

SUBCHAPTER G—ADMINISTRATION AND ENFORCEMENT UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

PART 2560—RULES AND REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT

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AUTHORITY: 29 U.S.C. 1132, 1135, and Secretary of Labor's Order 1-2003, 68 FR 5374 (Feb. 3, 2003). Sec. 2560.503-1 also issued under 29 U.S.C. 1133.

§ 2560.502-1 Requests for enforcement pursuant to section 502(b)(2).

(a) *Form, content and filing.* All requests by participants, beneficiaries, and fiduciaries for the Secretary of Labor to exercise his enforcement authority pursuant to section 502(a)(5), 29 U.S.C. 1132(a)(5), with respect to a violation of, or the enforcement of, parts 2 and 3 of title I of the Employee Retirement Income Security Act of 1974 (the Act) shall be in writing and shall contain information sufficient to form a basis for identifying the participant, beneficiary, or fiduciary and the plan involved. All such requests shall be considered filed if they are directed to and received by any office or official of the Department of Labor or referred to and received by any such office or official by any party to whom such writing is directed.

(b) *Consideration.* The Secretary of Labor retains discretion to determine whether any enforcement proceeding should be commenced in the case of any request received pursuant to paragraph (a) of this section, and he may, but shall not be required to, exercise his authority pursuant to section 502(a)(5) of the Act only if he deter-

mines that such violation affects, or such enforcement is necessary to protect claims of participants or beneficiaries to benefits under the plan.

[43 FR 50175, Oct. 27, 1978]

§ 2560.502c-2 Civil penalties under section 502(c)(2).

(a) *In general.* (1) Pursuant to the authority granted the Secretary under section 502(c)(2) of the Employee Retirement Income Security Act of 1974, as amended (the Act), the administrator (within the meaning of section 3(16)(A)) of an employee benefit plan (within the meaning of section 3(3) and §2510.3-1, *et seq.*) for which an annual report is required to be filed under section 101(b)(1) shall be liable for civil penalties assessed by the Secretary under section 502(c)(2) of the Act in each case in which there is a failure or refusal to file the annual report required to be filed under section 101(b)(1).

(2) For purposes of this section, a failure or refusal to file the annual report required to be filed under section 101(b)(1) shall mean a failure or refusal to file, in whole or in part, that information described in section 103 and §2520.103-1, *et seq.*, on behalf of the plan at the time and in the manner prescribed therefor.

(b) *Amount assessed.* (1) The amount assessed under section 502(c)(2) of the Act shall be determined by the Department of Labor, taking into consideration the degree and/or willfulness of the failure or refusal to file the annual report. However, the amount assessed under section 502(c)(2) of the Act shall not exceed \$1,000 a day (or such other maximum amount as may be established by regulation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended), computed from the date of the administrator's failure or refusal to file the annual report and, except as provided