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

Re: Annual Funding Notice For Defined Benefit Plans [RIN 1210-AB18]

Dear Sir/Madam:

This letter comments on the above-referenced proposed regulations, published in the Federal Register on November 18, 2010. 76 Fed. Reg. 70625. We sincerely regret the delay and respectfully request that, time permitting, the Department consider this comment letter and adopt our recommended change.

Our firm represents a multiple employer rural cooperative plan subject to the delayed effective date rules in section 104 of the Pension Protection Act of 2006 ("PPA"). Thus, the plan will not be subject to the PPA funding rules, based on the "adjusted funding target attainment percentage" ("AFTAP") scheme, until the 2017 plan year. In the Preamble (page 70633), the Department requested comments on whether special notice rules should be provided, and how the model notice could be modified, for such plans.

Thus far, our client has prepared its funding notices using the PPA's AFTAP to report its assets and liabilities based on FAB 2009-1 and the proposed regulations. This has led to substantial confusion and misunderstanding among many of the nearly 400 participating employers and their employees. The principal source of the confusion is the chart that appears on page one of the model that shows this plan's assets slightly exceeding its liabilities when, in fact, the plan is about 90 percent funded (primarily because plan assets and liabilities are actually calculated on a different basis reflecting the plan's own actuarial assumptions and methods instead of those specified for the AFTAP). A similar issue arises with the liability calculation under the heading "Year End Assets and Liabilities."

The confusion that has arisen for this plan is not merely an annoyance and diversion of time for the many affected parties. Rather, the disparity between the inapplicable AFTAP information and the funding information that is actually used for this plan is particularly disturbing because the plan has been taking steps to further improve its funded status by requiring increased employer contributions. Needless to say, participating employers have seriously questioned why more funding is being asked of them when the government-mandated notice shows their plan is fully funded. It seems ironic that the PPA-mandated notice intended to inform interested persons of a plan's funded status is potentially misleading (albeit unintentionally) – and may even impede responsible efforts to enhance plan funding.

We believe there is a reasonable solution to this problem. Specifically, we recommend that –

- plans subject to PPA section 104 be given the option to show "Plan Assets" and "Plan Liabilities" (Lines 2 and 3 of the chart on page one of the Model and also in the "Year End Assets and Liabilities" section) based on the plan's own actuarial assumptions and funding methods; and

- this option should be permitted for all plan years before the first plan year for which section 303 of ERISA, as amended by the PPA, applies to the plan. (The plan's notice could include a statement explaining that the plan is subject to the funding rules in effect before the PPA's enactment, and not the PPA's AFTAP rules, until the 2017 plan year.)

In addition, a sentence could be added at the end of Prop. Reg. § 2520.101-5(b)(3) to the effect that a plan subject to a delayed PPA effective date may determine assets and liabilities in the above-described manner.

We appreciate your attention to this issue and would be pleased to respond to any questions you may have.

Sincerely,

Louis T. Mazawey

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