



SPECIAL BULLETIN

DOL Announces New Procedure To Report Covered Service Providers Who Fail To Report Compensation Under 408(b)(2) Regulation

In February of this year, the Department of Labor (DOL) published a final regulation under *ERISA* Section 408(b)(2) (the "408(b)(2) regulation"), requiring that certain service providers to *ERISA* covered *defined contribution* and *defined benefit* pension plans disclose their direct and indirect compensation and potential conflicts of interest. The first disclosures were due from service providers to plans by July 1, 2012. Pension plans and their fund professionals are no doubt reviewing the disclosures for completeness and accuracy.

See [Benefit News Briefs 2010-81](#); [Benefit News Briefs 2011-44](#); [Client Bulletins 2012-05](#), [2012-07](#) and [2012-13](#) for background on the 408(b)(2) regulation, including discussion of "covered service providers."

If the disclosure requirements of the 408(b)(2) regulation are not satisfied, a prohibited provision of services under *ERISA* Section 406(a)(1)(C) will occur, with consequences for both the plan fiduciary and the covered service provider.

The final regulation exempts a responsible plan fiduciary from the prohibited transaction restrictions, if the fiduciary *takes certain specified steps* upon discovery of a disclosure failure. Among other steps, the responsible plan fiduciary must make a *written request* to the covered service provider for the undisclosed information. If the covered service provider does not comply with this request *within 90 days*, the responsible plan fiduciary **must** *notify the DOL*.

On July 16, the DOL published a rule in the *Federal Register* amending these submission procedures to reflect a new mailing address and to provide for electronic submission through the DOL's website instead of via email. The revised information as published in the *Federal Register* is available at <http://www.gpo.gov/fdsys/pkg/FR-2012-07-16/pdf/2012-17013.pdf> or by "[clicking here](#)."

The new mailing address is:

U.S. Department of Labor
Employee Benefits Security Administration
Office of Enforcement
P.O. Box 75296
Washington, DC 20013

In addition, **effective September 14, 2012**, the DOL is **eliminating** the non-compliance reporting email address at OEDelinquentSPnotice@dol.gov and instead setting up a dedicated link to use for electronic reporting of non-responsive covered service providers. The dedicated link is on the DOL website at www.dol.gov/ebsa/regs/feedisclosurefailurenotice.html.

This webpage will include clear instructions for how to submit the required notification and will provide immediate confirmation to plan fiduciaries that the notice has been received by the DOL.

Individuals responsible for monitoring the pension plans 408(b)(2) responses from covered service providers should make note of these changes.

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