



Field Assistance Bulletin No. 2013-01

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Memorandum For: Mabel Capolongo, Director of Enforcement
Regional Directors

From: John J. Canary
Director of Regulations and Interpretations

Subject: ERISA's Annual Funding Notice Requirements Following the Moving Ahead for Progress in the 21st Century Act

This memorandum provides guidance to the Employee Benefits Security Administration's national and regional offices on compliance by plan administrators of single-employer defined benefit pension plans with section 40211(b)(2) of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405. This section of MAP-21 amended the annual funding notice requirements of section 101(f) of the Employee Retirement Income Security Act (ERISA) to require additional disclosure of the effect of segment rate stabilization on the funding of single-employer defined benefit plans. This memorandum also includes a supplement to the model annual funding notice that plan administrators of such plans may use to comply with these new requirements.

Background

Section 303 of ERISA and section 430 of the Internal Revenue Code (Code) specify the minimum funding requirements that apply to single-employer defined benefit pension plans. The interest rates generally used to determine the present value of a single-employer defined benefit plan's liabilities are the three segment rates described in section 303(h)(2)(C)(i), (ii), and (iii) of ERISA.¹ The first segment rate for a month is the 24-month average of the yields on the top three tiers of investment grade corporate bonds maturing within five years. The second segment rate is the 24-month average of yields on such investment grade bonds maturing in years six through 20. The third segment rate is the 24-month average of yields on such investment grade bonds maturing after year 20. Section 40211(b)(1) of MAP-21 amended section 303(h)(2)(C) of ERISA by adding a new subclause (iv) to adjust the segment rates in section 303(h)(2)(C)(i)-(iii) as

¹ The parallel Code provision is section 430(h)(2)(C)(i), (ii) and (iii).

necessary to fall within a specified range, based on a 25-year average of the corresponding segment rates.²

Section 101(f) of ERISA sets forth the requirements for plan administrators of defined benefit plans to which title IV applies (both multiemployer and single-employer plans) to furnish annual funding notices to plan participants and beneficiaries, among other recipients. Section 40211(b)(2)(A) of MAP-21 amended section 101(f)(2) of ERISA by adding a new subparagraph (D). New section 101(f)(2)(D) of ERISA requires plan administrators of single-employer defined benefit plans to disclose additional information in the annual funding notice for a plan year beginning after December 31, 2011, and before January 1, 2015, if such plan year is an “applicable plan year” within the meaning of section 101(f)(2)(D)(ii).³ The additional disclosures relate to the effect of the new ERISA section 303(h)(2)(C)(iv) segment rate stabilization rules on plan liabilities and the plan sponsor’s minimum required contributions to the plan. Unless otherwise stated in this memorandum, references to the “MAP-21 segment rates” mean the segment rates determined in accordance with section 303(h)(2)(C)(iv) and references to the phrase “without regard to the MAP-21 segment rates” mean the segment rates determined in accordance with section 303(h)(2)(C)(i) through (iii) as if MAP-21 had not been enacted. The annual funding notices of multiemployer plans are not subject to the MAP-21 disclosure requirements.

Section 40211(b)(2)(B) of MAP-21 requires the Department to modify the model annual funding notice required under section 501(c) of the Pension Protection Act of 2006 (PPA), Pub. L. 109-280, 120 Stat. 780, to prominently include the supplemental information under new section 101(f)(2)(D) of ERISA. Unless otherwise stated, references in this memorandum to the “model annual funding notice” are to the single-employer model notices in Appendix A to Field Assistance Bulletin 2009-01⁴ or Appendix A to proposed regulation 29 CFR 2520.101-5⁵ or both.

Good Faith Compliance

Pending further guidance, the Department, as a matter of enforcement policy, will treat a plan administrator of a single-employer defined benefit plan as satisfying section 101(f)(2)(D) of ERISA if the plan administrator has complied with the guidance in this memorandum and has acted in accordance with a good faith, reasonable interpretation of section 101(f)(2)(D) with respect to matters not specifically addressed in this memorandum. In the case of a plan administrator who furnished the section 101(f)(2)(D) information before the issuance of this memorandum, the Department will treat the administrator as satisfying section 101(f)(2)(D) if he or she acted in accordance with a good faith, reasonable interpretation of that section.

² Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713) and section 3002(c) of ERISA, the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in section 303 of ERISA, as well as section 430 of the Code. For a detailed explanation of how section 40211 of MAP-21 affects the minimum funding rules of section 303 of ERISA and section 430 of the Code, see IRS Notice 2012-61, 2012-42 I.R.B. 479.

³ See Q&A 3.

⁴ FAB 2009-01 can be found at <http://www.dol.gov/ebsa/regs/fab2009-1.html>.

⁵ 75 FR 70625, 70641-70647.

Model MAP-21 Supplement to Annual Funding Notice

The appendix to this memorandum contains a model supplement (the “MAP-21 Supplement”) to the single-employer defined benefit plan model annual funding notice. Use of the MAP-21 Supplement is not mandatory; plan administrators may use other notice forms to satisfy the MAP-21 content requirements. However, pending further guidance, use of an appropriately completed MAP-21 Supplement, together with the model annual funding notice, will, as a matter of Department enforcement policy, satisfy the content requirements of section 101(f)(2) of ERISA.

Questions and Answers

General

Q1: Are all ERISA-covered defined benefit pension plans subject to the new MAP-21 annual funding notice requirements?

A1: No. The MAP-21 annual funding notice requirements only apply to single-employer defined benefit plans subject to both titles I and IV of ERISA where the plan year is an “applicable plan year” within the meaning of section 101(f)(2)(D)(ii) of ERISA. See Q&A 3 for the definition of “applicable plan year.” See also Q&As 8, 9 and 10 for information about situations where the MAP-21 requirements of section 101(f)(2)(D) do not apply.

Q2: When must plans first comply with the MAP-21 annual funding notice requirements?

A2: The new MAP-21 requirements generally apply to plan years beginning after December 31, 2011. The first annual funding notices to include the MAP-21 disclosures will be the annual funding notices for the 2012 plan year for calendar year plans (other than small plans described in section 303(g)(2)(B) of ERISA) due no later than April 30, 2013, (120 days after the close of the 2012 plan year).

Coverage Requirements – Applicable Plan Year; Exceptions to Coverage

Q3: What is an “applicable plan year?”

A3: Section 101(f)(2)(D)(ii) of ERISA defines an “applicable plan year” as any plan year beginning after December 31, 2011, and before January 1, 2015, for which the plan meets the following requirements in subclauses (I), (II), and (III) of that section:

- The funding target (as defined in section 303(d)(2) of ERISA) is less than 95% of the funding target determined without regard to the MAP-21 segment rates (Q&A 4 describes how this 95% test works);
- The plan's funding shortfall (as defined in section 303(c)(4) of ERISA) determined without regard to the MAP-21 segment rates is greater than \$500,000 (Q&As 5 and 6 describe how the funding shortfall is calculated for this purpose); and
- The plan had 50 or more participants on any day during the preceding plan year (Q&A 7 explains how participants are counted for this purpose).

A plan year beginning on or after January 1, 2015, is not an applicable plan year and the additional MAP-21 disclosures are not required, even if the plan year otherwise meets the conditions of section 101(f)(2)(D)(ii)(I) through (III).

Q4: Section 101(f)(2)(D)(ii)(I) of ERISA states that for a plan year to be an applicable plan year, “the funding target (as defined in section 303(d)(2)) is less than 95 percent of such funding target determined without regard to section 303(h)(2)(C)(iv).” How does this 95% test work?

A4: If the ratio of the funding target determined using the MAP-21 segment rates (i.e., the numerator) over the funding target determined without regard to the MAP-21 segment rates (i.e., the denominator) is 95% or greater, the plan year is not an applicable plan year and the additional MAP-21 disclosures to the annual funding notice are not required. If this ratio is less than 95% and the other conditions described in Q&A 3 (i.e., the funding shortfall test and minimum number of participants test) are met, the plan year is an applicable plan year and the additional MAP-21 disclosures are required.

The funding target determined using the MAP-21 segment rates (the numerator of the ratio) is the same amount disclosed on Line 3 (Plan Liabilities) of the Funding Target Attainment Percentage Chart (FTAP Chart) of the single-employer defined benefit plan model annual funding notice. The funding target determined without regard to the MAP-21 segment rates (i.e., the denominator of the ratio) is the funding target that would have been reported as Plan Liabilities on Line 3 of such chart if MAP-21 had not been enacted.

Section 303(d)(2)(B) of ERISA states that for purposes of determining the plan's funding target attainment percentage (FTAP), the funding target is determined without regard to the “at-risk” rules in section 303(i) of ERISA. Therefore, for purposes of the 95% test, the funding targets for both the numerator and the denominator are determined without regard to the at-risk rules in section 303(i), even if the plan is in at-risk status.

The following example illustrates the 95% test:

Example Q&A 4: As of Plan A's January 1, 2014, valuation date, the plan's funding target, based on the MAP-21 segment rates in section 303(h)(2)(C)(iv) of ERISA, is \$6,000,000. The funding target determined without regard to the MAP-21 segment rates is \$7,000,000. Since the funding target determined using the MAP-21 segment rates is 85.71 % ($\$6,000,000 \div \$7,000,000$) of the funding target determined without regard to the MAP-21 rates, the plan meets the condition of section 101(f)(2)(D)(ii)(I). In this example, Plan A's 2014 plan year will be an applicable plan year if the plan also meets the other two conditions described in Q&A 3 (i.e., the funding shortfall test and minimum number of participants test).

Q5: Section 101(f)(2)(D)(ii)(II) of ERISA states that for a plan year to be an applicable plan year, the plan must have "a funding shortfall (as defined in section 303(c)(4) and determined without regard to section 303(h)(2)(C)(iv)) greater than \$500,000." How does this funding shortfall test work?

A5: Section 303(c)(4) of ERISA defines the funding shortfall as the excess of the funding target over the value of plan assets reduced by any prefunding balance and/or funding standard carryover balance in accordance with section 303(f)(4)(B) of ERISA. For purposes of the funding shortfall calculation under section 101(f)(2)(D)(i)(II), the funding target is determined without regard to the MAP-21 segment rates.

While the funding target determined under section 303(c)(4) of ERISA is subject to the at-risk rules of section 303(i) of ERISA, if the plan is not in at-risk status for funding purposes (i.e., using MAP-21 segment rates), the plan administrator may determine the funding target without regard to the at-risk rules to calculate the funding shortfall. However, if the plan is in at-risk status for funding purposes, the plan administrator must determine the funding target using the additional at-risk assumptions in section 303(i) to calculate the funding shortfall.

See Q&A 6 for additional information on how to calculate the value of plan assets to determine the funding shortfall.

The following example illustrates:

Example Q&A 5: If the January 1, 2014, net value of Plan A's assets in Example Q&A 4 is \$5 million after reduction by any prefunding balance and/or funding standard carryover balance, the plan's funding shortfall determined without regard to the MAP-21 segment rates would be \$2 million (\$7 million funding target determined without regard to MAP-21 segment rates - \$5 million of net assets). Since the funding shortfall of \$2 million determined without regard to the MAP-21 segment rates is greater than \$500,000, the plan meets the condition of section 101(f)(2)(D)(ii)(II). In this example, Plan A's 2014 plan year will be an applicable plan year if the plan also meets the other two conditions described in Q&A 3 (i.e., the 95% test and minimum number of participants test).

Q6: In calculating the funding shortfall under section 101(f)(2)(D)(ii)(II) of ERISA, may the plan administrator use the same value of plan assets used to determine the actual funding shortfall under section 303(c)(4) of ERISA?

A6: Yes, in certain circumstances. The plan administrator may use the value of plan assets determined for funding purposes under section 303 of ERISA (i.e., using the MAP-21 segment rates) to determine if the funding shortfall is greater than \$500,000 under section 101(f)(2)(D)(ii)(II), provided that the plan is not required to determine the value of plan assets without regard to the MAP-21 segment rates for some other purpose.⁶ For example, if a plan is required to report information to the PBGC under section 4010 of ERISA, the assets used to determine the FTAP reported under section 4010 are based on segment rates, unadjusted by MAP-21.⁷ For such a plan, the asset value used to determine the funding shortfall for purposes of section 101(f)(2)(D)(ii)(II) is the asset value underlying the FTAP calculation reported in the section 4010 filing, not the asset value used to determine the actual funding shortfall under section 303(c)(4) of ERISA.

In determining the prefunding and funding standard carryover balances used to calculate the net value of plan assets, the plan administrator must apply the guidance set out in Q&A 15.

Q7: Section 101(f)(2)(D)(ii)(III) states that for a plan year to be an applicable plan year, the plan must have “had 50 or more participants on any day during the preceding plan year.” For purposes of determining the number of participants, “the aggregation rule under the last sentence of section 303(g)(2)(B) shall apply.” How does the plan administrator apply the aggregation rule to determine the number of participants?

A7: The last sentence of section 303(g)(2)(B) of ERISA states that all single-employer plans that “are maintained by the same employer (or any member of such employer’s controlled group) shall be treated as one plan, but only participants with respect to such employer or member shall be taken into account.”⁸ The following example illustrates the application of this rule:

Example Q&A7: Corporation A maintains Plan X, a defined benefit plan. Corporation B maintains Plan Y, a defined benefit plan. Corporation A and B are 100% owned by Doctor M. Since Doctor M owns 80% or more of the stock of corporations A and B, they are members of the same controlled group. The largest combined total of participants in Plans X and Y on any one day in 2013 was 70 (40 in Plan X and 30 in Plan Y). Plans X and Y are treated for purposes of section

⁶ For purposes of determining the value of plan assets without regard to MAP-21: (1) interest adjustments for contribution receivables are determined using an effective interest rate that does not reflect the MAP-21 segment rates; and (2) if funding is based on the actuarial value of assets under section 303(g)(3)(B) of ERISA, the limit on the assumed rate of return used to calculate expected earnings is the third segment rate, unadjusted by MAP-21. See Q&A NA-3(a) of IRS Notice 2012-61.

⁷ See PBGC Technical Update 12-2 (September 11, 2012), <http://www.pbgc.gov/res/other-guidance/tu/tu12-2.html> and Q&A NA-3 of IRS Notice 2012-61.

⁸ See also 26 CFR 1.430(g)-1(b)(2).

101(f)(2)(D)(ii)(III) as one plan with a total of 70 participants even though each plan had less than 50 participants. In this example, the 2014 plan year will be an applicable plan year for Plan X or Y if the other two conditions described in Q&A 3 (i.e., the 95% test and the funding shortfall test), as applied separately for each Plan, also are met.

Q8: Section 40211(c)(2)(A) of MAP-21 allows a plan sponsor to elect out of using the MAP-21 segment rates and the new annual funding notice disclosures in section 101(f)(2)(D) of ERISA for plan years beginning before January 1, 2013. May the plan sponsor elect out of the MAP-21 disclosures for the 2012 plan year but still use the MAP-21 segment rates for funding purposes in 2012?

A8: No. Section 40211(c)(2)(A) of MAP-21 permits the plan sponsor to elect out of using the MAP-21 segment rates for the 2012 plan year either for all purposes or solely for the purpose of determining the adjusted funding target attainment percentage used to trigger the restrictions and limitations imposed by sections 436 of the Code and 206(g) of ERISA. If, for the 2012 plan year, the plan sponsor elects out of using the MAP-21 segment rates for all purposes prior to the due date of the annual funding notice, the plan administrator is not required to include the MAP-21 disclosures of section 101(f)(2)(D) in the annual funding notice for the 2012 plan year. However, if the plan sponsor elects out of the MAP-21 segment rates solely for purposes of applying the benefit restrictions and limitations of Code section 436 and section 206(g) of ERISA, the plan administrator is required to include the MAP-21 disclosures in the annual funding notice for the 2012 plan year if the three conditions outlined in Q&A 3 are met.

Q9: If a plan sponsor elected under section 303(h)(2)(D)(ii) of ERISA (section 430(h)(2)(D)(ii) of the Code) to use the full corporate bond yield curve to determine the minimum required contribution to the plan, is the plan subject to the MAP-21 annual funding notice disclosure requirements in section 101(f)(2)(D) of ERISA?

A9: No. Section 303(h)(2)(C)(iv) of ERISA adjusts only the segment rates described in section 303(h)(2)(C)(i), (ii) and (iii) of ERISA. If the plan sponsor has made an election under section 303(h)(2)(D)(ii), the funding target is determined on a spot basis using the full yield curve without regard to section 303(h)(2)(C)(i), (ii) or (iii). Since 303(h)(2)(C)(iv) does not adjust the full yield curve under section 303(h)(2)(D)(ii), the funding target is determined without regard to the MAP-21 segment rates. The plan administrator of a plan whose plan sponsor made a section 303(h)(2)(D)(ii) election for the plan year is not required to include the MAP-21 disclosures in the annual funding notice for that plan year.

Q10: Does the plan administrator of a plan for which the effective date of the funding rules under the Pension Protection Act of 2006 (PPA) is delayed in accordance with sections 104 and 105 of the PPA, as amended, have to include the MAP-21 disclosures in the annual funding notice?

A10: No. Section 104 of the PPA delayed the application of the PPA funding rules to plans of eligible cooperatives and eligible charities until the earlier of the plan year the plan ceases to be

an eligible cooperative or eligible charity plan or the first plan year beginning on or after January 1, 2017.⁹ Section 105 of the PPA delayed the application of the PPA funding rules for certain PBGC settlement plans until the first plan year beginning on or after January 1, 2014. Sections 104(b) and 105(b) of the PPA require such plans to use the third segment rate determined under section 303(h)(2)(C)(iii) of ERISA (section 430(h)(2)(C)(iii) of the Code) to calculate current liability under section 302(b)(5)(B) of ERISA (section 412(b)(5)(B) of the Code), as in effect prior to the enactment of the PPA. IRS Notice 2012-61, Q&A G-2(a)(3), provides that for purposes of the minimum required contribution requirements in section 412 of the Code and section 302 of ERISA (as in effect prior to the PPA), current liability is determined reflecting the MAP-21 adjustments to the third segment rate in accordance with section 430(h)(2)(C)(iv) of the Code.¹⁰

The purpose of the table required by section 101(f)(2)(D)(i)(III) of ERISA is to illustrate how the MAP-21 segment rates affect the plan's FTAP, funding shortfall and the minimum required contribution. A change in current liability under sections 305(b)(5)(B) of ERISA and 412(b)(5)(B) of the Code (as in effect prior to the of enactment of the PPA) arising from the use of the MAP-21 third segment rate has no relationship to the difference between the FTAP (or funding shortfall) determined with and without regard to the MAP-21 segment rates. In addition, a change in current liability due to the MAP-21 third segment rate may not have any impact on the minimum required contribution of a delayed effective date plan.

Therefore, the Department will not require the plan administrator of a plan with a delayed effective date under section 104 or 105 of the PPA to include the MAP-21 disclosures in the plan's annual funding notice. Nothing in the answer to this Q&A 10 should be interpreted as excusing the plan administrator of a plan with a delayed effective date under section 104 or 105 of the PPA from furnishing an annual funding notice in accordance with section 101(f) without regard to the MAP-21 requirements of paragraph (D) of section 101(f)(2) of ERISA. See guidance provided in Q&A 17 of Field Assistance Bulletin 2009-01.

Content Requirements

Q11: Section 101(f)(2)(D)(i)(I) of ERISA states that the annual funding notice for an applicable plan year must include a statement that "MAP-21 modified the method for determining the interest rates used to determine the actuarial value of benefits earned under the plan, providing for a 25-year average of interest rates to be taken into account in addition to a 2-year average." May the statement also describe or include the "effective interest rates" within the meaning of section 303(h)(2)(A) of ERISA that result from the use of the 25-year and 2-year average interest rates?

⁹ Section 202(b) of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, Pub. L. 111-192, 124 Stat. 1281, amended section 104 of the PPA, by expanding the group of plans eligible for a delayed effective date under section 104 to include eligible charity plans.

¹⁰ The parallel provision of ERISA is section 303(h)(2)(C)(iv).

A11: While there is no statutory requirement in section 101(f)(2)(D) to describe or include the interest rates in the MAP-21 disclosures, a plan administrator may include such information to the extent it is necessary or helpful to understanding such disclosures and does not have the effect of misleading or misinforming participants. See Q&A 13 of Field Assistance Bulletin 2009-01.

Q12: Section 101(f)(2)(D)(i)(II) of ERISA states that the annual funding notice for an applicable plan year must include a statement that “as a result of the MAP-21, the plan sponsor may contribute less money to the plan when interest rates are at historical lows.” Must the plan administrator include this statement if, prior to the due date of the annual funding notice for the applicable plan year, the plan sponsor contributes an amount equal to or greater than the minimum required contribution determined without regard to the MAP-21 segment rates?

A12: Yes. A plan administrator must include the statement described in section 101(f)(2)(D)(i)(II) whether or not the plan sponsor has contributed more than the minimum required contribution. A plan administrator who includes the MAP-21 Supplement in the model annual funding notice will be treated as complying with section 101(f)(2)(D)(i)(II) of ERISA.

Q13: Section 101(f)(2)(D)(i)(III) of ERISA states that the annual funding notice for an applicable plan year must include a “table which shows (determined both with and without regard to section 303(h)(2)(C)(iv)) the funding target attainment percentage (as defined in section 303(d)(2)), the funding shortfall (as defined in section 303(c)(4)) and the minimum required contribution (as determined under section 303), for the applicable plan year and each of the 2 preceding plan years.” How should the plan administrator calculate the entries for the table required by section 101(f)(2)(D)(i)(III) of ERISA?

A13: (a) Entries determined “With MAP-21 Interest Rates.” The FTAP, funding shortfall and minimum required contribution (MRC) determined “with regard to section 303(h)(2)(C)(iv)” of ERISA are based on the MAP-21 segment rates used for funding. For purposes of determining the “With MAP-21 Interest Rates” entries of the table in the MAP-21 Supplement:

- FTAP: The FTAP entry is the same as the FTAP entry in Line 5 of the FTAP Chart in the model annual funding notice. Section 303(d)(2)(B)(2) of ERISA states that the funding target used to calculate the FTAP is determined without regard to the at-risk rules of section 303(i) of ERISA. Accordingly, the FTAP entry is determined without regard to the at-risk rules.
- Funding shortfall: If the plan is not in at-risk status within the meaning of section 303(i) of ERISA, the funding shortfall is the excess of the Plan Liabilities on Line 3 of the FTAP Chart in the model annual funding notice over Net Plan Assets from Line 2.d. of that chart. If the plan is in at-risk status, the funding shortfall is the excess of the At-Risk Liabilities on Line 4 of the FTAP Chart over the Net Plan Assets from Line 2.d. of that chart.

- MRC: The MRC entry is the minimum required contribution calculated by the plan's actuary for funding purposes taking into account the at-risk rules of section 303(i) of ERISA, if applicable.

(b) Entries determined "Without MAP-21 Interest Rates." The FTAP, funding shortfall and MRC determined "without regard to section 303(h)(2)(C)(iv)" of ERISA are based on the "24 month segment rates determined without regard to adjustment for the 25-year average segment rates" published by the Internal Revenue Service for the applicable month (within the meaning of sections 303(h)(2)(E) of ERISA and 430(h)(2)(E) of the Code) used by the plan for valuation purposes. For purposes of determining the "Without MAP-21 Interest Rates" entries of the table in the MAP-21 Supplement:

- FTAP: The FTAP entry is a percentage equal to the funding target in the denominator of the 95% test of section 101(f)(2)(D)(ii)(I) of ERISA and described in Q&A 4, divided by the net value of plan assets on the valuation date. For the reasons stated in subparagraph (a) of this Q&A, the FTAP entry is determined without regard to the at-risk rules of section 303(i) of ERISA.
- Funding shortfall: The funding shortfall entry is the excess of the funding target, determined under section 303(c)(4) of ERISA without regard to the MAP-21 segment rates, over the net value of plan assets on the valuation date. The funding target used to determine the funding shortfall entry is the same funding target calculated by the plan's actuary to determine the MRC entry below.¹¹ See Q&A 17 for more information on how the at-risk rules of section 303(i) affect the funding shortfall entry.
- MRC: The MRC entry is a hypothetical minimum required contribution determined in accordance with the rules of section 303 of ERISA and section 430 of the Code. The segment rates determined without regard to MAP-21 are used to calculate various components of the hypothetical minimum required contribution (e.g., target normal cost, funding target, present value of remaining shortfall and waiver amortization installments, and the current year's shortfall and waiver amortization installment). This hypothetical minimum required contribution is determined on a standalone basis and does not require a hypothetical redetermination of prior year activity (e.g., previously established amortization bases do not have to be redetermined). See Q&As 16 and 17 for more information on the determination of short term amortization bases and the application of the at-risk rules, respectively, for purposes of determining the MRC entry.
- Net value of plan assets: The net value of plan assets used to determine the FTAP, funding shortfall, and MRC entries is determined in accordance with Q&As 14 and 15.

¹¹ The funding target used to determine the "Without MAP-21 Interest Rates" funding shortfall is the same funding target used in the funding shortfall test of section 101(f)(2)(D)(ii)(II) of ERISA described in Q&A 5.

(c) If the plan administrator does not use the MAP-21 Supplement, the FTAP, funding shortfall, and MRC entries in the table required by section 101(f)(2)(D)(i)(III) of ERISA should be the same as the corresponding FTAP, funding shortfall, and MRC entries in the MAP-21 Supplement.

Q14: In calculating the FTAP, funding shortfall and MRC without regard to the MAP-21 segment rates in section 303(h)(2)(C)(iv) of ERISA, may the plan administrator use the same value of plan assets used to determine the FTAP, funding shortfall, and MRC for funding purposes (i.e., taking into account the MAP-21 segment rates)?

A14: Yes. For the reasons articulated in Q&A 6, the Department determined that the plan administrator may use the net value of plan assets used for funding purposes to determine the FTAP, funding shortfall, and MRC entries (determined without regard to the MAP-21 segment rates) for the table required by section 101(f)(2)(D)(i)(III), unless the value of plan assets is determined without regard to the MAP-21 segment rates for some other purpose. If the value of plan assets is determined using the MAP-21 segment rates, the Net Plan Assets from Line 2.d. of the FTAP Chart of the model annual funding notice should be used to determine the FTAP, funding shortfall, and MRC entries for the table in the MAP-21 Supplement.

If the value of plan assets is determined without regard to the MAP-21 segment rates, the MAP-21 disclosures must include a statement setting forth the value of plan assets determined on that basis along with an explanation of how it differs from the value of plan assets used for funding purposes. If the plan administrator is using the MAP-21 Supplement, the statement must explain how the value of plan assets, determined without regard to MAP-21, differs from Total Plan Assets in Line 2.a. of the FTAP Chart in the model annual funding notice.

Q15: The value of plan assets used to determine the FTAP, funding shortfall and MRC are reduced by the prefunding balance, or the funding standard carryover balance or both (collectively "credit balances") in accordance with sections 303(f)(4) of ERISA and 430(f)(4) of the Code. In calculating the FTAP, funding shortfall and MRC without regard to the MAP-21 segment rates in section 303(h)(2)(C)(iv) of ERISA, should the plan administrator use the same credit balances used to determine the FTAP, funding shortfall and MRC for funding purposes (i.e., taking into account the MAP-21 segment rates)?

A15: Yes. The amount of a credit balance depends upon voluntary and deemed elections made by the plan sponsor. IRS Notice 2012-61, Q&A NA-3(c), states that it would be "complex to determine what these balances would have been had MAP-21 not been enacted." Further, Q&A NA-3(c) states that the actual credit balances "must be used for measurements in which the assets are determined by subtracting the funding balances, even if the MAP-21 segment rates are not otherwise used for that measurement." The Department concurs with this assessment for purposes of applying the rules and requirements of section 101(f)(2)(D). Accordingly, the credit balances used to determine the net value of plan assets for funding purposes must be used to determine the entries in the table required by section 101(f)(2)(D)(i)(III) of ERISA and to

determine if the plan year is an applicable plan year under the funding shortfall test of section 101(f)(2)(D)(ii)(II) of ERISA (see Q&A 6).

Q16: How are the previously established shortfall amortization bases in plan years 2012 and 2013 used to determine the MRC without regard to the MAP-21 segment rates in section 303(h)(2)(C)(iv) for the 2013 and 2014 applicable plan years?

A16: Under section 303(a)(1) of ERISA, the MRC is the sum of the target normal cost and any funding shortfall and waiver amortization charges. The shortfall amortization charge is the total of the shortfall installments with respect to the shortfall amortization base for the current plan year and the preceding six years. Generally, a shortfall installment is the amount needed to amortize the shortfall amortization base over seven years. The shortfall amortization base established for the current plan year is equal to the funding shortfall minus the present value of the future shortfall and waiver installments associated with the previously established amortization bases.

The previously established shortfall amortization bases actually used for funding should be used to calculate the hypothetical MRC determined without regard to the MAP-21 segment rates. However, the shortfall installment for the current applicable plan year must be derived from a hypothetical shortfall amortization base determined without regard to the MAP-21 segment rates, taking into account the at-risk guidance of Q&A 17. The following example illustrates:

Example Q&A 16: The 2012 and 2013 plan years of Plan Z are applicable plan years, and Plan Z has never had any waiver amortization bases. For purposes of calculating the MRC disclosure, determined without regard to the MAP-21 segment rates, for the 2013 applicable plan year, the shortfall amortization charge would be the sum of:

- (1) the actual shortfall installments for 2008¹² through 2011 derived from the shortfall amortization bases determined under the pre-MAP-21 rules;
- (2) the actual 2012 shortfall installment derived from the actual 2012 shortfall amortization base determined using the MAP-21 segment rates; and
- (3) the hypothetical 2013 shortfall installment derived from a hypothetical 2013 shortfall amortization base, determined by subtracting the present value of the actual future shortfall installments for shortfall amortization bases established for years 2008 through 2012 from the hypothetical 2013 funding shortfall determined without regard to the MAP-21 segment rates, as described in Q&A 13(b). The interest rates used to calculate the present value of the actual future shortfall installments are the 2013 segment rates determined without regard to the MAP-21 segment rates.

¹² Even though 2007 is the 6th preceding plan year, there is no shortfall amortization base for 2007, because PPA was not effective until the 2008 plan year.

Q17: When should the at-risk rules of section 303(i) of ERISA be used to determine the “without regard to section 303(h)(2)(C)(iv)” entries for the table required by section 101(f)(2)(D)(i)(III) of ERISA?

A17: (a) FTAP. The at-risk rules of section 303(i) of ERISA are not used to determine the FTAP entries for the table required by section 101(f)(2)(D)(i)(III) of ERISA. See Q&A 13.

(b) Funding Shortfall and MRC. As stated in Q&A 5, the Department believes that the administrative burden and cost of a hypothetical at-risk actuarial valuation is substantial. Therefore, if the plan is not in at-risk status for the applicable plan year under section 303(i) of ERISA for funding purposes (i.e., using MAP-21 segment rates), the funding shortfall and MRC entries, determined without regard to the MAP-21 segment rates, do not have to be calculated on an at-risk basis even if the plan would have been in at-risk status based on a hypothetical preceding plan year funding target determined without regard to the MAP-21 segment rates. However, if the plan is in at-risk status under section 303(i) for an applicable plan year for funding purposes, the funding shortfall and MRC entries, determined without regard to the MAP-21 segment rates, must be calculated using the additional at-risk assumptions in section 303(i).

Example Q&A 17: In 2013, Plan R’s actual FTAP was below 80% but the FTAP using at-risk assumptions and the MAP-21 segment rates was above the 70% threshold of section 303(i)(4)(A)(ii) of ERISA.¹³ This results in Plan R not being in at-risk status for 2014. However, a hypothetical 2013 funding target, using at-risk assumptions but determined without regard to the MAP-21 segment rates, would have been below the 70% threshold of section 303(i)(4)(A)(ii) of ERISA. The “without regard to MAP-21 segment rates” disclosures for the 2014 applicable plan year do not have to be determined on an at-risk basis. However, if instead Plan R was in at-risk status in 2014 for funding purposes, the “without regard to MAP-21 segment rates” disclosures for 2014 would have to be determined on an at-risk basis.

Q18: The table mandated by section 101(f)(2)(D)(i)(III) of ERISA requires disclosure of the FTAP, funding shortfall, and MRC not only for the applicable plan year but also for the two plan years preceding that year. Thus, for example, the MAP-21 Supplement for the 2012 applicable plan year must include information pertaining to the 2011 and 2010 plan years (both pre-MAP-21 years). What information for these pre-MAP-21 years should the plan administrator include in its MAP-21 Supplement?

A18: Section 101(f)(2)(D)(iii) of ERISA states that “[i]n the case of a preceding plan year referred to in clause (i)(III) which begins prior to January 1, 2012, the information described in such clause shall be provided only without regard to section 303(h)(2)(C)(iv).” Accordingly, for applicable plan years 2012 and 2013, plan administrators using the MAP-21 Supplement should enter the actual FTAP, funding shortfall, and MRC determined under pre-MAP-21 rules in the “Without MAP-21 Interest Rates” cells of the table and insert “Not Applicable” in the “With MAP-21

¹³ The parallel Code provision is section 430(i)(4)(A)(ii).

Interest Rates” cells of the table for the relevant preceding plan year(s) beginning before January 1, 2012.

Q19: If a plan year is an applicable plan year, but the plan was not required to furnish the MAP-21 disclosures in one or both of the two preceding plan years (beginning on or after January 1, 2012), what MAP-21 disclosures should the plan administrator make for such preceding plan year(s)?

A19: (a) Plans using MAP-21 segment rates for funding purposes in preceding plan year(s) beginning on or after January 1, 2012. If the preceding plan year was not an applicable plan year because the plan did not satisfy the three conditions in section 101(f)(2)(D)(ii) of ERISA and described in Q&A 3 (i.e., the 95%, funding shortfall, and minimum number of participants tests), the plan would have no reason to determine a hypothetical MRC without regard to the MAP-21 segment rates.¹⁴ The Department understands that requiring the plan to retroactively calculate a hypothetical MRC could increase significantly the administrative burden and cost of preparing the MAP-21 disclosures. Accordingly, the Department will not require the plan administrator to determine the FTAP, funding shortfall, and MRC without regard to the MAP-21 segment rates for the preceding plan year where such preceding plan year failed to meet one or more of the applicable plan year conditions in section 101(f)(2)(D)(ii) of ERISA and described in Q&A 3.

In preparing entries for the table in the MAP-21 Supplement for such preceding plan year, the plan administrator should complete the “With MAP-21 Interest Rates” cells of the table and enter “Not Applicable” in the “Without MAP-21 Interest Rates” cells.

(b) Plans that did not use MAP-21 segment rates for funding purposes in preceding plan year(s). As discussed in Q&As 8, 9 and 10, a plan is not subject to the new MAP-21 disclosure rules of section 101(f)(2)(D) for a plan year if:

- A full yield curve election under section 303(h)(2)(D)(ii) of ERISA was in effect for the plan year;
- The plan year begins in 2012 and the plan administrator elected under section 40211(c)(2)(A)(i) of MAP-21 to opt out of the MAP-21 rules for all purposes; or
- The funding rules of section 303 of ERISA did not apply to the plan during the plan year because the plan had a delayed effective date under section 104 or 105 of the PPA.

If the preceding plan year was not subject to section 101(f)(2)(D) for one of the above reasons, the plan administrator would not determine the FTAP, funding shortfall, or MRC for such plan year using the MAP-21 segment rates. A retroactive calculation of a hypothetical funding target and MRC for the preceding plan year could increase significantly the administrative burden and cost of preparing the MAP-21 disclosures. Therefore, the Department will not require the plan

¹⁴ Plans with 50 or more participants would have determined a funding target without regard to the MAP-21 segment rates in order to perform the 95% test and funding shortfall test. Plans with less than 50 participants would not have been required to determine a funding target without regard to the MAP-21 segment rates for any purpose.

administrator to determine the FTAP, funding shortfall, and MRC using the MAP-21 segment rates for the preceding plan year where such preceding plan year was not subject to section 101(f)(2)(D) for one of the reasons described in this paragraph (b) of Q&A 19. When using the MAP-21 Supplement, the plan administrator should complete the “Without MAP-21 Interest Rates” cells of the table for such preceding plan year using the FTAP and funding shortfall information (i.e., Plan Liabilities – Net Plan Assets) from the FTAP Chart of the model annual funding notice and the actual MRC for such preceding plan year. “Not Applicable” should be entered in the “With MAP-21 Interest Rates” cells of the table for such preceding plan year.

Q20: The plan administrator uses the model annual funding notice in Field Assistance Bulletin 2009-01. May the administrator attach the MAP-21 Supplement to the front of the model annual funding notice?

A20: The Joint Explanatory Statement of the Committee of the Conference for MAP-21 states that the “Secretary of Labor is directed to modify the model funding notice required so that the model includes the additional information in a prominent manner, for example, on a separate first page before the remainder of the notice.”¹⁵ Accordingly, the plan administrator may attach the MAP-21 Supplement to the front of the model annual funding notice.

Paperwork Reduction Act (PRA)

This memorandum revises the collection of information approved under OMB Control Number 1210-0126, which currently is scheduled to expire on February 29, 2016. The Department is planning to submit a revision to the information collection and intends to publish a notice announcing OMB’s decision upon review of the Department’s submission. The Department notes that a federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the PRA, and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. See 44 U.S.C. § 3507. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. See 44 U.S.C. § 3512.

Based on conversation with industry experts, the Department expects that the calculations necessary to prepare the MAP-21 supplement to the annual funding notice will be performed by third-party service providers, primarily actuaries, at an average cost of \$500 per respondent. The hour burden required to distribute the annual funding notice already has been accounted for and is not impacted by this revision to the information collection. The Department estimates that the 62 percent of plans that mail the annual funding notice will incur an incremental cost of five cents per notice to mail the one-page MAP-21 supplement with the notice.

The Department estimates that approximately 12,000 single-employer defined benefit plans covering 33.5 million participants and beneficiaries are affected by the MAP-21 disclosure

¹⁵ MAP-21 Conference Report to accompany H.R. 4348, House Report 112-557 (June 28, 2012), at 626.

requirements. Therefore, the Department estimates that the aggregate cost burden associated with this revision to the information collection is approximately \$7 million including approximately \$6 million to prepare the MAP-21 supplement (\$500 x 12,000 respondents), and approximately \$1.04 million of additional mailing cost to distribute the supplement (33.5 million notices x \$0.05 x 62% of annual funding notices sent by mail).

For Further Information

Questions concerning the information contained in this memorandum may be directed to Thomas M. Hindmarch or Stephanie Cibinic of the Office of Regulations and Interpretations 202.693.8500 (not a toll free number).

APPENDIX TO FAB 2013-01

**MAP-21 SUPPLEMENT TO ANNUAL FUNDING NOTICE
OF [insert Plan Name] (PLAN) FOR
PLAN YEAR BEGINNING [Insert Date] AND ENDING [Insert Date] (Plan Year)**

This is a temporary supplement to your annual funding notice. It is required by a new federal law named Moving Ahead for Progress in the 21st Century Act (MAP-21). MAP-21 changed how pension plans calculate their liabilities. The purpose of this supplement is to show you the effect of these changes. Prior to MAP-21, pension plans determined their liabilities using a two-year average of interest rates. Now pension plans also must take into account a 25-year average of interest rates. This means that MAP-21 interest rates likely will be higher and plan liabilities lower than they were under prior law. As a result, your employer may contribute less money to the plan at a time when market interest rates are at or near historical lows.

The “MAP-21 Information Table” shows how the MAP-21 interest rates affect the Plan’s: (1) Funding Target Attainment Percentage, (2) Funding Shortfall, and (3) Minimum Required Contribution. The funding target attainment percentage of a plan is a measure of how well the plan is funded on a particular date. The funding shortfall of a plan is the amount by which liabilities exceed net plan assets. The minimum required contribution is the amount of money an employer is required by law to contribute to a plan in a given year. The following table shows this information determined with and without the MAP-21 rates to illustrate the effect of MAP-21. The information is provided for the Plan Year and for each of the two preceding plan years, if applicable.

MAP-21 INFORMATION TABLE						
	[Applicable Plan Year]		[1 st year preceding Applicable Plan Year]		[2nd year preceding Applicable Plan Year]	
	With MAP-21 Interest Rates	Without MAP-21 Interest Rates	With MAP-21 Interest Rates	Without MAP-21 Interest Rates	With MAP-21 Interest Rates	Without MAP-21 Interest Rates
Funding Target Attainment Percentage	[Insert %]	[Insert %]	[Insert %]	[Insert %]	[Insert %]	[Insert %]
Funding Shortfall	[Insert \$ amount]	[Insert \$ amount]	[Insert \$ amount]	[Insert \$ amount]	[Insert \$ amount]	[Insert \$ amount]
Minimum Required Contribution	[Insert \$ amount]	[Insert \$ amount]	[Insert \$ amount]	[Insert \$ amount]	[Insert \$ amount]	[Insert \$ amount]

Instructions: Insert Not Applicable in the “With MAP-21 Interest Rates” cells of the relevant preceding year, if (1) the preceding year was 2010 or 2011; (2) a full yield curve election under section 303(h)(2)(D)(ii) was in effect for the preceding year; (3) the preceding year was 2012 and the plan sponsor elected out of MAP-21 for all purposes under section 40211(c)(2)(A)(i) of MAP-21; or (4) the plan was a delayed effective date plan under section 104 or 105 of the PPA in such preceding year.

Insert Not Applicable in the “Without MAP-21 Interest Rates” cells of the relevant preceding year if the MAP-21 segment rates were used for funding purposes in such preceding year but such year was not an applicable plan year within the meaning of section 101(f)(2)(D)(ii).