



## BENEFIT NEWS BRIEFS

### ***DOL Publishes Final Rule On Civil Penalties Under PPA***

The Department of Labor (DOL) published a Final Rule in the *Federal Register* (74 FR 17) implementing the civil penalty provisions added by the *Pension Protection Act of 2006 (PPA)* for failure of plan sponsors' to meet new disclosure requirements added by the *PPA*. The Final Rule, as published, is available by "[clicking here](#)" or at <http://edocket.access.gpo.gov/2009/pdf/E8-31188.pdf>. A copy of just the regulation is found by "[clicking here](#)." The Rule is effective March 3, 2008.

In general, the Final Rule sets 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 Department and to request an administrative hearing. These civil penalties are not to exceed \$1,000 per day for each violation of Section 101(j), (k) or (l), or Section 514(e)(3) of ERISA.

#### **Multiemployer Pension Plan – Participant Disclosures**

Section 502(a)(1) of the *PPA* amended Section 101 of *ERISA* by adding Subsection (k). Under Subsection (k), the plan administrator of a multiemployer pension plan must, upon *written* request, furnish certain documents to any plan participant, beneficiary, employee representative or any employer that has an obligation to contribute to the plan. The information which must be made available to a participant, or beneficiary, employee representative, or any employer that has an obligation to contribute to the plan generally includes actuarial reports, (2) annual financial reports and application for amortization extensions and the result thereof. There is a limit of one copy of each report every 12 months and the administrator may charge reasonable copying, mailing and other costs.

Section 502(a)(2) of the *PPA* amended Section 502(c)(4) of *ERISA* to provide the Secretary of Labor with the authority to assess a civil penalty of not more than \$1,000 a day for each violation of ERISA Section 101(k).

The effective date of the provisions added by *PPA* Section 502(a) is for plan years beginning on or after January 1, 2008.

### **Multiemployer Pension Plan – Disclosure of Employer Withdrawal Liability**

Section 502(b)(1) of the *PPA* amended Section 101 of *ERISA* by adding Subsection (l). Under Subsection (l), a plan sponsor or plan administrator of a multiemployer employee benefit plan must, upon *written* request, furnish to any employer with an obligation to contribute to such plan, *notice of potential withdrawal liability*.

Section 502(b)(2) of the *PPA* amended Section 502(c)(4) of *ERISA* to provide the Secretary of Labor with the authority to assess a civil penalty of not more than \$1,000 a day for each violation of ERISA Section 101(l).

The effective date of the provisions added by *PPA* Section 502(b) is for plan years beginning on or after January 1, 2008.

### **401k Pension Plans – Disclosures to Participants**

Section 902(f)(1) of the *PPA* amended Section 514 of *ERISA* by adding Subsection (e)(3). Under Subsection (e)(3), the plan administrator of a 401k plan with an automatic contribution arrangement shall provide to each participant, to whom the arrangement applies, notice of the participant's rights and obligations under such arrangement. An automatic contribution arrangement is sometimes referred to as a "negative election" in that a participant is automatically enrolled to make contributions in the 401k plan at a specified percentage unless he elects out of the plan. See [Research Memo 2006-54](#) for more details.

Section 902(f)(2) of the *PPA* amended Section 502(c)(4) of *ERISA* to provide the Secretary of Labor with the authority to assess a civil penalty of not more than \$1,000 a day for each violation of ERISA Section 514(e)(3).

The effective date of the provisions added by *PPA* Section 902(f) is August 17, 2006.

### **Single-Employer Defined Benefit Plans – Participant Disclosure**

Section 103(b)(1) of the *PPA* amended Section 101 of *ERISA* by adding a new disclosure requirement under Subsection (j). Under Subsection (j), 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 the parallel Internal Revenue Code provision at Section 436(b)). A notice of benefit limitations must be furnished within 30 days after a plan becomes subject to an *ERISA* Section 206(g) funding-based restriction and at such other times as may be determined. Section 103(b)(2) of the *PPA* amended Section 502(c)(4) of *ERISA* to provide the Secretary of Labor with the authority to assess a civil penalty of not more than \$1,000 a day for each violation of ERISA Section 101(j).

The effective date of the provisions added by *PPA* Section 103(b) is for plan years beginning on or after January 1, 2008.

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