

MEMO# 26378

August 8, 2012

DOL Issues Direct Final Rule Revising 408(b)(2) Non-Compliant Provider Notification Procedures

[26378]

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TO: PENSION MEMBERS No. 28-12

OPERATIONS COMMITTEE No. 23-12

BANK, TRUST AND RETIREMENT ADVISORY COMMITTEE No. 35-12

BROKER/DEALER ADVISORY COMMITTEE No. 38-12

TRANSFER AGENT ADVISORY COMMITTEE No. 47-12 RE: DOL ISSUES DIRECT FINAL RULE
REVISING 408(b)(2) NON-COMPLIANT PROVIDER NOTIFICATION PROCEDURES

The Department of Labor issued a direct final rule amending the submission procedures to be used by plan fiduciaries to inform the Department about service providers that fail to furnish the required 408(b)(2) disclosures. [\[1\]](#) The final 408(b)(2) regulation conditions relief from ERISA's prohibited transaction provisions and associated excise taxes on the plan fiduciary informing the Department of the disclosure failure after first requesting in writing that the covered service provider furnish the required disclosures. The final regulation provided two alternative methods of notification to the Department – either through U.S. mail or through electronic delivery to a Department email address provided in the final rule. [\[2\]](#)

The direct final rule revises the notification procedure in two ways, effective September 14, 2012. First, it changes the U.S. mail address to provide a dedicated post office box. Second, it replaces the previous email address with a web link (www.dol.gov/ebsa/regs/feedisclosurefailurenotice.html) through which plan fiduciaries will be able to submit notices electronically and receive immediate confirmation that the notice has been received by the Department.

The Department issued the amendment as a direct final rule because it does not anticipate any significant adverse comments on the amendment. However, the Department also published a corresponding proposed rule in the Federal Register with the amendment and a comment period expiring on August 15, 2012. [\[3\]](#) In the event that the Department receives significant adverse comment, it will withdraw the direct final rule and address all public comments in a subsequent final rule.

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endnotes

[1] A copy of the direct final rule can be found here:
<http://www.gpo.gov/fdsys/pkg/FR-2012-07-16/pdf/2012-17013.pdf>.

[2] A copy of the final regulation can be found here:
<http://www.dol.gov/ebsa/pdf/2012-02262-PI1.pdf>. For a description of the Final Regulation see [Memorandum](#) to Pension Members No. 8-12 [25876], dated February 7, 2012; [Memorandum](#) to Pension Committee No. 6-12, Pension Operations Advisory Committee No. 6-12, Operations Committee No. 4-12, Bank Trust and Retirement Advisory Committee No. 6-12, Broker/Dealer Advisory Committee No. 5-12 and Transfer Agent Advisory Committee No. 7-12 [25875], dated February 7, 2012.

[3] A copy of the Proposed Rule can be found here:
<http://webapps.dol.gov/FederalRegister/PdfDisplay.aspx?DocId=26219>.

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