

(ERISA or the Act) requires the Secretary of Labor to assess a civil penalty against a fiduciary who breaches a fiduciary responsibility under, or commits any other violation of, part 4 of title I of ERISA or any other person who knowingly participates in such breach or violation. The penalty under section 502(1) is equal to 20 percent of the “applicable recovery amount” paid pursuant to any settlement agreement with the Secretary or ordered by a court to be paid in a judicial proceeding instituted by the Secretary under section 502 (a)(2) or (a)(5). The Secretary may, in the Secretary’s sole discretion, waive or reduce the penalty if the Secretary determines in writing that:

(a) The fiduciary or other person acted reasonably and in good faith, or

(b) It is reasonable to expect that the fiduciary or other person will not be able to restore all losses to the plan or any participant or beneficiary of such plan without severe financial hardship unless such waiver or reduction is granted.

The penalty imposed on a fiduciary or other person with respect to any transaction shall be reduced by the amount of any penalty or tax imposed on such fiduciary or other person with respect to such transaction under section 502(i) or section 4975 of the Internal Revenue Code of 1986 (the Code).

§ 2570.82 Definitions.

For purposes of this section:

(a) *502(1) civil penalty proceedings* means an adjudicatory proceeding relating to the assessment of a civil penalty provided in section 502(1) of ERISA;

(b) *Notice of assessment* means any document, however designated, issued by the Secretary which contains a specified assessment, in monetary terms, of a civil penalty under ERISA section 502(1). A “notice of assessment” will contain a brief factual description of the violation for which the assessment is being made, the identity of the person being assessed, and the amount of the assessment and the basis for assessing that particular person that particular penalty amount;

(c) *Person* includes an individual, partnership, corporation, employee

benefit plan, association, exchange or other entity or organization;

(d) *Petition* means a written request, made by a person, for a waiver or reduction of the civil penalty described herein; and

(e) *Secretary* means the Secretary of Labor and includes, pursuant to any delegation of authority by the Secretary, the Assistant Secretary for Employee Benefits Security, Regional Directors for Employee Benefits Security, or Deputy Regional Directors for Employee Benefits Security.

[55 FR 25286, June 20, 1990, as amended at 68 FR 16400, Apr. 3, 2003]

§ 2570.83 Assessment of civil penalty.

(a) Except as described in §§ 2570.85 and 2570.86 of this part, subsequent to the payment of the applicable recovery amount pursuant to either a settlement agreement or a court order, the Secretary shall serve on the person liable for making such payment a notice of assessment of civil penalty equal to 20 percent of the applicable recovery amount.

(b) Service of such notice shall be made either:

(1) By delivering a copy to the person being assessed; if the person is an individual, to the individual; if the person is a partnership, to any partner; if the person is a corporation, association, exchange, or other entity or organization, to any officer of such entity; if the person is an employee benefit plan, to a trustee of such plan; or to any attorney representing any such person;

(2) By leaving a copy at the principal office, place of business, or residence of such individual, partner, officer, trustee, or attorney; or

(3) By mailing a copy to the last known address of such individual, partner, officer, trustee, or attorney.

If service is accomplished by certified mail, service is complete upon mailing. If done by regular mail, service is complete upon receipt by the addressee.

§ 2570.84 Payment of civil penalty.

(a) The civil penalty must be paid within 60 days of service of the notice of assessment.