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LEGAL ALERT



## Legal Alert: DOL Issues Proposed Regulation Regarding ERISA Penalties

1/8/2008

The Department of Labor (DOL) recently issued a proposed regulation that would establish procedures relating to the department's assessment of penalties for failure to disclose certain documents to plan participants, beneficiaries and others as required by ERISA. The proposed regulation reflects amendments contained in the 2006 Pension Protection Act (PPA), which gives the DOL the authority to assess civil penalties.

### **Background**

In 2006, the PPA amended ERISA by, among other things, adding a disclosure requirement under which 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 § 206(g) of ERISA. A notice of benefits limitation must be provided within 30 days after a plan becomes subject to a § 206(g) funding based restriction.

Additionally, the PPA amended ERISA to require plan sponsors or administrators of multiemployer benefit plans to, upon written request, furnish employers a notice of potential withdrawal liability. The PPA also amended ERISA to require the plan administrator of a plan with an automatic contribution arrangement to provide each participant with notice of the participant's rights and obligations.

The PPA also amended the civil enforcement provisions in ERISA to give the DOL the authority to assess civil monetary penalties for violations of these substantive provisions. For violations of the provisions discussed above, the DOL is authorized to assess civil penalties not to exceed \$1,000 per day for each violation.

### **Penalty Provisions**

Generally, the proposed regulations set forth how the maximum penalty amounts are computed, identifies the circumstances under which a penalty may be assessed, sets forth certain procedural rules for service and filing, and provides a plan administrator a means to contest an assessment by the DOL by requesting an administrative hearing.

The proposed regulation also clarifies the liability of the parties for penalties assessed under § 502(c)(4) of ERISA, including joint and several liability and personal liability.

The proposed regulation is available at  
<http://www.gpoaccess.gov/fr/index.html>.

On this page, click on the browse tab, then back issues, 2007, and select December 19, 2007. Written comments on the proposed regulation should be received by the DOL no later than February 19, 2008.

The Department proposes to make this regulation effective 60 days after the date of publication of the final rule in the Federal Register.

If you have any questions regarding the proposed regulation or any other employment-related benefits issues, please contact Tiffany Downs, [tdowns@fordharrison.com](mailto:tdowns@fordharrison.com), 404-888-3961 or any member of Ford & Harrison's Employee Benefits and Executive Compensation practice group.