



Field Assistance Bulletin No. 2015-01

Date: January 14, 2015

Memorandum For: Mabel Capolongo, Director of Enforcement
Regional Directors

From: John J. Canary
Director of Regulations and Interpretations

Subject: ERISA's Annual Funding Notice Requirements Following the
Highway and Transportation Funding Act of 2014

This memorandum provides guidance to the Employee Benefits Security Administration's national and regional offices on compliance by plan administrators of single-employer defined benefit plans with the annual funding notice requirements of section 101(f) of the Employee Retirement Income Security Act of 1974 (ERISA), as amended by section 2003 of the Highway and Transportation Funding Act of 2014 (HATFA), Pub. L. 113-159, 128 Stat. 1839. This memorandum also includes a modified supplement to the model annual funding notice that plan administrators may use to comply with the requirements of section 101(f)(2)(D).

Background:

Section 303 of ERISA and section 430 of the Internal Revenue Code (Code) specify the minimum funding requirements that generally apply to single-employer defined benefit pension plans. The interest rates generally used to determine the present value of a single-employer defined benefit plan's liabilities are the three segment rates described in section 303(h)(2)(C)(i), (ii), and (iii) of ERISA.¹ Section 40211(b)(1) of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405, amended section 303(h)(2)(C) of ERISA by adding a new subclause (iv) to adjust the segment rates in section 303(h)(2)(C)(i)-(iii) as necessary to fall within a specified range, determined by multiplying the 25-year average of the corresponding segment rates by the following minimum and maximum applicable percentages:²

If the plan year begins in:	The applicable minimum percentage is:	The applicable maximum percentage is:
2012	90%	110%
2013	85%	115%
2014	80%	120%

¹ The corresponding Code segment rates are in section 430(h)(2)(C)(i), (ii) and (iii).

² Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713) and section 3002(c) of ERISA, the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in section 303 of ERISA, as well as section 430 of the Code. For a detailed explanation of how section 40211 of MAP-21 affects the minimum funding rules of section 303 of ERISA and section 430 of the Code, see IRS Notice 2012-61, 2012-42 I.R.B. 479.

2015	75%	125%
After 2015	70%	130%

Section 2003(b)(1) of HATFA amended section 303(h)(2)(C)(iv) by replacing the above table with the following:

If the plan year begins in:	The applicable minimum percentage is:	The applicable maximum percentage is:
2012 through 2017	90%	110%
2018	85%	115%
2019	80%	120%
2020	75%	125%
After 2020	70%	130%

The above described adjustment of the segment rates under MAP-21 and HATFA is sometimes referred to as “funding stabilization” in this memorandum.

Section 101(f) of ERISA sets forth the requirements for plan administrators of defined benefit plans to which title IV of ERISA applies (both multiemployer and single-employer plans) to furnish annual funding notices to plan participants and beneficiaries, among other recipients. Section 101(f)(2)(D)(i) of ERISA, as added by MAP-21, requires plan administrators of single-employer defined benefit plans to disclose additional information in the annual funding notice for a plan year beginning after December 31, 2011 and before January 1, 2015, if such plan year is an “applicable plan year” within the meaning of section 101(f)(2)(D)(ii). These disclosures relate to the effect of the ERISA section 303(h)(2)(C)(iv) funding stabilization rules on plan liabilities and the plan sponsor’s minimum required contributions to the plan. Section 2003(b)(2)(A) of HATFA amended section 101(f)(2)(D)(ii) of ERISA by extending the period for which such additional information must be furnished through applicable plan years beginning before January 1, 2020. It also modified the statements required by section 101(f)(2)(D)(i)(I) and (II). The amendments to both the funding rules and the annual funding notice are effective for plan years beginning after December 31, 2012, unless the plan sponsor elects out of the new rules for a plan year beginning in 2013.³

On September 29, 2014, the Internal Revenue Service (IRS) issued Notice 2014-53, 2014-43 I.R.B. 737, to provide guidance on the changes made to the funding stabilization rules by sections 2003 of HATFA.

Unless otherwise stated, references to the “adjusted interest rates” in this memorandum and the attached Appendix A mean the segment rates determined in accordance with section 303(h)(2)(C)(iv) of ERISA, as amended by HATFA, and references to the phrase “without regard to the adjusted interest rates” mean the segment rates determined in accordance with section 303(h)(2)(C)(i) through (iii) as if MAP-21 and HATFA had not been enacted.

³ HATFA § 2003(e).

In accordance with section 2003(b)(2)(B) of HATFA, the Department has modified the supplement to the model annual funding notice set out in Appendix A of Field Assistance Bulletin 2013-01 (FAB 2013-01) to include a reference to HATFA.

Due to the extension of the applicability of section 101(f)(2)(D) to plan years ending before January 1, 2020, the Department reviewed the guidance in FAB 2013-01, taking into account questions and other feedback from practitioners. As the result of that review, the Department has decided to modify its answer to Question 14 of FAB 2013-01. Except as stated in this memorandum, FAB 2013-01 remains in effect.

Good Faith Compliance:

Pending further guidance, the Department, as a matter of enforcement policy, will treat a plan administrator of a single-employer defined benefit plan as satisfying section 101(f)(2)(D) of ERISA, as amended by HATFA, if the plan administrator complies with the guidance in FAB 2013-01 and this memorandum, and has acted in accordance with a good faith, reasonable interpretation of section 101(f)(2)(D) with respect to matters not specifically addressed in those memoranda. The Department will treat a funding notice for a plan year beginning after December 31, 2012, that was issued before the issuance of this memorandum as satisfying the HATFA amendments to section 101(f)(2)(D), if it reflects a good faith, reasonable interpretation of the amendments to that section.

Model Notices:

Appendix A to this memorandum contains a supplement (the “Model Supplement”) to the single-employer defined benefit plan model annual funding notice. The Model Supplement replaces the MAP-21 Supplement set out in Appendix A of FAB 2013-01 for applicable plan years beginning on or after January 1, 2014. For a 2013 applicable plan year, the Model Supplement replaces the MAP-21 Supplement only if the funding notice reflects the use of the HATFA segment rates. Pending further guidance, use of an appropriately completed Model Supplement, together with the model annual funding notice, will, as a matter of Department enforcement policy, satisfy the content requirements of section 101(f)(2)(B) and (D) of ERISA.

Questions and Answers:

General

Q1: When are the HATFA changes to the annual funding notice effective?

A1: Section 2003(e)(1) of HATFA states that the changes made to sections 303(h)(2)(C)(iv) and 101(f)(2)(D) of ERISA are effective for plan years beginning after December 31, 2012. Under section 2003(e)(2) of HATFA, the plan sponsor may elect not to have HATFA apply to the 2013 plan year, only. Questions 2 and 3 address how the Department will enforce the retroactive application of HATFA to the 2013 plan year.

Q2: If, on or before the thirtieth day following the date of this memorandum, a plan administrator issued an annual funding notice for the 2013 plan year using the MAP-21 segment rates, is the administrator required to issue a corrected or revised notice to reflect HATFA?

A2: No. A plan administrator is not required to reissue a notice under these circumstances even if the plan used the HATFA rates for funding purposes for the 2013 plan year. The Department does not think that the benefits of a corrected notice generally will outweigh the administrative cost of redistributing the 2013 notice. Nothing in this memorandum, however, precludes a plan administrator from issuing a corrected notice if the administrator determines that it is in the best interests of participants and beneficiaries. The same principles would apply if a plan administrator furnished the 2013 notice using the HATFA rates and the plan sponsor subsequently elected out of HATFA.

Q3: If, as of the thirtieth day following the date of this memorandum, a plan administrator has not yet issued a notice for the 2013 plan year, what rates should be used?

A3: The rates used to prepare the annual funding notice should reflect the rates used, or reasonably expected to be used, to meet the minimum funding standards. Thus, if the plan sponsor has not elected out of HATFA by the due date of the notice, and the plan administrator reasonably believes no such election will be made, the notice should be prepared using the HATFA segment rates. If such an election is made after the notice is furnished, the plan administrator is not required to furnish a corrected notice. Nothing in this memorandum, however, precludes a plan administrator from issuing a corrected notice if the administrator determines it is in the best interests of participants and beneficiaries.

HATFA Changes to Definition of Applicable Plan Year

Q4: The plan administrator is not required to include the funding stabilization disclosures of section 101(f)(2)(D)(i) of ERISA in the annual funding notice, unless the plan year to which the notice relates (the “notice year”) is an “applicable plan year” within the meaning of section 101(f)(2)(D)(ii) of ERISA. How did HATFA change the definition of “applicable plan year”?

A4: Prior to HATFA, section 101(f)(2)(D)(ii) of ERISA defined an “applicable plan year” as any plan year beginning after December 31, 2011, and before January 1, 2015, for which the plan meets the following requirements in subclauses (I), (II), and (III) of that section:

- The funding target (as defined in section 303(d)(2) of ERISA) is less than 95% of the funding target determined without regard to the adjusted interest rates;
- The plan’s funding shortfall (as defined in section 303(c)(4) of ERISA) determined without regard to the adjusted interest rates is greater than \$500,000; and
- The plan had 50 or more participants on any day during the preceding plan year.

HATFA did not change the requirements of subclause (I), (II) and (III) of section 101(f)(2)(D)(ii), but did change the period of applicability from “plan years beginning after December 31, 2011, and before January 1, 2015” to “plan years beginning after December 31, 2011, and before January 1, 2020.”

Changes to the Content Requirements of the Section 101(f)(2)(D)(i) Disclosures, the Model Supplement and the Funding Target Attainment Percentage Chart of the Model Notice.

Q5: How did HATFA change the statements required by sections 101(f)(2)(D)(i)(I) and (II) of ERISA?

A5: Section 2003(b)(2)(A)(i) of HATFA added “and the Highway and Transportation Funding Act of 2014” after “MAP-21” both places it appears in section 101(f)(2)(D)(i). The first paragraph of the Model Supplement may be used to satisfy the amendments made by section 2003(b)(2)(A)(i) of HATFA to the statements required by sections 101(f)(2)(D)(i)(I) and (II) of ERISA.

Q6: FAB 2013-01 refers to the “MAP-21 segment rates,” the “MAP-21 rates” and “MAP-21 interest rates” in several places. Does HATFA affect the substance of the guidance in FAB 2013-01 using those terms?

A6: No. In applying FAB 2013-01, references to the MAP-21 segment rates, MAP-21 rates, and/or MAP-21 interest rates should be read to mean the MAP-21 rates, as amended by HATFA. The Model Supplement in Appendix A to this memorandum replaces references to the MAP-21 interest rates with the term “adjusted interest rates.”

Q7: In question 14 of Field Assistance Bulletin 2013 -01 (FAB 2013-01), the Department stated that if the value of plan assets is determined without regard to the MAP-21 segment rates, the MAP-21 supplement must include a statement setting forth the value of plan assets determined on that basis along with an explanation of how it differs from the value of plan assets used for funding purposes. Does the Department continue to maintain this position under HATFA?

A7: No. The enactment of HATFA provided the Department with an opportunity to review the efficacy of its prior guidance under section 101(f) of ERISA, including the questions and answers in FAB 2013-01. In the aftermath of FAB 2013-01, actuaries and other plan service providers questioned the reasoning behind the asset-value statement and related explanation required by Q&A 14 of FAB 2013-01 and informed the Department that these data elements in particular have caused confusion to service providers and participants and beneficiaries alike. The intent behind these disclosures was to ensure that plans would provide participants and beneficiaries with information to help them understand the meaning behind the data elements required by MAP-21. At the time of FAB 2013-01, the Department was concerned that, without more information, participants and beneficiaries would not understand or appreciate the difference between the “with” and “without” disclosures explicitly required by MAP-21. The Department is now concerned that the annual funding notice requirements in section 101(f) of ERISA, as amended first by MAP-21 and then by HATFA, may result in very complex

disclosure requirements. In light of the foregoing, and because plan administrators already have the ability to augment their disclosures with additional information if and when they think it would be helpful to their participants, the Department has decided to amend its position in Q&A 14 of FAB 2013-01. Accordingly, the Department will no longer require the Model Supplement (or the MAP-21 Supplement) to state the value of plan assets, determined without regard to the adjusted interest rates, or to include an accompanying explanation for any funding notice due after the date of this memorandum.

Q8: Question 16 of FAB 2013-01 includes an example illustrating how previously established shortfall amortization bases are used to determine the minimum required contribution (MRC) disclosures for the “Without MAP-21 Interest Rates” cells of the MAP-21 Information Table of the MAP-21 Supplement. Does this example change under HATFA?

A8: The substance of Q&A 16 of FAB 2013-01 remains unchanged. The previously established shortfall amortization bases actually used for funding still should be used to calculate the hypothetical MRC determined without regard to the adjusted interest rates for purposes of the Information Table of the Model Supplement. The shortfall installment for the current applicable plan year should still be derived from a hypothetical shortfall amortization base determined without regard to the adjusted interest rates, taking into account the at-risk guidance of Q&A 17 of FAB 2013-01. Example Q8 illustrates the application of HATFA to the principles illustrated by Example Q&A 16 of FAB 2013-01.

Example Q8: The 2012, 2013 and 2014 plan years of Plan Z are applicable plan years, and Plan Z has never had any waiver amortization bases. The plan sponsor did **not** elect out of HATFA for 2013. For purposes of calculating the MRC disclosure, determined without regard to the adjusted interest rates, for the 2014 applicable plan year, the shortfall amortization charge would be the sum of:

- (1) the actual shortfall installments for 2008 through 2011 derived from the shortfall amortization bases determined under the pre-MAP-21 rules;
- (2) the actual 2012 shortfall installment derived from the actual 2012 shortfall amortization base determined using the MAP-21 segment rates;
- (3) the actual 2013 shortfall installment derived from the 2013 shortfall amortization base determined using the adjusted interest rates under HATFA; and
- (4) the 2014 shortfall installment derived from a hypothetical 2014 shortfall amortization base, determined by subtracting the present value of the actual future shortfall installments for shortfall amortization bases established for years 2008 through 2013 from the hypothetical 2014 funding shortfall determined without regard to the adjusted interest rates. The interest rates used to calculate the present value of the actual future shortfall installments are the 2014 segment rates determined without regard to MAP-21 and HATFA.

Q9: In preparing the 2013 preceding plan year entries for the Funding Target Attainment Percentage (FTAP) chart of the model notice and “With Adjusted Interest Rates” cells of the Information Table of the Model Supplement for the 2014 and 2015 notice years, may the plan administrator use the entries from the annual funding notice for the 2013 plan year, and if not, what should the plan administrator use?

A9: (a) General rule. The actuarial value of assets and liabilities shown in the FTAP chart are determined in the same manner as under section 303 of the Act, as of the valuation date of the notice year and for each of the two preceding plan years, as reported in the annual report filed under section 104 of ERISA for each such preceding plan year. The funding target attainment percentage, the funding shortfall, and the minimum required contribution are derived from the actuarial value of such assets and liabilities. Generally, the plan administrator may use information in the most recently filed annual report and the attendant Schedule SB for the 2013 plan year to prepare such entries, unless the plan administrator knows that the relevant information in such annual report is not correct.

(b) Plan sponsor revokes a deemed election not to apply the HATFA segment rates to the 2013 plan year and files a corrected annual report for the 2013 plan year after the due date of the 2014 plan year annual funding notice. If the plan administrator files an annual report (Form 5500 or Form 5500SF) for the 2013 plan year before December 31, 2014 and the Schedule SB is prepared using the MAP-21 segment rates, “an election to defer use of the HATFA segment rates for purposes of both §§ 430 and 436 [of the Code] until the first plan year beginning on or after January 1, 2014 is deemed made.” See section III.B. of IRS Notice 2014-53. The plan sponsor may revoke the deemed election by providing written notice of the revocation to the plan’s enrolled actuary and the plan administrator no later than December 31, 2014.

If the plan sponsor revokes the deemed election, the plan administrator must file an amended annual report for the 2013 plan year, along with a revised Schedule SB reflecting the HATFA segment rates, on or before the earlier of the due date (with extensions) of the annual report for the 2014 plan year or the date such report is filed. This could result in the 2014 annual funding notice being furnished (*e.g.*, April 30, 2015) before the 2013 amended Form 5500 and revised Schedule SB are filed (*e.g.*, October 15, 2015). In this case, it would not be a reasonable good faith interpretation of section 101(f) of ERISA to use the previously filed 2013 annual report and Schedule SB, reflecting the MAP-21 segment rates, to prepare the 2013 preceding plan year entries for the “With Adjusted Interest Rates” cells of the Information Table of the Model Supplement and the FTAP chart of the model notice for the 2014 notice year, since the plan administrator would already know that the plan sponsor intends to use the HATFA segment rates for 2013. The plan administrator and the plan’s enrolled actuary should, in a reasonable manner, determine such 2013 preceding plan year entries with the HATFA segment rates for the 2014 annual funding notice using standard actuarial principles.

Paperwork Reduction Act (PRA):

This memorandum relies on the collection of information approved under OMB Control Number 1210-0126, which currently is scheduled to expire on February 28, 2017. The Department is planning to submit a revision to the information collection and intends to publish a notice

announcing OMB's decision upon review of the Department's submission. The Department notes that a federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the PRA, and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. See 44 U.S.C. § 3507. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. See 44 U.S.C. § 3512.

Since HATFA added less than 20 words to the disclosures required by MAP-21, any burden relating to this memorandum was included and reported under Field Assistance Bulletin 2013-01.

For Further Information:

Questions concerning the information contained in this memorandum may be directed to Thomas M. Hindmarch of the Office of Regulations and Interpretations 202.693.8500 (not a toll free number).

APPENDIX A TO FAB 2015-01

**MODEL SUPPLEMENT TO ANNUAL FUNDING NOTICE
OF [insert Plan Name] (PLAN) FOR
PLAN YEAR BEGINNING [Insert Date] AND ENDING [Insert Date] (Plan Year)**

This is a temporary supplement to your annual funding notice which is required by the Moving Ahead for Progress in the 21st Century Act and the Highway and Transportation Funding Act of 2014. These federal laws changed how pension plans calculate their liabilities. The purpose of this supplement is to show you the effect of these changes. Prior to 2012, pension plans determined their liabilities using a two-year average of interest rates. Now pension plans also must take into account a 25-year average of interest rates. This means that interest rates likely will be higher and plan liabilities lower than they were under prior law. As a result, your employer may contribute less money to the plan at a time when market interest rates are at or near historical lows.

The “Information Table” compares the impact of using interest rates based on the 25-year average (the “adjusted interest rates”) and interest rates based on a two-year average on the Plan’s: (1) Funding Target Attainment Percentage, (2) Funding Shortfall, and (3) Minimum Required Contribution. The funding target attainment percentage is a measure of how well the plan is funded on a particular date. The funding shortfall is the amount by which liabilities exceed net plan assets. The minimum required contribution is the amount of money an employer is required by law to contribute to a plan in a given year. The following table shows this information determined with and without the adjusted interest rates. The information is provided for the Plan Year and for each of the two preceding plan years, if applicable.

INFORMATION TABLE						
	<i>[Applicable Plan Year]</i>		<i>[1st year preceding Applicable Plan Year]</i>		<i>[2nd year preceding Applicable Plan Year]</i>	
	With Adjusted Interest Rates	Without Adjusted Interest Rates	With Adjusted Interest Rates	Without Adjusted Interest Rates	With Adjusted Interest Rates	Without Adjusted Interest Rates
Funding Target Attainment Percentage	<i>[Insert %]</i>	<i>[Insert %]</i>	<i>[Insert %]</i>	<i>[Insert %]</i>	<i>[Insert %]</i>	<i>[Insert %]</i>
Funding Shortfall	<i>[Insert \$ amount]</i>	<i>[Insert \$ amount]</i>	<i>[Insert \$ amount]</i>	<i>[Insert \$ amount]</i>	<i>[Insert \$ amount]</i>	<i>[Insert \$ amount]</i>
Minimum Required Contribution	<i>[Insert \$ amount]</i>	<i>[Insert \$ amount]</i>	<i>[Insert \$ amount]</i>	<i>[Insert \$ amount]</i>	<i>[Insert \$ amount]</i>	<i>[Insert \$ amount]</i>

Instructions: Insert Not Applicable in the “With Adjusted Interest Rates” cells of the relevant preceding year, if (1) the preceding plan year was 2011; (2) a full yield curve election under section 303(h)(2)(D)(ii) of ERISA was in effect for such preceding year; (3) in the case of the 2012 plan year, the plan sponsor elected out of MAP-21 for all

purposes; or (4) the plan was a delayed effective date plan under section 104 or 105 of the PPA in such preceding year.

Insert Not Applicable in the “Without Adjusted Interest Rates” cells of the relevant preceding year, if the adjusted interest rates were used for funding purposes in such preceding year but such year was not an applicable plan year within the meaning of section 101(f)(2)(D)(ii) of ERISA.