



sponsors should add explanations to funding notices

MSK Client Alert

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For the first time, multiemployer pension plans must give plan participants written notice setting forth the funded percentage of their plans. The notice also goes to participating employers and unions and the PBGC. The funded percentage is the percentage of plan assets to liabilities and is computed under fairly conservative assumptions. Under these assumptions, many plans will show funded percentages less than 100 percent.

The notice is due for the 2005 plan year two months after the filing deadline for the IRS Form 5500. For a calendar year plan that is filing its Form 5500 on extension, the Form 5500 was due on October 15, 2006. Since the funding notice is due two months after the Form 5500, the funding notice for most calendar year plans will be due December 15, 2006.

Although the form of the notice is prescribed by DOL regulations, the regulations permit plan administrator to add additional explanatory information at the end of the notice that the plan administrator considers "necessary or helpful to understanding the mandatory information in the notice." Plan administrators may want to take advantage of that opportunity if they are concerned that the prescribed language, which includes a detailed discussion of the rules applicable to insolvent plans, may strike participants as excessively gloomy. The regulations are clear, however, that any additional explanatory information must be placed at the end of the notice. Of course, there is no guarantee that participants will read that far. A possible solution may be to provide a cover letter for the notice that alerts participants that there is additional information at the end of the notice that they should be sure to read.

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