

---

## 2008 Form 5500 Info on Defined Benefit Pension Plans Must Be on Company Intranet

by Susan P. Serota and Kathleen D. Bardunias

---

*The Pension Protection Act (“PPA”) requires that defined benefit plan actuarial information disclosing the funding status of the plan must be posted on the employer’s intranet for all plan years beginning after December 31, 2007. Employers that sponsor calendar-year defined benefit pension plans are required to post the actuarial information included on the 2008 Form 5500, which form typically had to be filed no later than October 15, 2009. This requirement only applies to employers who maintain an intranet site for employee communications and does not obligate employers to create such an intranet site.*

---

The PPA made several changes to participant disclosure requirements for defined benefit plans. For example, it deleted the summary annual report obligation for such plans but added an annual funding notice requirement and the Form 5500 information intranet posting requirement. The PPA requires both the Department of Labor (“DOL”) and the plan sponsor (the plan sponsor is generally the employer) to post the Form 5500 information. Although effective for all plan years beginning after December 31, 2007, the DOL has not yet issued regulations regarding these requirements. Thus, employers with defined benefit pension plans and an intranet site will need to individually determine how to best comply with this posting requirement.

### **What Must Be Posted**

“Identification and basic plan information and actuarial information included in the annual report” must be filed with the DOL in an electronic format, as well as displayed on the employer’s intranet site. The statute does not appear to obligate the employer to post the entire Form 5500 filing (including all the schedules), but only the identification information (Part I of Form 5500), basic plan information (Part II of Form 5500) and actuarial information (Schedule SB). Further, the statute does not clarify what format should be used to post this information.

### When Must It Be Posted

Although the DOL has not issued any guidance about when employers must post the plan information, the statute requires the DOL to post the plan information on its website within 90 days after the Form 5500 filing. It is reasonable to infer that the DOL will not allow an employer to take longer than that 90-day period and may even require employers to post the information sooner since they have access to all the information as it is being filed and could prepare for its posting in advance. Until further guidance is issued, employers should consider posting required information contemporaneously with the Form 5500 filing or as soon as practically possible thereafter.

### Additional Questions

Employers will also need to determine how best to comply with this new disclosure obligation. Some unanswered questions include:

- What is considered to be an employer intranet site?
- Is there any obligation to notify employees about the Form 5500 information posting?
- What format should be used to present the information? Should the actuarial information be posted separately from other Form 5500 information?
- Where should the information be posted within the intranet site?

In general, employers should review these questions broadly and seek to post and provide the required information to employees in a user-friendly and accessible manner. It would appear to be appropriate to use the employer's HR or benefit plans intranet website to post the information. In addition, it is recommended that employers notify employees of the posting in some manner. Until DOL guidance is issued, employers should take reasonable good faith efforts to provide the required information.

### Conclusion

Employers with defined benefit pension plans that have recently filed a 2008 Form 5500 should address the above issues immediately to determine if the posting obligation applies to them, and if so, how to best comply with this new disclosure obligation. At a minimum, employers with an intranet site must make the required information available on the site as soon as possible in order to be in compliance.

---

If you have any questions about the content of this advisory, please contact the Pillsbury attorney with whom you regularly work or any of the members of the Executive Compensation & Benefits group.

### New York

Susan P. Serota **(bio)**  
+1.212.858.1125  
susan.serota@pillsburylaw.com

Peter J. Hunt **(bio)**  
+1.212.858.1139  
peter.hunt@pillsburylaw.com

Scott E. Landau **(bio)**  
+1.212.858.1598  
scott.landau@pillsburylaw.com

John J. Battaglia **(bio)**  
+1.212.858.1738  
john.battaglia@pillsburylaw.com

Mark C. Jones (bio)  
+1.212.858.1430  
mark.jones@pillsburylaw.com

Kathleen D. Bardunias (bio)  
+1.212.858.1905  
kathleen.bardunias@pillsburylaw.com

Bradley A. Benedict (bio)  
+1.212.858.1523  
bradley.benedict@pillsburylaw.com

### Washington, DC / Northern Virginia

Howard L. Clemons (bio)  
+1.703.770.7997  
howard.clemons@pillsburylaw.com

Keith R. Kost (bio)  
+1.703.770.7799  
keith.kost@pillsburylaw.com

### San Diego—North County

Jan H. Webster (bio)  
+1.858.509.4012  
jan.webster@pillsburylaw.com

Daniel N. Riesenber (bio)  
+1.858.847.4130  
daniel.riesenber@pillsburylaw.com

Kenneth E. Bonus (bio)  
+1.858.847.4206  
kenneth.bonus@pillsburylaw.com

Lori Partrick (bio)  
+1.858.509.4087  
lori.partrick@pillsburylaw.com

### San Francisco

Christine L. Richardson (bio)  
+1.415.983.1826  
crichardson@pillsburylaw.com

### Silicon Valley

Cindy V. Schlaefer (bio)  
+1.650.233.4023  
cindy.schlaefer@pillsburylaw.com

Grace Chen (bio)  
+1.650.233.4873  
grace.chen@pillsburylaw.com

This publication is issued periodically to keep Pillsbury Winthrop Shaw Pittman LLP clients and other interested parties informed of current legal developments that may affect or otherwise be of interest to them. The comments contained herein do not constitute legal opinion and should not be regarded as a substitute for legal advice.

© 2009 Pillsbury Winthrop Shaw Pittman LLP. All Rights Reserved.