

Justification for Non-material/Non-substantive Change 2012 Form 5500 Submission

On February 3, 2012, the Department published a final regulation under ERISA section 408(b)(2) (the “408(b)(2) regulation”), requiring that certain service providers to pension plans disclose information about the service providers’ compensation and potential conflicts of interest.¹ These disclosure requirements were established to provide guidance for compliance with a statutory exemption from ERISA’s prohibited transaction provisions. 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 responsible plan fiduciary and the covered service provider. However, paragraph (c)(1)(ix) of 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 so notify the Department.

The final 408(b)(2) regulation, in paragraph (c)(1)(ix)(F), provides two alternative methods for submitting such notices to the Department. Responsible plan fiduciaries may send notices to the following address: U.S. Department of Labor, Employee Benefits Security Administration, Office of Enforcement, 200 Constitution Ave., N.W., Suite 600, Washington, DC 20210. Alternatively, notices may be sent electronically to OE-DelinquentSPnotice@dol.gov. The Department issued a direct final rule that amends these submission procedures to reflect a new mailing address and to provide for electronic submission through the Department’s website. 77 FR 41678.

Fiduciaries may continue to send paper notices to the Department; however, a dedicated post office box has been established to replace the original mailing address. The new mailing address is: U.S. Department of Labor, Employee Benefits Security Administration, Office of Enforcement, P.O. Box 75296, Washington, DC 20013. Further, effective 60 days after the direct final rule is published in the Federal Register, the Department will eliminate the previously available email address (OE-DelinquentSPnotice@dol.gov). Instead, pursuant to instructions that will be separately provided by the Department, responsible plan fiduciaries who wish to submit notices electronically will be able to do so through a dedicated link on the Department’s Web site, at www.dol.gov/ebsa/regs/feedisclosurefailurenotice.html. This web page will include clear instructions for how to submit the required notification and will provide immediate confirmation to responsible plan fiduciaries that the notice has been received by the Department.

The Department believes that the new web submission procedure will benefit both responsible plan fiduciaries and the Department and, therefore, does not anticipate any significant adverse comment on this amendment. The submission process will be easier for responsible plan fiduciaries, because the web page will include clear instructions and

¹ 77 FR 5632 (Feb. 3, 2012).

will assist responsible plan fiduciaries by ensuring that they include all of the information required by the regulation's notice provision. Plan fiduciaries, especially for small plans, will be more easily able to take advantage of the relief provided by the 408(b)(2) regulation's class exemption provision. Further, unlike submissions by email or paper mail, the web-based submission procedure will include immediate, electronic confirmation for responsible plan fiduciaries that their notice has been received. The online submission procedure also will benefit the Department by enabling its staff to more efficiently receive, process, and review class exemption notices under the 408(b)(2) regulation, which in turn will benefit responsible plan fiduciaries who wish to avail themselves of relief provided by the regulation's class exemption. The Department expects that responsible plan fiduciary errors will be fewer, due to the web-based procedures that will include clear instructions and better ensure that complete information is submitted, and that transcription and other errors by the Department will be fewer, due to the automated procedures that will occur when submissions are received electronically.

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)), the Department submitted an information collection request (ICR) to OMB in accordance with 44 U.S.C. 3507(d) for the final regulation that was published on February 3, 2012. OMB approved the ICR on March 29, 2012, under control number 1210-0133, which is currently schedule to expire on March 31, 2015. The Department, therefore, is hereby submitting a no material, nonsubstantive change request with OMB to implement the Internet option and update the mailing address.