- to-2006 period was a time of particular turmoil. Many terminated employees were in their 50s. Businesses and their employees were especially vulnerable to the recession beginning in 2007.

Many companies became insolvent and many filed for bankruptcy, resulting pension plan terminations for hundreds of thousands of plan participants who soon discovered that they were virtually helpless as unsecured creditors. Younger retirees in particular were shocked to learn that the safety net they thought was in place to protect their earned pension benefits was far from adequate.

This shock has occurred in part because Congress does not require disclosure of plan funding levels as calculated by the Pension Benefit Guaranty Corporation. The PBGC applies a substantially lower discount rate (based on the pricing of commercial insurance industry annuities) to calculate a plan’s termination liability. If the plan’s funding level on a termination basis is disclosed – with liabilities calculated using the same discount rate used by the PBGC – retirees would have a more realistic understanding of the degree to which their earned pensions are at risk.

To remedy this disclosure gap, the NRLN proposes adding the table immediately below to the PBGC section of the AFN that explains distress terminations and benefit guarantees, so that retirees and other participants know the “**Percentage of PBGC Termination Liability Funded**” (line 3) as of the last day of the plan year (and using the same assumptions as the headline table above). As the AFN should explain, the PBGC calculates termination liability using a discount rate that is based on a periodic survey of insurance industry rates and published on the PBGC website. It is an indication of the downside risks of a “distress” plan termination. PBGC termination liability is currently estimated and reported to the PBGC by plans falling below the 80 percent funding threshold, along with other data.

Estimated PBGC Termination Liability	2010	2011	2012
1 – Total Plan Assets (same as Table 1, line 2 and last day of plan year)	[insert amount]	[insert amount]	[insert amount]
2 – PBGC Termination Liability (last day of plan year)	[insert amount]	[insert amount]	[insert amount]

3 – Percentage of PBGC Termination Liability Funded (1)/(2)	[insert percentage]	[insert percentage]	[insert percentage]
4 – PBGC Termination Liability Discount Rate (last day of Plan year)	[insert percentage]	[insert percentage]	[insert percentage]

Current reporting misleads 44 million plan participants by requiring companies to send them an Annual Funding Notice (AFN) that discloses a funding level and benefit obligation data that are substantially rosier than what the PBGC calculates as “termination liability.” The PBGC chooses to use a different – and far more conservative – interest rate assumption in valuing benefit obligations than a plan sponsor is required to use under ERISA’s minimum funding rules. In addition, because the PBGC assumes a much lower discount rate on future benefit obligations, it allocates plan assets as if it will not be offsetting a substantial portion of future benefit costs by investing the plan assets, just as other plan sponsors offset future costs with expected market rates of return on investment. As a result, the assets recovered from a terminated plan cover the inflated “present value” of guaranteed and non-guaranteed benefit obligations to a much lesser degree than if the PBGC assumed that plan assets would earn a long-term average market rate of return (typically 6% to 8%).

The lower the interest rate, the greater the estimated present value of future benefit obligations. Since the present value of benefit liabilities are exaggerated, plan assets rarely cover even most of the non-guaranteed vested benefits, such as benefit increases within five years of termination. This results in unnecessarily large and permanent losses for participants.

The largest permanent loss of earned benefits suffered by most retirees after a plan termination is caused by the PBGC’s decision to value the future cost of benefits using an irrelevant and unrealistically low interest rate assumption. When the PBGC takes over a terminated plan, it steps into the shoes of the plan sponsor, adds the assets to its larger investment pool, and invests – like any other pension plan – based on a very long-time horizon. PBGC does not purchase a group annuity contracts and therefore the ultra-low discount rate derived from the pricing of commercial fixed annuity contracts (which build in the cost of marketing, profits, taxes and other costs that PBGC does not have) is inappropriate and only serves to harm retirees and other plan participants.

The NRLN’s survey of AFNs for 26 plans provided to retirees in 2012 by 18 large corporations, described above, reinforces the need to add a disclosure of PBGC termination liabilities funded to the AFN section explaining the consequences of distress termination and PBGC guarantees. At a number of companies – including some in our survey – the PBGC calculation of liabilities funded at termination would be far below the level that would protect all vested benefits after a distress termination. Among the 18 plans reviewed, the NRLN found several evident disclosure shortcomings with current AFN reporting that prevent unknowing participants from seeing information that discloses the risk of a PGBC plan termination:

The data below is the same company data highlighted in the FMV comments in the previous section. The data demonstrates here that once an FMV FTAP is disclosed to be in the 70-77% range that some of these participant’s plans might be near or below the PBGC termination liability level of 65%.

	With Relief	PPA Basis	EOY FMV & Est. Liabilities
Delta Air Lines	58.0%	42.1%	38.0%
American Airlines	86.3	76.0 (estimate)	58.0
Chrysler	89.3	76.5	56.5
DTE Energy	90.9	77.1	76.0
AT&T	96.1	83.2	77.0
Raytheon	100+		75.4
Verizon	100+		66.2
Xerox	100+		77.5

As the table above shows, the Chrysler plan's 2012 AFN reported the plan FTAP at 89.3% using the higher discount rate ("stabilization rate") adopted by Congress in the 2012 MAP-21 legislation. Without stabilization, the reported FTAP was 76.5%, down from 80% in 2011. However, using the reported FMV of Assets and Estimated Liabilities at year end 2012, this plan was actually funded at 56.5%.

The Delta Air Lines Management plan reported a Funding Target Attainment percentage (FTA) of 58%, using the elevated 8.25% airline rate relief adopted by Congress. The annual Milliman Corporate Pension Funding Study for 2012 reported the Delta plan's Fair Market Value at 38.7% and a PBGC termination calculation would yield an FTAP percentage well below 38%. The 2012 Milliman study ranked this plan dead last in FTA performance at # 100 based on its FMV rating of 38.7%. Delta management did voluntarily disclose that on April 1, 2011 that the plan was funded at 42.51% using the interest rate assumptions that apply to non-airline plans. Clearly, this is the PPA calculation and not the funded level as the PBGC would calculate it, which would substantially lower.

Delta at least deserves credit for disclosing that their funded level would have been lower without the alchemy of airline rate relief. The same can't be said for American Airlines, another beneficiary of the special airline 8.25% relief rate. American reported a FTAP of 86.3% – based on the 8.25% discount rate – when in reality its plan ended the 2012 year at 58% based on FMV values of assets. American has frozen plan benefit accruals and has instead redirected capital to support a merger with U.S. Airways. While Delta's plan participants could at least compare the rate relief and more market-rate, non-adjusted calculations of the FTAP, American left its participants in the dark. More critically, all retirees and other plan participants deserve a full disclosure of the "Percentage of PBGC Termination Liability Funded," a calculation that uses the PBGC discount rate in place of the rate plan sponsors use to calculate their minimum annual funding contribution.

Plan Participant Information Should Cover Three Years in Tabular Format

The DOL's model AFN currently requires "Participant Information," by category (active, retired, or separated but eligible for future benefits). However, unlike most other disclosures in the AFN, it is in narrative format and only for the current plan year. The NRLN proposes that the AFN's current disclosure of "Participant Information" be displayed in tabular form and – like all other AFN disclosures – show the Plan Year and the two previous plan years. Since the other funding disclosures allow a comparison over three years, providing comparable data with respect to changes in the number of covered participants by type can assist retirees and others understand or ask more informed questions about year-to-year changes in funding status.

Plan Participant Classifications	2010	2011	2012
Active Employees in Plan (not retired)			
Retired or Former Employees Receiving Benefits (in pay status)			
Retired or Former Employees with Right to Future Benefits (vested benefits, not yet payable)			
Total Plan Participants			

The easy-to-read disclosure of participant data for the same three years as the disclosure of plan funding levels, and asset and liability values, and minimum required contributions, can help participants to better understand possible causes for increases or decreases in the overall Percentage of Plan Liabilities Funded over time (as disclosed in table one).

The Asset Allocation Table Should Include Average Return on Assets

Finally, the NRLN proposes adding one line to the AFN's required Assets Allocation table that shows the Average Return on Assets for the Plan Year. This can provide useful context, particularly where the AFN shows a large swing in a plan's Percentage of Plan Liabilities Funded.

The DOL's current model AFN suggests a fairly detailed breakdown of plan assets, including investments in corporate bonds, corporate stocks, real estate and U.S. government securities. This current disclosure requirement gives participants a general idea of the plan's investment philosophy and how relatively risky is its asset allocation strategy. However, despite this suggested detail, AFNs omit a critical bottom line disclosure: how are those assets actually performing on a cumulative (average) basis? Of course, the annual return on assets for a plan year does not indicate anything in and of itself; but in relation to the overall markets – and looked at over a substantial number of years – the average return on assets can provide valuable insight and complements the existing required disclosure of investments.

In addition, EBSA regulations – or statutory changes – should clarify that plans must disclose all of underlying assets based on the categories specified in the Department's model AFN. The NRLN's survey revealed that in many AFNs, the Asset Allocation table discloses only that 100% of all assets are invested in a Master Trust. This defeats the intent of the required disclosure. The AFN should also disclose the disaggregated allocations of the Master Trust assets by investment type, roughly as mutual funds are required to disclose to investors by the SEC. Today, too many plan sponsors obscure the true character and riskiness of investments in a manner that would not meet fiduciary standards established by the SEC for public investment offerings.

The aggregation of allocations into very general categories, such as "Equity Securities," also should be disaggregated to disclose investments in specific risk sub-classes such as common and preferred public stock, private equity, and fixed income instruments by maturity, as the EBSA model AFN suggests is the intent of the law. Too often, rather than disclose details, plan sponsors force participants to analyze IRS Form 5500 filings which can be equally confusing and out of date.

The NRLN's survey of AFN's revealed that Alcatel-Lucent, Detroit Edison, and Raytheon used only one line on the report, line 11, which is for disclosing assets invested in a Master Trust. All three companies entered 100% of the plan's assets were invested in a Master Trust. American Airlines and

Monsanto entered 100% on the Master Trust line but then listed several asset classes also totaling to 100%. However, they created some labels and dollars in a way that was too broad to be helpful. In contrast, the survey showed Boeing to be the most transparent concerning its investment allocations. The company disclosed investments by-line for all nine plans. Other plans in the study reported inconsistent and unusable data. Although some asset classes were mixed, Aetna, Century Link, John Deere, Kodak and Verizon used only the 17 standard asset definitions listed by-line numbers on the standard table provided in the AFN. Other created their own labels aggregated dollars.

The Asset Allocation table should display the current and previous two years histories of relevant data, like other AFN tables, so that plan participants can view changes in the number of plan participants, plan assets and liabilities, company funding obligations and contributions, interest rates used to calculate funding levels and the rate of return on plan investment, over a three (3) year period.

Proposed Legislative Amendments to Enhance the Annual Funding Notice

As noted above, Section 101(f) of ERISA requires that the Annual Funding Notice disclose, first and most critically, “whether the plan’s **Percentage of Plan Liabilities Funded** . . . for the plan year to which the notice relates, and for the 2 preceding plan years, is at least 100 percent (and, if not, the actual percentages).”⁷ Accordingly, in the Department of Labor’s model AFN, this disclosure is the focus of the table on page one – and includes estimates of the “total plan assets” and “total plan liabilities” used to calculate the plan’s funded status.

Unfortunately, however, Congress chose to reference provisions defining the Funding Target Attainment Percentage, or FTAP – which plan sponsors use to determine their minimum annual funding contribution – as the proxy for the “percentage of plan liabilities funded.” Although the FTAP is not the most relevant, accurate or timely measure of the “percentage of plan liabilities funded” from the perspective of retirees and other plan participants, it will take a legislative amendment to achieve the four basic improvements to the AFN outlined above.

Accordingly, the NRLN proposes that Congress adopt the following amendment to ERISA. If Congress enacts the changes just below, the Department of Labor will amend its current model AFN so that it provides a more timely and relevant disclosure. A revised version of DOL’s model AFN – incorporating the changes required by the amendments just below – is attached as an appendix to this white paper.

The subsections of Section 101(f) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021(f)) designated below are amended to read as follows:

(f) DEFINED BENEFIT PLAN FUNDING NOTICES

. . .

(2) INFORMATION CONTAINED IN NOTICES

. . .

(B) Specific information A plan funding notice under paragraph (1) shall include—

(i)(I) in the case of a single-employer plan, a statement as to whether the plan’s **Percentage of Plan Liabilities Funded (as defined in subclause (ii)(I)(bb) below)** for the

⁷ 29 U.S.C. 1021(f).

plan year to which the notice relates, and for the 2 preceding plan years, is at least 100 percent (and, if not, the actual percentages), or

• • •
(ii)(I) in the case of a single-employer plan, a statement of –

(aa) [~~deleted~~]

(bb) [~~redesignated as (aa)~~] the value of the plan's assets and liabilities, as of the last day of the plan year, for the plan year to which the notice relates and for the 2 preceding plan years, determined using the fair market value of plan assets under subclause (II) of section 1306(a)(3)(E)(iii) of this title and the interest rate under section 1306(a)(3)(E)(iv) of this title, and

(bb) [~~new~~] the Percentage of Plan Liabilities Funded, calculated as the ratio between the value of the plan's assets and liabilities, as determined under subclause (aa) above, for the plan year to which the notice relates and for the 2 preceding plan years.

• • •
(iii) a statement of the number of participants **for the plan year to which the notice relates as of the last day of such plan year and the preceding 2 plan years, in tabular format**, who are—

- (I) retired or separated from service and are receiving benefits,
- (II) retired or separated participants entitled to future benefits, and
- (III) active participants under the plan,

(iv) a statement setting forth the funding policy of the plan, the asset allocation of investments under the plan (expressed as percentages of total assets) **and the average return on assets for the plan year**, as of the end of the plan year to which the notice relates,

• • •
(ix) [~~new~~] in the case of a single-employer plan, a statement as to whether the plan's **Funded Status Based on PBGC Termination Liability** for the plan year to which the notice relates, and for the 2 preceding plan years, is at least 100 percent (and, if not, the actual percentages), that includes –

- (I) the plan's assets, as of the last day of the plan year and for the 2 preceding plan years, as determined under subclause (ii)(I)(aa) above,
- (II) the plan's liabilities, as of the last day of the plan year and for the 2 preceding plan years, as determined under subclause (ii)(1)(aa) above, but determined using the published interest rates the PBGC uses to value annuities in distress and involuntary single-employer plan terminations for the purpose of allocating assets under 29 U.S.C. 1344, and
- (III) **the Funded Status Based on PBGC Termination Liability**, determined as the ratio of the plan's assets and liabilities calculated under subclauses (I) and (II), for the plan year to which the notice relates, and for the 2 preceding plan years.

(x) [~~redesignated - same as current (ix)~~]

(xi) [~~redesignated - same as current (x)~~]

• • •

NATIONAL RETIREES LEGISLATIVE NETWORK
Proposed Revisions to Department of Labor Model AFN (instructions deleted)

APPENDIX A TO §2520.101-5-- SINGLE-EMPLOYER PLANS
[U.S. Department of Labor, Federal Register Notice, Feb. 2, 2015]

ANNUAL FUNDING NOTICE

For

[insert name of pension plan]

Introduction

This notice includes important information about the funding status of your pension plan (“the Plan”) and general information about the benefit payments guaranteed by the Pension Benefit Guaranty Corporation (“PBGC”), a federal insurance agency. All traditional pension plans (called “defined benefit pension plans”) must provide this notice every year regardless of their funding status. This notice does not mean that the Plan is terminating. It is provided for informational purposes and you are not required to respond in any way. This notice is for the plan year beginning *[insert beginning date]* and ending *[insert ending date]* (“Plan Year”).

How Well Funded Is Your Plan

Under federal law, the plan must report how well it is funded. For the purpose of this notice, the Percentage of Plan Liabilities Funded (line 4 in the chart below) is obtained by dividing the Plan’s Total Plan Assets by Total Plan Liabilities on the Valuation Date for the plan year. In general, the higher the percentage, the better funded the plan. Your Plan’s Percentage of Plan Liabilities Funded for the Plan Year and each of the two preceding plan years is shown in the chart below, along with a statement of the value of the Plan’s assets and liabilities for the same period. For purposes of this disclosure, the Valuation Date (line 1) is the last day of the plan year.

Plan Funding Status			
	<i>[insert Plan Year, e.g., 2011]</i>	<i>[insert plan year preceding Plan Year, e.g., 2010]</i>	<i>[insert plan year 2 years preceding Plan year, e.g., 2009]</i>
1. Valuation Date (last day of plan year)	<i>[insert date]</i>	<i>[insert date]</i>	<i>[insert date]</i>
2. Total Plan Assets (fair market value on last day of plan year)	<i>[insert amount]</i>	<i>[insert amount]</i>	<i>[insert amount]</i>
3. Plan Liabilities			
a. Total Plan Liabilities (last day of plan year)	<i>[insert amount]</i>	<i>[insert amount]</i>	<i>[insert amount]</i>
b. At-Risk Liabilities	<i>[insert amount]</i>	<i>[insert amount]</i>	<i>[insert amount]</i>
4. Percentage of Plan Liabilities Funded (2)/(3a)	<i>[insert percentage]</i>	<i>[insert percentage]</i>	<i>[insert percentage]</i>
5. Effective Average Liability Discount rate	<i>[insert percentage]</i>	<i>[insert percentage]</i>	<i>[insert percentage]</i>
6. Minimum Required Contribution for Plan year	<i>[insert amount]</i>	<i>[insert amount]</i>	<i>[insert amount]</i>

7. Credit Balances at Beginning of Plan Year	[insert amount]	[insert amount]	[insert amount]
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Plan Assets and Credit Balances

Total Plan Assets is the fair market value of the Plan’s assets on the Valuation Date (see line 2 in the chart above). Pension plans are permitted to maintain credit balances (also called “funding standard carryover balances” or “prefunding balances” in the chart above) for the purpose of calculating the plan sponsor’s minimum required contribution for a plan year. The Plan’s total credit balance at the beginning of the Plan year is shown on line 7. A plan might have a credit balance, for example, if in a prior year an employer made contributions to the plan above the minimum level required by law. Generally, the excess contributions are counted as “credits” and may be applied in future years toward the minimum level of contributions a plan sponsor is required to make by law.

Plan Liabilities

Total Plan Liabilities, shown in line 3a of the chart above, are an estimate of the amount of assets the Plan needs on the Valuation Date (the last day of the plan year) to pay for promised benefits under the plan. The interest rates used to determine Plan Liabilities on line 3a are based on a corporate bond yield curve, as published by the U.S. Department of Treasury, and averaged over 24 months. For purposes of determining the Plan’s minimum required contribution for the plan year (see line 6), because of changes in the law that apply to plan years through 2020, plan administrators have the option to calculate the Funding Target Attainment Percentage (FTAP) at the beginning of the plan year using interest rate segments that are 90% of the corporate bond yield curve averaged over a 25-year period. As a result, the Plan liabilities and FTAP reported by the Plan in its annual report filed with the US Department of Labor on Form 5500 may be different than the values reported here.

At-Risk Liabilities

If a plan’s Funding Target Attainment Percentage (FTAP) for the prior plan year is below a specified legal threshold, the plan is considered under law to be in “at-risk” status. This means that for the purpose of calculating the annual minimum contribution, the plan is required to use actuarial assumptions that result in a higher value of plan liabilities and, as a consequence, requires the employer to contribute more money to the plan. For example, plans in “at-risk” status are required to assume that all workers eligible to retire in the next 10 years will do so as soon as they can, and that they will take their distribution in whatever form would create the highest cost to the plan, without regard to whether those workers actually do so. The additional funding that results from “at-risk” status may then remove the plan from this status. The Plan has been determined to be in “at-risk” status in [enter year or years covered by the chart above]. The increased liabilities to the Plan as a result of being in “at-risk” status are reflected in the At-Risk Liabilities row in the chart above (line 3b).

Minimum Required Contribution

The asset values in the chart above are market values and are measured as of the last day of the plan year. Market values tend to show a clearer picture of a plan’s funded status as of a given point in time. Because market values can fluctuate daily based on factors in the marketplace, such as changes in the stock market, pension law allows plans to use actuarial values that are designed to smooth out those fluctuations for the purpose of calculating the plan’s minimum required contribution. Similarly,

as explained above, in 2014 Congress enacted changes in the law that gives plan administrators the option, for plan years through 2020, to calculate the FTAP and minimum required contribution using interest rate segments that are averaged over a 25-year period. As a result of these provisions, the Plan's Minimum Required Contribution reported on line 6 above is derived from a Funding Target that [is/may be] different than the values reported in the table above. For the purpose of calculating the Plan's Funding Target and Minimum Required Contribution, on the first day of the Plan year the Plan's assets were [enter amount]. On this same date, the Plan's liabilities were [enter amount].

Plan Participant Information

The table below shows the total number of participants in the Plan as of the Plan's valuation date (the last day of the plan year), as well as a breakdown by classification (for example, active employees and retirees).

Plan Participant Classifications	2010	2011	2012
Active Employees in Plan (not retired or terminated)			
Retired or Former Employees Receiving Benefits (in pay status)			
Retired or Former Employees with Right to Future Benefits (vested benefits, not yet payable)			
Total Plan Participants			

Funding & Investment Policies

Every pension plan must have a procedure for establishing a funding policy to carry out plan objectives. A funding policy relates to the level of assets needed to pay for promised benefits. The funding policy of the Plan is [insert a summary statement of the Plan's funding policy].

Once money is contributed to the Plan, the money is invested by plan officials, called fiduciaries, who make specific investments in accordance with the Plan's investment policy. Generally speaking, an investment policy is a written statement that provides the fiduciaries who are responsible for plan investments with guidelines or general instructions concerning investment management decisions. The investment policy of the Plan is [insert a summary statement of the Plan's investment policy].

Under the Plan's investment policy, the Plan's assets were allocated among the following categories of investments, as of the end of the Plan Year. These allocations and the Average Return on Assets for the Plan Year (line 18) are percentages of total assets:

Asset Allocations	Percentage
1. Cash (interest bearing and non-interest bearing)	_____
2. U.S. Government securities	_____
3. Corporate debt instruments (other than employer securities):	
Preferred	_____
All other	_____
4. Corporate stocks (other than employer securities):	
Preferred	_____
Common	_____
5. Partnership/joint venture interests	_____
6. Real estate (other than employer real property)	_____
7. Loans (other than to participants)	_____
8. Participant loans	_____
9. Value of interest in common/collective trusts	_____
10. Value of interest in pooled separate accounts	_____
11. Value of interest in master trust investment accounts	_____
12. Value of interest in 103-12 investment entities	_____
13. Value of interest in registered investment companies (e.g., mutual funds)	_____
14. Value of funds held in insurance co. general account (unallocated contracts)	_____
15. Employer-related investments:	
Employer Securities	_____
Employer real property	_____
16. Buildings and other property used in plan operation	_____
17. Other	_____
18. Average Return on Assets for Plan Year	_____

For information about the plan's investment in any of the following types of investments as described in the chart above - common/collective trusts, pooled separate accounts, master trust investment accounts, or 103-12 investment entities - contact [*insert the name, telephone number, email address or mailing address of the plan administrator or designated representative*].

Events Having a Material Effect on Assets or Liabilities

Federal law requires the plan administrator to provide in this notice a written explanation of events, taking effect in the current plan year, which are expected to have a material effect on plan liabilities or assets. Material effect events are occurrences that tend to have a significant impact on a plan's funding condition. An event is material if it, for example, is expected to increase or decrease Total Plan Assets or Plan Liabilities by five percent or more. For the plan year beginning on [*insert the first day of the current plan year (i.e., the year after the notice year)*] and ending on [*insert the last day of the current plan year*], the following events are expected to have such an effect: [*insert explanation of any plan amendment, scheduled benefit increase or reduction, or other known event taking effect in the current plan year and having a material effect on plan liabilities or assets for the year, as well as a projection to the end of the current plan year of the effect of the amendment, scheduled increase or reduction, or event on plan liabilities*].

Right to Request a Copy of the Annual Report

A pension plan is required to file with the US Department of Labor an annual report called the Form 5500 that contains financial and other information about the plan. Copies of the annual report are available from the US Department of Labor, Employee Benefits Security Administration's Public Disclosure Room at 200 Constitution Avenue, NW, Room N-1513, Washington, DC 20210, or by calling 202.693.8673. For 2009 and subsequent plan years, you may obtain an electronic copy of the

plan's annual report by going to www.efast.dol.gov and using the Form 5500 search function and entering the plan sponsor's Employer Identification Number, which is _____. Or you may obtain a copy of the Plan's annual report by making a written request to the plan administrator. Individual information, such as the amount of your accrued benefit under the plan, is not contained in the annual report. If you are seeking information regarding your benefits under the plan, contact the plan administrator identified below under "Where To Get More Information."

Summary of Rules Governing Termination of Single-Employer Plans

If a plan is terminated, there are specific termination rules that must be followed under federal law. A summary of these rules follows.

There are two ways an employer can terminate its pension plan. First, the employer can end the plan in a "standard termination" but only after showing the PBGC that the plan has enough money to pay all benefits owed to participants. Under a standard termination, the plan must either purchase an annuity from an insurance company (which will provide you with periodic retirement benefits, such as monthly, for life or for a set period of time when you retire) or, if your plan allows, issue one lump-sum payment that covers your entire benefit. Your plan administrator must give you advance notice that identifies the insurance company (or companies) that your employer may select to provide the annuity. The PBGC's guarantee ends when your employer purchases your annuity or gives you the lump-sum payment.

Second, if the plan is not fully-funded, the employer may apply for a distress termination. To do so, however, the employer must be in financial distress and prove to a bankruptcy court or to the PBGC that the employer cannot remain in business unless the plan is terminated. If the application is granted, the PBGC will take over the plan as trustee and pay plan benefits, up to the legal limits, using plan assets and PBGC guarantee funds.

Under certain circumstances, the PBGC may take action on its own to end a pension plan. Most terminations initiated by the PBGC occur when the PBGC determines that plan termination is needed to protect the interests of plan participants or of the PBGC insurance program. The PBGC can do so if, for example, a plan does not have enough money to pay benefits currently due.

Funded Status Based on PBGC Termination Liability

The Chart below shows the Plan's funding status based on the PBGC's measure of the Plan's total Termination Liability for future benefit payments as of the last day of the plan year. PBGC Termination Liability is calculated using the interest rate the PBGC uses to calculate the present value of a plan's future vested benefit obligations. The PBGC calculates termination liability using the PBGC's discount rate, which is based on a periodic survey of insurance industry rates and published on the PBGC website. This typically results in a lower percentage of liabilities funded (line 3). It is an indication of the downside risks of a "distress" plan termination due to bankruptcy or an action by the PBGC to protect plan participants from further deterioration in the Plan's ability to pay future benefit obligations. For purposes of this disclosure, the Valuation Date is the last day of the plan year.

Funded Status Based on PBGC Termination Liability	2010	2011	2012
1 - Total Plan Assets (same as Chart 1, line 2 and last day of plan year)	[insert amount]	[insert amount]	[insert amount]
2 - PBGC Termination Liability (last day of plan year)	[insert amount]	[insert amount]	[insert amount]
3 - Percentage of PBGC Termination Liability Funded (1)/(2)	[insert percentage]	[insert percentage]	[insert percentage]
4 - PBGC Termination Liability Discount Rate (last day of Plan year)	[insert percentage]	[insert percentage]	[insert percentage]

Benefit Payments Guaranteed by the PBGC

When the PBGC takes over a plan, it pays pension benefits through its insurance program. Only benefits that you have earned a right to receive and that cannot be forfeited (called vested benefits) are guaranteed. Most participants and beneficiaries receive all of the pension benefits they would have received under their plan, but some people may lose certain benefits that are not guaranteed.

The amount of benefits that PBGC guarantees is determined as of the plan termination date. However, if a plan terminates during a plan sponsor's bankruptcy and the bankruptcy proceeding began on or after September 16, 2006, then the amount guaranteed is determined as of the date the sponsor entered bankruptcy.

The PBGC maximum benefit guarantee is set by law and is updated each calendar year. For a plan with a termination date or sponsor bankruptcy date, as applicable in *[insert current calendar year]*, the maximum guarantee is *[insert amount from PBGC web site, www.pbgc.gov, applicable for the current calendar year]* per month, or *[insert amount from PBGC web site, www.pbgc.gov, applicable for the current calendar year]* per year, for a benefit paid to a 65-year-old retiree with no survivor benefit. If a plan terminates during a plan sponsor's bankruptcy, and the bankruptcy proceeding began on or after September 16, 2006, the maximum guarantee is fixed as of the calendar year in which the sponsor entered bankruptcy. The maximum guarantee is lower for an individual who begins receiving benefits from PBGC before age 65; the maximum guarantee by age can be found on PBGC's website, www.pbgc.gov. *[If the Plan does not provide for commencement of benefits before age 65, you may omit this sentence.]* The guaranteed amount is also reduced if a benefit will be provided to a survivor of the plan participant.

The PBGC guarantees "basic benefits" earned before a plan is terminated, which includes:

- pension benefits at normal retirement age;
- most early retirement benefits;
- annuity benefits for survivors of plan participants; and

- disability benefits for a disability that occurred before the date the plan terminated or the date the sponsor entered bankruptcy, as applicable.

The PBGC does not guarantee certain types of benefits:

- The PBGC does not guarantee benefits for which you do not have a vested right, 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.
- Benefit increases and new benefits that have been in place for less than one year are not guaranteed. Those that have been in place for less than five 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 generally does not pay lump sums exceeding \$5,000.

In some circumstances, participants and beneficiaries still may receive some benefits that are not guaranteed. This depends on how much money the terminated plan has and how much the PBGC recovers from employers for plan underfunding.

Corporate and Actuarial Information on File with PBGC

A plan sponsor must provide the PBGC with financial information about itself and actuarial information about the plan under certain circumstances, such as when the funding target attainment percentage of the plan (or any other pension plan sponsored by a member of the sponsor's controlled group) falls below 80 percent (other triggers may also apply). The sponsor of the Plan, [enter name of plan sponsor], and members of its controlled group, if any, were subject to this requirement to provide corporate financial information and plan actuarial information to the PBGC. The PBGC uses this information for oversight and monitoring purposes.

Where to Get More Information

For more information about this notice, you may contact [enter name of plan administrator and if applicable, principal administrative officer], at [enter phone number and address and insert email address if appropriate]. For identification purposes, the official plan number is [enter plan number] and the plan sponsor's name and employer identification number or "EIN" is [enter name and EIN of plan sponsor]. For more information about the PBGC, go to PBGC's website, www.pbgc.gov.