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Department of Labor Issues Final Multiemployer Pension Plan Participant Disclosure Regulations

Get ready to warm up your copiers...

Rules just announced by the Department of Labor (DoL) have clarified the requirement added by the Pension Protection Act of 2006 that participants in a Multiemployer pension plan may ask to receive more details about the plan. Under the final regulations, announced on February 26 and effective **April 1, 2010** (30 days after publication in the Federal Register on March 2nd), participants in Multiemployer pension plans (both defined benefit and defined contribution, including annuity plans) will now have greater access to information about the operation and financial health of their plans.

Who can ask for information?

The following people/entities have a right to request the information discussed later in this article:

- 1) Any participant in the plan;
- 2) Any beneficiary receiving benefits under the plan;
- 3) Any labor organization representing participants under the plan;
- 4) Any employer that is a party to the collective bargaining agreement(s) pursuant to which the plan is maintained or who otherwise may be subject to withdrawal liability pursuant to Section 4203 of ERISA.

What can be requested?

The final regulations say that any of the people or entities listed above can request and receive from the plan administrator copies of certain financial and actuarial reports of the plan. The information that can be requested is:

- 1) A copy of any periodic actuarial report (including sensitivity testing) that the plan has had *in its possession* for at least 30 days;
- 2) A copy of any "quarterly, semi-annual, or annual financial report" prepared for the plan by any plan investment manager or advisor or other fiduciary that the plan has had *in its possession* for at least 30 days;
- 3) A copy of any application filed with the Secretary of the Treasury requesting an "amortization extension" for a defined benefit plan and the determination of the Secretary with respect to the application.

The plan administrator has to provide a written response with the requested documents within 30 days from the request, but a plan doesn't have to provide more than one copy of any document during any one 12-month period.

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If the plan administrator receives a request for a document that has not been in the plan's possession for at least 30 days (for example, if someone asks for the 2010 actuarial report, and the plan actuary has yet to provide it to the plan), the plan administrator must notify the requestor within 30 days of the request (a) whether the document exists and (b) the earliest date on which the plan can furnish the document (no later than 30 days after the plan receives the document).

What won't be included in the information provided?

Information that the plan has had for 6 or more years at the time of the request is not subject to these rules, and therefore the plan is not required to provide any such information.

Additionally, any information within a report or application that the plan administrator reasonably determines to be either: (a) individually identifiable information with respect to any plan participant, beneficiary, employee, fiduciary, or contributing employer, or (b) proprietary information regarding the plan, any contributing employer, or entity providing services to the plan. The plan administrator may have to spend some time redacting the information that is either individually identifiable or proprietary in order to comply with participant requests.

An exception to this limitation, though, is for an investment manager, adviser, or other person (other than an employee of the plan) who prepares a "quarterly, semi-annual, or annual financial report." Any such investment manager, adviser, or other person should be identified.

Also, "proprietary information" means trade secrets and other non-public information (such as processes, procedures, formulas, methodologies, techniques or strategies) that, if disclosed by the plan may cause or reasonably increase the risk of financial harm to the plan, a contributing employer or an entity providing services to the plan. The plan administrator may treat information relating to a contributing employer or entity providing services to the plan as other than proprietary if the contributing employer or service provider has not identified such information as proprietary.

A plan administrator has to tell the requestor if any "proprietary information" described above is withheld from a report or application requested.

What is considered a "periodic actuarial report"?

The regulations define "periodic actuarial report" to mean any actuarial report prepared by an actuary of the plan and received by the plan at "regularly scheduled, recurring intervals." So, for example, a plan administrator must provide a requestor with a copy of the actuarial report prepared in connection with the annual valuation.

The rules make it clear that the term "periodic actuarial report" means more than just the annual report the actuary provides. The term includes the following, even if the actuary who provides this information does not label the information a "report."

[Any] study, test (including a sensitivity test), document, analysis or other information (whether or not called a "report") received by the plan from an actuary of the plan that depicts alternative funding scenarios based on a range of alternative actuarial assumptions, whether or not such information is received by the plan at regularly scheduled, recurring intervals.

For example, a plan administrator has to disclose any sensitivity testing that the plan may request occasionally, such as in response to a certification of critical or endangered status.

What if the requested information is not provided?

As with most regulations from DoL, if a plan does not comply with these rules (including meeting the "30 day" requirement), there could be financial penalties against any person of up to \$1,000 a day for each violation of these rules by such person.



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How much will this cost plan sponsors?

It's difficult to estimate the additional cost to an individual plan of providing this information since it will depend heavily upon the number of requests received and the volume of information subject to disclosure for each plan.

DoL has computed that the annual cost of these rules can also be viewed as roughly \$3 for each \$1 million dollars of plan assets for defined benefit plans, and \$10 for each \$1 million dollars of assets in defined contribution plans.

These costs arise from logging in disclosure requests, copying and mailing the reports, and redacting individually identifiable and proprietary information from the reports. The plan administrator may make reasonable charges to participants for providing copies of the requested reports.

It's clear that complying with this rule will be a significant task for pension and annuity plans.

What should plan sponsors do?

Plan sponsors should set up an administrative system to track requests to ensure that they are able to comply with the 30-day response period. They should also make sure that they understand which information received from the plan's actuary, investment advisors, and others may be requested, and should install an administrative process to copy and mail such information.

DoL is not requiring a notice of these new rules be sent to participants, beneficiaries, labor organizations, contributing employer, and so on. However, they have indicated that the plan's "Summary Plan Description" should be amended to reflect these new rules. The DOL intends to update the statutory ERISA rights section for this purpose and has invited suggestions for model language. We recommend that any future SPD updates incorporate this requirement until the DOL issues its new model language.



If you have questions about this information, please call your Savitz consultant.