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Final Regulations Adopted on ERISA Civil Penalties for PPA Disclosure Violations

On January 2, 2009, the Department of Labor (“DOL”) published [final regulations](#) on civil penalties under Section 502(c)(4) of the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended by the Pension Protection Act of 2006 (“PPA”). The PPA included new disclosure requirements as part of its revisions to the rules for defined benefit plan funding, and for automatic contribution arrangements, and authorized DOL to assess civil penalties of up to \$1,000 per day per violation against plan administrators for violations of those disclosure requirements. The final regulation provides administrative procedures for assessing and contesting such penalties; it does not address the substantive provisions of the new disclosure requirements.

Under the final regulations, DOL is authorized to assess civil penalties not to exceed \$1,000 per day for violations of each of the following:

- **Notice of funding-based limits.** The plan administrator of a single-employer defined benefit pension plan must provide written notice of limitations on benefits and benefit accruals to participants and beneficiaries pursuant to Section 206(g) of ERISA or Section 436(b) of the Internal Revenue Code. The notice must be furnished within 30 days after a plan becomes subject to an ERISA Section 206(g) funding-based restriction and at any other time the Secretary of the Treasury determines. This requirement is effective for plan years beginning on or after January 1, 2008.
- **Notice requirements for automatic contribution arrangements.** For a plan with an automatic contribution arrangement, the plan administrator must provide notice of the participant’s rights and obligations under such arrangement. This requirement is effective August 17, 2006.
- **Furnishing of plan documents.** The plan administrator of a multiemployer pension plan must, upon written request, furnish certain documents to any plan participant, beneficiary or employee representative or to any employer that has an obligation to contribute to the plan. This requirement is effective for plan years beginning on or after January 1, 2008.
- **Notice of potential withdrawal liability.** The plan administrator of a multiemployer employee benefit must, upon written request, furnish to any employer with an obligation to contribute to such plan, notice of potential withdrawal liability. This requirement is effective for plan years beginning on or after January 1, 2008.

The amount assessed for each separate violation is to be determined by DOL, taking into consideration the degree or willfulness of the failure or refusal to furnish any required documents. Prior to the assessment of any penalty, the DOL will provide to the plan administrator written notice of the DOL’s intent to assess the penalty, the amount of such penalty, the number of individuals on which the penalty is based, the period to which the penalty applies, and the reasons for the penalty. The plan administrator may, within 30 days of DOL’s notice of intent to assess a penalty, file a statement of reasonable cause, submitting evidence of compliance with the above requirements or mitigating circumstances regarding the degree or willfulness of the noncompliance. Failure to file a statement of reasonable cause is deemed an admission of the facts alleged in the notice. DOL will review the statement and notify the administrator, in writing, of its determination on the statement of reasonable cause and its determination on whether to waive the penalty in whole or in part. The administrator may then file a request for a hearing within 30 days from the date of the service of notice.



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