

**MEMO# 22774**

August 5, 2008

## **DOL Updates Enforcement Manual Regarding Gifts and Entertainment**

[22774]

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TO: PENSION MEMBERS No. 47-08  
COMPLIANCE ADVISORY COMMITTEE No. 11-08 RE: DOL UPDATES ENFORCEMENT  
MANUAL REGARDING GIFTS AND ENTERTAINMENT

The Department of Labor added a new section to its enforcement manual regarding gifts and entertainment provided to plan fiduciaries. [\[1\]](#) The enforcement manual provides guidelines for the enforcement activities of DOL and its regional offices.

The new language, section 12 of the description of the Fiduciary Investigations Program, [\[2\]](#) states that an investigation may disclose fiduciary violations involving a plan fiduciary's acceptance, from a party dealing with the plan, of consideration such as meals, gifts, entertainment, or expenses associated with educational conferences. The manual states that the investigator should determine whether the facts support an allegation that the receipt of gifts, gratuities, or other consideration were for the fiduciary's personal account and received in connection with a transaction or transactions involving the assets of the plan in violation of section 406(b)(3) of ERISA. The investigator should also determine whether the fiduciary or the plan maintained a reasonable written policy or plan provision governing the receipt of items or services from parties dealing with the plan and whether the fiduciary adhered to that policy.

The new language includes guidelines for insubstantial gifts and entertainment. It states that, for enforcement purposes only, an investigator should:

- Treat as insubstantial, and not as an apparent violation of section 406(b)(3), the receipt by a fiduciary of gifts, gratuities, meals, entertainment, or other consideration (other than cash or cash equivalents), and reimbursement of expenses associated with educational conferences, as long as their aggregate annual value is less than

\$250 and their receipt does not violate any plan policy or provision.

- Not treat the reimbursement to a plan of expenses associated with a plan representative's attendance at an educational conference as a violation of section 406(b)(3) if a plan fiduciary reasonably determined, in advance and without regard to whether such expenses will be reimbursed, that (a) the plan's payment of educational expenses in the first instance was prudent, (b) the expenses were consistent with a written plan policy or provision designed to prevent abuse, (c) the conference had a reasonable relationship to the duties of the attending plan representative, and (d) the expenses for attendance were reasonable in light of the benefits afforded to the plan by such attendance and unlikely to compromise the plan representative's ability to carry out his or her duties faithfully in accordance with ERISA. The fiduciary's determination should be in writing.

Michael L. Hadley  
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**endnotes**

[1] The Enforcement Manual is available on DOL's website:  
<http://www.dol.gov/ebsa/oemanual/main.html>.

[2] The Fiduciary Investigations Program description is available here:  
<http://www.dol.gov/ebsa/oemanual/cha48.html>.

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