



UPDATE: Employee Benefits and Compensation

APRIL 2010

New Disclosure Rules for Multiemployer Plans Effective April 1, 2010

In March 2010, the Department of Labor's Employee Benefits Security Administration (EBSA) published a final rule regarding a multiemployer pension plan administrators' obligation to disclose certain actuarial and financial information to plan participants and others upon request. Effective April 1, 2010, the much-anticipated rule implements provisions of the Pension Protection Act of 2006 (PPA), mandating an increase in transparency with respect to multiemployer retirement plan operations.

Documents to be Disclosed

PPA amended the Employee Retirement Income Security Act of 1974 (ERISA) by adding a new Section 101(k), intended to provide plan participants and contributing employers with a greater opportunity to monitor their plans' funding and financial status and to increase accountability of plan fiduciaries. Section 101(k) requires administrators of multiemployer plans to provide certain documents to plan participants, beneficiaries, employee representatives (i.e., unions), and contributing employers upon written request. The documents subject to disclosure including the following:

- Any periodic actuarial report received by the plan for any plan year, including certain studies, tests, analyses, or other information received by a plan from an actuary that depicts alternative funding scenarios based on a range of alternative actuarial assumptions, regardless of whether such information is supplied on a routine basis.
- Any quarterly, semiannual, or annual financial report prepared for the plan by any plan investment manager (or advisor) or fiduciary.
- Any application filed with the Secretary of the Treasury requesting an amortization extension, as well as the Secretary's determination.

Exemptions

Only those documents and reports that have been in the plan's possession for at least 30 days are subject to disclosure. The final rule exempts from disclosure certain information and data used to develop the plan's annual valuation report. Additionally, the rule does not require disclosure of information that a plan administrator reasonably determines to be either (1) individually identifiable information with respect to any plan participant, beneficiary, employee, fiduciary, or contributing employer or (2) proprietary information regarding the plan, any contributing employer, or entity providing services to the plan. Finally, reports and applications

that have been in the plan's possession for six years or more as of the date on which the request is received by the plan do not have to be furnished.

Timeliness of Disclosure

The final rule requires that plan administrators provide copies of the requested documents no later than 30 days after the date the written request is received; however, the administrator need not provide more than one copy of a document to a requestor during any 12-month period. If an individual requests a document that has not yet been in the plan's possession for at least 30 days, the plan administrator must provide notification of the existence of the document and the earliest date on which such document may be furnished by the plan.

Penalties

Failure to comply with the final rule could result in civil penalties of up to \$1,000 per day for each violation.

Conclusion

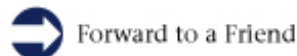
Contributing employers are now able to obtain additional information about those plans to which they make contributions. This information should assist employers in determining their funding obligations in the future.

If you have any questions about how the multiemployer disclosure obligations may impact you as a participating employer or a plan administrator, please contact any of the following attorneys:

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