

Publications

DOL Issues Field Assistance Bulletin on Annual Funding Notices for Multiemployer Plans That Receive Special Financial Assistance

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On April 25, 2023 the Department of Labor (“DOL”) published [Field Assistance Bulletin 2023-01](#) (the “FAB”), which provides guidance to multiemployer pension plans that receive Special Financial Assistance (“SFA”) regarding the information that should be included in an Annual Funding Notice (“AFN”).

The preamble to the FAB acknowledges that the guidance does not address all questions that may arise, and states that absent further guidance, plans complying with the FAB will be considered to have followed a reasonable, good faith interpretation of the AFN requirements of ERISA section 101(f). It also recognizes that plans receiving SFA may have already issued AFNs prior to the release of the FAB, and such plans should consider whether it is appropriate to provide participants with additional information in light of the FAB.

The information in the FAB consists of 11 questions and answers, which are summarized below.

Q&A 1 – Funded Percentage and Actuarial Value of Assets. Neither the funded percentage nor the actuarial value of assets that plans are required to disclose in the AFN should include the SFA. The FAB contains model language that plans may use to explain that SFA is not included in the funded percentage or the actuarial value of assets, and to inform participants as to what those figures would be if SFA were included.

Q&A 2 – Fair Market Value of Assets. The fair market value of assets that plans are required to disclose in the AFN should include the SFA. Plans must tell participants that the plan received SFA and that the funded percentage and actuarial value of assets do not include the SFA. The FAB provides model language for this purpose.

Q&A 3 – Material Effect Explanation. The receipt of SFA always necessitates a “material effect” explanation in the AFN. The FAB further provides that a plan that is required to reinstate previously suspended benefits due to the receipt of SFA is not required to project the impact of the reinstatement on the liabilities through the end of the plan year.

Q&A 4 – Plan Year of the Material Effect Explanation. The material effect explanation is only required in the AFN applicable to the plan year in which the SFA was received. If a plan receives SFA in two different plan years due to a supplemented application, the explanation is required for each year.

Q&A 5 – Content of Material Effect Explanation. The material effect explanation must include the amount of SFA and the date it was received. If SFA was received pursuant to a supplemented application, the date and amount of the supplemented application must be provided, together with an explanation of why the plan received supplemented SFA.

The material effect explanation must also describe the conditions that apply to plans that receive SFA, and if applicable, must describe the reinstatement of previously suspended benefits. The FAB provides model language for both of these purposes. This requirement only applies to the initial receipt of SFA, and does not need to be repeated for supplemented SFA.

Q&A 6 – Statement Regarding Zone Status. The AFN should disclose to participants that due to the receipt of SFA, the plan is deemed to be in critical status through the plan year ending in 2051. The FAB provides model language for this purpose.

Q&A 7 – Description of Investment Policy. The description of the plan’s investment policy in the AFN must reflect the limitations on the investment of SFA and the requirement that one year of benefit payments and expenses be held in investment grade fixed income securities.

Q&A 8 – Separate Identification of SFA Assets. The AFN does not need to separately identify SFA and non-SFA assets when showing the allocation of plan assets. Plans should include an explanation that SFA is included in the allocations, and the FAB provides model language for this purpose.

Q&A 9 – Summary of Insolvency Rules. Plans receiving SFA should continue to include a summary of the rules governing plan insolvencies in their AFNs.

Q&A 10 – Summary of Insolvency Rules for Insolvent Plans Eligible for SFA that have not yet Received SFA. An insolvent plan that is eligible for SFA but has not yet received SFA may modify the summary of the rules governing insolvencies to include information on the SFA program. The FAB provides model language for this purpose.

Q&A 11 – Prohibition on SFA Plans Applying for Benefit Suspensions. Plans may include a statement in the AFN explaining that the receipt of SFA prevents the plan from applying for benefit suspensions in the future, and the FAB provides model language for this purpose.

For more information on the impact of the FAB, please contact the authors or any of our Groom attorneys.