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Helpful Web Links

Department of Labor
www.dol.gov/

Taking the Mystery Out of
Retirement Planning
www.dol.gov/ebsa/publications/nearretirement.html

Internal Revenue Service
www.irs.gov/

DOL Civil Penalties for Failure to Provide Automatic Enrollment Notice

OPN Highlights

- **Action Required:** Clients should be made aware of these civil penalties.
- Civil penalties may be assessed for failure or refusal to provide notice of automatic enrollment not to exceed \$1,000 per day, per violation (i.e., per participant).

On January 2, 2009, the Department of Labor (DOL) published final regulations regarding the assessment of Civil Penalties under ERISA Section 502(c)(4) for failure or refusal of the plan administrator (or their representative) to furnish certain participant notices. These regulations establish the process by which the DOL may assess civil penalties in these situations and the process by which the plan administrator may challenge the assessment.

Background

The Pension Protection Act of 2006 (PPA) amended ERISA to require that the plan administrator of a plan that includes an automatic enrollment arrangement, under which contributions are invested in accordance with the Qualified Default Investment Alternative (QDIA) regulations, must provide each participant to whom the arrangement applies, notice of the participant's rights and obligations under the arrangement. Further, PPA provided that the plan administrator will be liable for civil

penalties assessed by the DOL for failure or refusal to furnish the notice. The effective date of these PPA provisions was August 17, 2006.

Civil Penalties – Key Points

- The amount of the penalty assessed will be based on the degree or willfulness of the failure or refusal to provide the proper notice and shall not exceed \$1,000 per day for each failure or refusal (i.e., per each individual affected by the failure or refusal).
- Written notice of intent to assess a penalty must be provided by the DOL.
- The penalty may be reduced or waived if the plan administrator can show reasonable cause or mitigating circumstances.
- DOL will provide a notice of determination on whether the penalty will be reduced or waived and the amount of any penalty that will be assessed.
- An administrative hearing may be requested by the plan administrator in response to the DOL's notice of determination.



- If more than one person is responsible as plan administrator, they shall all be jointly, severally and personally liable for the failure. The term “administrator” shall include the plan sponsor.

Effective Date - The final rule on civil penalties is effective March 3, 2008.

IRS Circular 230 Disclosure

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