

Subject: No Material/Non-Substantive Change Request – Annual Funding Notice For Multiemployer Plans Receiving Special Financial Assistance

This memorandum requests a no material/non-substantive change request for the Annual Funding Notice (OMB Control Number 1210-0126), which currently is scheduled to expire on August 31, 2023. As further discussed below, the Department is providing guidance for how multiemployer defined benefit plan administrators can comply with the annual funding notice requirements of section 101(f) of the Employee Retirement Income Security Act (ERISA) in the case of plans that receive special financial assistance (SFA) from the Pension Benefit Guaranty Corporation (PBGC) under the American Rescue Plan Act of 2021 (ARP), Pub. L. 117-2. The underlying collection is not being changed.

Background

Section 9704 of ARP added new section 4262 titled “Special financial assistance by the corporation” to ERISA.¹ Section 4262 creates a program to enhance retirement security for millions of Americans by providing SFA to financially troubled multiemployer plans. The SFA program is expected to assist about 200 financially troubled plans. Thirty-five plans received SFA in 2022 covering several hundred thousand participants entitled to an AFN. Effective July 9, 2021, PBGC issued an interim final rule setting forth the requirements for SFA applications and related restrictions and conditions.² Following review of public comments on the interim final rule, PBGC issued a final rule under 29 CFR Part 4262 on July 8, 2022.³

Section 9704 of ARP also added new sections 432(b)(7) and 432(k) to the Internal Revenue Code (Code) which address how a plan’s receipt of SFA will affect the application of the Code’s funding rules.

The plan’s receipt of SFA, the conditions and restrictions imposed by section 4262, and the new funding rules applicable to plans that receive SFA, will affect the disclosures on the annual funding notice required by section 101(f) of ERISA. The Department intends to issue a Field Assistance Bulletin (SFA FAB) to provide guidance to plan administrators responsible for preparing annual funding notices for multiemployer plans that receive SFA.

Overview of Requested Changes

The SFA FAB provides guidance on how to apply the annual funding notice disclosure requirements of 29 CFR 2520.101-5 to a multiemployer plan that receives SFA and suggests alternative model language for some of the affected disclosures. The SFA FAB contains eleven Questions and Answers (Q&A) which are briefly described below:

¹ 29 USC 1432.

² 86 FR 36598 (July 12, 2021).

³ 87 FR 40968.

- Q&A 1 addresses the impact of the plan’s receipt of SFA on the funded percentage and the actuarial value of assets disclosures of the annual funding notice. As a result of the changes to the funding rules made by ARP, the SFA account (SFA adjusted for earnings, expenses, and distributions) is excluded from the assets used to determine the funded percentage and actuarial value of assets.⁴ The Q&A provides model language that plan administrators may (but are not required to) use if they want to illustrate what the funded percentage and actuarial value of assets would be if SFA was included in the asset values used to determine those disclosures.
- Q&A 2 clarifies that the required year-end fair market value of asset disclosure includes the SFA account and provides model language to that effect.
- Q&As 3 through 5 recognize that receipt of SFA is material effect event and provide guidance as to timing and the content of the disclosure.
- Q&A 6 addresses new Code section 432(b)(7) which deems a plan that receives SFA to be in “critical status” through 2051. The Q&A provides alternative model language.
- Q&A 7 provides guidance on how a plan should address SFA in the annual funding notice’s general description of the plan’s investment policy.
- Q&A 8 provides that the statement setting out the plan’s allocation of investments should state whether total investments include funds in the SFA account without separately identifying which investments are held in the SFA account.
- Q&A 9 clarifies that a plan which receives SFA must continue to include the required summary of the rules governing insolvency even though it is unlikely that the plan would become insolvent prior to 2052.
- Q&A 10 provides that an insolvent plan eligible for SFA may voluntarily add additional language to the summary of the rules governing insolvency to advise participants that the plan is eligible for SFA.
- Q&A 11 encourages (but does not require) a plan to include a statement in the annual funding notice that the plan may not suspend benefits in the future under the Multiemployer Pension Reform Act of 2014.

The SFA FAB does not change the underlying collection and does not materially affect the hour or cost burden associated with the annual information collection.

Time Sensitivities

An immediate approval is requested with no change in the approved expiration date. The filing deadline for calendar year plans that received SFA in 2022 is April 30, 2023. This guidance is intended to help plan administrators prepare the Annual Funding Notice.

⁴ See Code § 432(k)(2)(D)(i).