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**Proposed Disclosure Requirements for Multiemployer Plans**

The Department of Labor (“Department”) has proposed a regulation implementing section 101(f) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), which requires defined benefit multiemployer pension plans to issue a plan funding notice each year to plan participants and beneficiaries, labor organizations representing them, contributing employers and the Pension Benefit Guaranty Corporation (“PBGC”) describing the funded level of the plan, the benefits that would be guaranteed by PBGC in the event the plan became insolvent, and other financial information about the plan. 70 Fed. Reg. 6306 (Feb. 4, 2005). As provided in section 101(f), the notice requirement is effective for plan years ending after December 31, 2004. Comments on the regulation must be submitted to the Department by March 7, 2005. Please contact Lonie Hassel at (202) 861-6634 if you would like us to submit comments on your behalf.

Under the proposed regulation, multiemployer plans are required to provide participants with information similar to that required of single employer plans under section 4011 of ERISA. Unlike participant notices under section 4011, however, which are required only for underfunded single-employer defined benefit plans, the multiemployer plan notice requirement applies to all multiemployer plans, except those that are receiving financial assistance from PBGC, *i.e.*, those that already are insolvent.

The proposed regulation requires the plan administrator to issue an annual notice that includes (1) identifying information about the plan, (2) a statement whether the plan’s funded current liability percentage is at least 100 percent, and if not, the actual percentage, (3) a statement of the market value of the plan’s assets, (4) the amount of benefit payments and the ratio of assets to payments for the plan year for which the notice is issued, (5) a summary of the rules governing insolvent multiemployer plans, including rules about benefit suspensions and reductions, (6) a description of guaranteed benefits under the plan and the limits of PBGC’s guarantee, and (7) additional information the plan wishes to provide to help understand the information in the notice. A model notice is provided with the regulation.

The notice must be furnished within nine months after the close of the plan year, or, if an extension has been issued, two months after the end of the extension period for filing the plan’s Form 5500. The notice must be sent to participants, beneficiaries, labor organizations, and contributing employers by one of the methods prescribed for providing summary plan descriptions, described in 29 C.F.R. § 2520.104b-1. This includes hand delivery, mail delivery and electronic delivery in accordance with the Department’s requirements for electronic disclosure. The notice must be provided to PBGC by hand

delivery, mail or delivery service, electronic delivery or facsimile, as described in 29 C.F.R. Part 4000.

Under section 502(c)(1) of ERISA, a court may assess personal liability of up to \$100 a day against the plan administrator, *i.e.*, the multiemployer plan's trustees, for failure to provide the notice.