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

PART 2560—RULES AND REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT

AUTHORITY: 29 U.S.C. 1132, 1135, and Secretary of Labor's Order 1–2011, 77 FR 1088 (Jan. 9, 2012). Section 2560.503–1 also issued under 29 U.S.C. 1133. Section 2560.502c–7 also issued under 29 U.S.C. 1132(c)(7). Section 2560.502c–4 also issued under 29 U.S.C. 1132(c)(4). Section 2560.502c–8 also issued under 29 U.S.C. 1132(c)(8).

§ 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 determines 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 (adjusted for inflation 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 in paragraph (b)(2) of this section, continuing up to the date on which an annual report satisfactory to the Secretary is filed.

(2) If upon receipt of a notice of intent to assess a penalty (as described in paragraph (c) of this section) the administrator files a statement of reasonable cause for the failure to file, in accordance with paragraph (e) of this section, a penalty shall not be assessed for any day from the date the Department serves the administrator with a copy of such notice until the day after the Department serves notice on the administrator of its determination on reasonable cause and its intention to assess a penalty (as described in paragraph (g) of this section).

(3) For purposes of this paragraph, the date on which the administrator failed or refused to file the annual report shall be the date on which the annual report was due (determined without regard to any extension for filing). An annual report which is rejected under section 104(a)(4) for a failure to provide material information shall be treated as a failure to file an annual report when a revised report satisfactory to the Department is not filed within 45 days of the date of the Department's notice of rejection.

A penalty shall not be assessed under section 502(c)(2) for any day earlier than the day after the date of an administrator's failure or refusal to file the annual report if a revised filing satisfactory to the Department is not submitted within 45 days of the date of the notice of rejection by the Department.

(c) *Notice of intent to assess a penalty.* Prior to the assessment of any penalty under section 502(c)(2), the Department shall provide to the administrator of the plan a written notice indicating the Department's intent to assess a penalty under section 502(c)(2), the amount of such penalty, the period to which the penalty applies, and the reason(s) for the penalty.

(d) *Reconsideration or waiver of penalty to be assessed.* The Department may determine that all or part of the penalty amount in the notice of intent to assess a penalty shall not be assessed on a showing that the administrator complied with the requirements of section 101(b)(1) of the Act or on a showing by the administrator of mitigating circumstances regarding the degree or willfulness of the noncompliance.

(e) *Showing of reasonable cause.* Upon issuance by the Department of a notice of intent to assess a penalty, the administrator shall have thirty (30) days from the date of service of the notice, as described in paragraph (i) of this section, to file a statement of reasonable cause explaining why the penalty, as calculated, should be reduced, or not be assessed, for the reasons set forth in paragraph (d) of this section. Such statement must be made in writing and set forth all the facts alleged as reasonable cause for the reduction or nonassessment of the penalty. The statement must contain a declaration by the administrator that the statement is made under the penalties of perjury.

(f) *Failure to file a statement of reasonable cause.* Failure of an administrator to file a statement of reasonable cause within the thirty (30) day period described in paragraph (e) of this section shall be deemed to constitute a waiver of the right to appear and contest the facts alleged in the notice of intent, and such failure shall be deemed an admission of the facts alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(2) of the Act. Such notice shall then become a final order of the Secretary, within the meaning of § 2570.61(g) of this chapter, forty-five (45) days from the date of service of the notice.

(g) *Notice of the determination on statement of reasonable cause.* (1) The Department, following a review of all the facts alleged in support of no assessment or a complete or partial waiver of the penalty, shall notify the administrator, in writing, of its determination to waive the penalty, in whole or in

part, and/or assess a penalty. If it is the determination of the Department to assess a penalty, the notice shall indicate the amount of the penalty, not to exceed the amount described in paragraph (c) of this section. This notice is a ''pleading'' for purposes of §2570.61(m) of this chapter.

(2) Except as provided in paragraph (h) of this section, a notice issued pursuant to paragraph (g)(1) of this section, indicating the Department's intention to assess a penalty, shall become a final order, within the meaning of §2570.61(g) of this chapter, forty-five (45) days from the date of service of the notice.

(h) *Administrative hearing.* A notice issued pursuant to paragraph (g) of this section will not become a final order, within the meaning of §2570.61(g) of this chapter, if, within thirty (30) days from the date of the service of the notice, the administrator or a representative thereof files a request for a hearing under §§2570.60 through 2570.71 of this chapter, and files an answer to the notice. The request for hearing and answer must be filed in accordance with §2570.62 of this chapter and §18.4 of this title. The answer opposing the proposed sanction shall be in writing, and supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to paragraph (g) of this section.

(i) *Service of notices and filing of statements.* (1) Service of a notice for purposes of paragraphs (c) and (g) of this section shall be made:

(i) By delivering a copy to the administrator or representative thereof;

(ii) By leaving a copy at the principal office, place of business, or residence of the administrator or representative thereof; or

(iii) By mailing a copy to the last known address of the administrator or representative thereof.

(2) If service is accomplished by certified mail, service is complete upon mailing. If service is by regular mail, service is complete upon receipt by the addressee. When service of a notice under paragraph (c) or (g) of this section is by certified mail, five (5) days shall be added to the time allowed by these rules for the filing of a statement, or a request for hearing and answer, as applicable.

(3) For purposes of this section, a statement of reasonable cause shall be considered filed:

(i) Upon mailing, if accomplished using United States Postal Service certified mail or Express Mail;

(ii) Upon receipt by the delivery service, if accomplished using a ''designated private delivery service'' within the meaning of 26 U.S.C. 7502(f);

(iii) Upon transmittal, if transmitted in a manner specified in the notice of intent to assess a penalty as a method of transmittal to be accorded such special treatment; or

(iv) In the case of any other method of filing, upon receipt by the Department at the address provided in the notice of intent to assess a penalty.

(j) *Liability.* (1) If more than one person is responsible as administrator for the failure to file the annual report, all such persons shall be jointly and severally liable with respect to such failure.

(2) Any person against whom a civil penalty has been assessed under section 502(c)(2) pursuant to a final order, within the meaning of §2570.61(g), shall be personally liable for the payment of such penalty.

(k) *Cross-reference.* See §§2570.60 through 2570.71 of this chapter for procedural rules relating to administrative hearings under section 502(c)(2) of the Act.

[54 FR 26894, June 26, 1989, as amended at 67 FR 777, Jan. 7, 2002; 68 FR 3734, Jan. 24, 2003; 81 FR 43453, July 1, 2016]

§ 2560.502c–4 Civil penalties under section 502(c)(4).

(a) *In general.* (1) Pursuant to the authority granted the Secretary under section 502(c)(4) of the Employee Retirement Income Security Act of 1974, as amended (the Act), the administrator (within the meaning of section 3(16)(A) of the Act) shall be liable for civil penalties assessed by the Secretary under section 502(c)(4) of the Act, for failure or refusal to furnish:

(i) Notice of funding-based limits in accordance with section 101(j) of the Act;

(ii) Actuarial, financial or funding information in accordance with section 101(k) of the Act;

(iii) Notice of potential withdrawal liability in accordance with section 101(l) of the Act; or

(iv) Notice of rights and obligations under an automatic contribution arrangement in accordance with section 514(e)(3) of the Act.

(2) For purposes of this section, a failure or refusal to furnish the items referred to in paragraph (a)(1) above shall mean a failure or refusal to furnish, in whole or in part, the items required under section 101(j), (k), or (l), or section 514(e)(3) of the Act at the relevant times and manners prescribed in such sections.

(b) *Amount assessed.* (1) The amount assessed under section 502(c)(4) of the Act for each separate violation shall be determined by the Department of Labor, taking into consideration the degree or willfulness of the failure or refusal to furnish the items referred to in paragraph (a) of this section. However, the amount assessed for each violation under section 502(c)(4) of the Act shall not exceed $1,000 a day (adjusted for inflation 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 furnish the items referred to in paragraph (a) of this section.

(2) For purposes of calculating the amount to be assessed under this section, a failure or refusal to furnish the item with respect to any person entitled to receive such item, shall be treated as a separate violation under section 101(j), (k), or (l), or section 514(e)(3) of the Act, as applicable.

(c) *Notice of intent to assess a penalty.* Prior to the assessment of any penalty under section 502(c)(4) of the Act, the Department shall provide to the administrator of the plan a written notice indicating the Department's intent to assess a penalty under section 502(c)(4) of the Act, the amount of such penalty, the number of individuals on which the penalty is based, the period to which the penalty applies, and the reason(s) for the penalty.

(d) *Reconsideration or waiver of penalty to be assessed.* The Department may determine that all or part of the penalty amount in the notice of intent to assess a penalty shall not be assessed on a showing that the administrator complied with the requirements of section 101(j), (k), or (l), or section 514(e)(3) of the Act, as applicable, or on a showing by such person of mitigating circumstances regarding the degree or willfulness of the noncompliance.

(e) *Showing of reasonable cause.* Upon issuance by the Department of a notice of intent to assess a penalty, the administrator shall have thirty (30) days from the date of service of the notice, as described in paragraph (i) of this section, to file a statement of reasonable cause explaining why the penalty, as calculated, should be reduced, or not be assessed, for the reasons set forth in paragraph (d) of this section. Such statement must be made in writing and set forth all the facts alleged as reasonable cause for the reduction or nonassessment of the penalty. The statement must contain a declaration by the administrator that the statement is made under the penalties of perjury.

(f) *Failure to file a statement of reasonable cause.* Failure to file a statement of reasonable cause within the thirty (30) day period described in paragraph (e) of this section shall be deemed to constitute a waiver of the right to appear and contest the facts alleged in the notice of intent, and such failure shall be deemed an admission of the facts alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(4) of the Act. Such notice shall then become a final order of the Secretary, within the meaning of § 2570.131(g) of this chapter, forty-five (45) days from the date of service of the notice.

(g) *Notice of determination on statement of reasonable cause.* (1) The Department, following a review of all of the facts in a statement of reasonable cause alleged in support of nonassessment or a complete or partial waiver of the penalty, shall notify the administrator, in writing, of its determination on the statement of reasonable cause and its determination whether to waive the penalty in whole or in part, and/or assess a penalty. If it is the determination of the Department to assess a penalty, the notice shall indicate the amount of the penalty assessment, not to exceed the amount described in

paragraph (c) of this section. This notice is a ''pleading'' for purposes of § 2570.131(m) of this chapter.

(2) Except as provided in paragraph (h) of this section, a notice issued pursuant to paragraph (g)(1) of this section, indicating the Department's determination to assess a penalty, shall become a final order, within the meaning of § 2570.131(g) of this chapter, forty-five (45) days from the date of service of the notice.

(h) *Administrative hearing.* A notice issued pursuant to paragraph (g) of this section will not become a final order, within the meaning of § 2570.131(g) of this chapter, if, within thirty (30) days from the date of the service of the notice, the administrator or a representative thereof files a request for a hearing under §§ 2570.130 through 2570.141 of this chapter, and files an answer to the notice. The request for hearing and answer must be filed in accordance with § 2570.132 of this chapter and § 18.4 of this title. The answer opposing the proposed sanction shall be in writing, and supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to paragraph (g) of this section.

(i) *Service of notices and filing of statements.* (1) Service of a notice for purposes of paragraphs (c) and (g) of this section shall be made:

(i) By delivering a copy to the administrator or representative thereof;

(ii) By leaving a copy at the principal office, place of business, or residence of the administrator or representative thereof; or

(iii) By mailing a copy to the last known address of the administrator or representative thereof.

(2) If service is accomplished by certified mail, service is complete upon mailing. If service is by regular mail, service is complete upon receipt by the addressee. When service of a notice under paragraph (c) or (g) of this section is by certified mail, five days shall be added to the time allowed by these rules for the filing of a statement or a request for hearing and answer, as applicable.

(3) For purposes of this section, a statement of reasonable cause shall be considered filed:

(i) Upon mailing, if accomplished using United States Postal Service certified mail or express mail;

(ii) Upon receipt by the delivery service, if accomplished using a ''designated private delivery service'' within the meaning of 26 U.S.C. 7502(f);

(iii) Upon transmittal, if transmitted in a manner specified in the notice of intent to assess a penalty as a method of transmittal to be accorded such special treatment; or

(iv) In the case of any other method of filing, upon receipt by the Department at the address provided in the notice of intent to assess a penalty.

(j) *Liability.* (1) If more than one person is responsible as administrator for the failure to furnish the items required under section 101(j), (k), or (l), or section 514(e)(3) of the Act, as applicable, all such persons shall be jointly and severally liable for such failure. For purposes of paragraph (a)(1)(iii) of this section, the term ''administrator'' shall include plan sponsor (within the meaning of section 3(16)(B) of the Act).

(2) Any person, or persons under paragraph (j)(1) of this section, against whom a civil penalty has been assessed under section 502(c)(4) of the Act, pursuant to a final order within the meaning of § 2570.131(g) of this chapter shall be personally liable for the payment of such penalty.

(k) *Cross-references.* (1) The procedural rules in §§ 2570.130 through 2570.141 of this chapter apply to administrative hearings under section 502(c)(4) of the Act.

(2) When applying procedural rules in §§ 2570.130 through 2570.140:

(i) Wherever the term ''502(c)(7)'' appears, such term shall mean ''502(c)(4)'';

(ii) Reference to § 2560.502c–7(g) in 2570.131(c) shall be construed as reference to § 2560.502c–4(g) of this chapter;

(iii) Reference to § 2560.502c–7(e) in § 2570.131(g) shall be construed as reference to § 2560.502c–4(e) of this chapter;

(iv) Reference to § 2560.502c–7(g) in § 2570.131(m) shall be construed as reference to § 2560.502c–4(g); and

(v) Reference to §§ 2560.502c–7(g) and 2560.502c–7(h) in § 2570.134 shall be construed as reference to §§ 2560.502c–4(g) and 2560.502c–4(h), respectively.

[74 FR 20, Jan. 2, 2009, as amended at 81 FR 43453, July 1, 2016]

§ 2560.502c–5 Civil penalties under section 502(c)(5).

(a) *In general.* (1) Pursuant to the authority granted the Secretary under section 502(c)(5) of the Employee Retirement Income Security Act of 1974, as amended (the Act), the administrator of a multiple employer welfare arrangement (MEWA) (within the meaning of section 3(40)(A) of the Act) that is not a group health plan, and that provides benefits consisting of medical care (within the meaning of section 733(a)(2)), for which a report is required to be filed under section 101(g) of the Act and 29 CFR 2520.101–2, shall be liable for civil penalties assessed by the Secretary under section 502(c)(5) of the Act for each failure or refusal to file a completed report required to be filed under section 101(g) and 29 CFR 2520.101–2. The term ''administrator'' is defined in 29 CFR 2520.101–2(b).

(2) For purposes of this section, a failure or refusal to file the report required to be filed under section 101(g) shall mean a failure or refusal to file, in whole or in part, that information described in section 101(g) and 29 CFR 2520.101–2, on behalf of the MEWA, at the time and in the manner prescribed therefor.

(b) *Amount assessed.* (1) The amount assessed under section 502(c)(5) shall be determined by the Department of Labor, taking into consideration the degree and/or willfulness of the failure to file the report. However, the amount assessed under section 502(c)(5) or the Act shall not exceed $1,000 a day (adjusted for inflation 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 report and, except as provided in paragraph (b)(2) of this section, continuing up to the date on which a report meeting the requirements of section 101(g) of the Act and 29 CFR 2520.101–2, as determined by the Secretary, is filed.

(2) If, upon receipt of a notice of intent to assess a penalty (as described in paragraph (c) of this section), the administrator files a statement of reasonable cause for the failure to file, in accordance with paragraph (e) of this section, a penalty shall not be assessed for any day from the date the Department serves the administrator with a copy of such notice until the day after the Department serves notice on the administrator of its determination on reasonable cause and its intention to assess a penalty (as described in paragraph (g) of this section).

(3) For purposes of this paragraph, the date on which the administrator failed or refused to file the report shall be the date on which the report was due (determined without regard to any extension of time for filing). A report which is rejected under 29 CFR 2520.101–2 shall be treated as a failure to file a report when a revised report meeting the requirements of this section is not filed within 45 days of the date of the Department's notice of rejection. If a revised report meeting the requirements of this section, as determined by the Secretary, is not submitted within 45 days of the date of the notice of rejection by the Department, a penalty shall be assessed under section 502(c)(5) beginning on the day after the date of the administrator's failure or refusal to file the report.

(c) *Notice of intent to assess a penalty.* Prior to the assessment of any penalty under section 502(c)(5), the Department shall provide to the administrator of the MEWA a written notice indicating the Department's intent to assess a penalty under section 502(c)(5), the amount of such penalty, the period to which the penalty applies, and a statement of the facts and the reason(s) for the penalty.

(d) *Reconsideration or waiver of penalty to be assessed.* The Department may determine that all or part of the penalty amount in the notice of intent to assess a penalty shall not be assessed on a showing that the administrator complied with the requirements of section 101(g) of the Act or on a showing by the administrator of mitigating circumstances regarding the degree or willfulness of the noncompliance.

(e) *Showing of reasonable cause.* Upon issuance by the Department of a notice of intent to assess a penalty, the administrator shall have thirty (30) days from the date of service of the notice, as described in paragraph (i) of this section, to file a statement of reasonable cause explaining why the penalty, as calculated, should be reduced, or not be assessed, for the reasons set forth in paragraph (d) of this section. Such statement must be made in writing and set forth all the facts alleged as reasonable cause for the reduction or nonassessment of the penalty. The statement must contain a declaration by the administrator that the statement is made under the penalties of perjury.

(f) *Failure to file a statement of reasonable cause.* Failure of an administrator to file a statement of reasonable cause within the thirty (30) day period described in paragraph (e) of this section shall be deemed to constitute a waiver of the right to appear and contest the facts alleged in the notice of intent, and such failure shall be deemed an admission of the facts alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(5) of the Act. Such notice shall then become a final order of the Secretary, within the meaning of 29 CFR 2570.91(g), forty-five (45) days from the date of service of the notice.

(g) *Notice of the determination on statement of reasonable cause.* (1) The Department, following a review of all the facts alleged in support of no assessment or a complete or partial waiver of the penalty, shall notify the administrator, in writing, of its determination to waive the penalty, in whole or in part, and/or assess a penalty. If it is the determination of the Department to assess a penalty, the notice shall indicate the amount of the penalty, not to exceed the amount described in paragraph (c) of this section, and a brief statement of the reasons for assessing the penalty. This notice is a ''pleading'' for purposes of 29 CFR 2570.91(m).

(2) Except as provided in paragraph (h) of this section, a notice issued pursuant to paragraph (g)(1) of this section, indicating the Department's intention to assess a penalty, shall become a final order, within the meaning of 29 CFR 2570.91(g), forty-five (45) days from the date of service of the notice.

(h) *Administrative hearing.* A notice issued pursuant to paragraph (g) of this section will not become a final order, within the meaning of 29 CFR 2570.91(g), if, within thirty (30) days from the date of the service of the notice, the administrator or a representative thereof files a request for a hearing under 29 CFR 2570.90 through 2570.101, and files an answer to the notice. The request for hearing and answer must be filed in accordance with 29 CFR 2570.92 and 18.4. The answer opposing the proposed sanction shall be in writing, and supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to paragraph (g) of this section.

(i) *Service of notices and filing of statements.* (1) Service of a notice for purposes of paragraphs (c) and (g) of this section shall be made:

(i) By delivering a copy to the administrator or representative thereof;

(ii) By leaving a copy at the principal office, place of business, or residence of the administrator or representative thereof; or

(iii) By mailing a copy to the last known address of the administrator or representative thereof.

(2) If service is accomplished by certified mail, service is complete upon mailing. If service is by regular mail, service is complete upon receipt by the addressee. When service of a notice under paragraph (c) or (g) of this section is by certified mail, five (5) days shall be added to the time allowed by these rules for the filing of a statement, or a request for hearing and answer, as applicable.

(3) For purposes of this section, a statement of reasonable cause shall be considered filed:

(i) Upon mailing, if accomplished using United States Postal Service certified mail or Express Mail;

(ii) Upon receipt by the delivery service, if accomplished using a ''designated private delivery service'' within the meaning of 26 U.S.C. 7502(f);

(iii) Upon transmittal, if transmitted in a manner specified in the notice of intent to assess a penalty as a method

of transmittal to be accorded such special treatment; or

(iv) In the case of any other method of filing, upon receipt by the Department at the address provided in the notice of intent to assess a penalty.

(j) *Liability.* (1) If more than one person is responsible as administrator for the failure to file the report, all such persons shall be jointly and severally liable with respect to such failure.

(2) Any person against whom a civil penalty has been assessed under section 502(c)(5) pursuant to a final order, within the meaning of 29 CFR 2570.91(g), shall be personally liable for the payment of such penalty.

(k) *Cross-reference. See* 29 CFR 2570.90 through 2570.101 for procedural rules relating to administrative hearings under section 502(c)(5) of the Act.

[68 FR 17505, Apr. 9, 2003, as amended at 81 FR 43453, July 1, 2016]

§ 2560.502c–6 Civil penalties under section 502(c)(6).

(a) *In general.* (1) Pursuant to the authority granted the Secretary under section 502(c)(6) of the Employee Retirement Income Security Act of 1974, as amended (the Act), the administrator (within the meaning of section 3(16)(A) of the Act) of an employee benefit plan (within the meaning of section 3(3) of the Act and § 2510.3–1 of this chapter) shall be liable for civil penalties assessed by the Secretary under section 502(c)(6) of the Act in each case in which there is a failure or refusal to furnish to the Secretary documents requested under section 104(a)(6) of the Act and § 2520.104a–8 of this chapter.

(2) For purposes of this section, a failure or refusal to furnish documents shall mean a failure or refusal to furnish, in whole or in part, the documents requested under section 104(a)(6) of the Act and § 2520.104a–8 of this chapter at the time and in the manner prescribed in the request.

(b) *Amount assessed.* (1) The amount assessed under section 502(c)(6) 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 furnish any document or documents requested by the Department under section 104(a)(6) of the Act. However, the amount assessed under section 502(c)(6) of the Act shall not exceed $100 a day or $1,000 per request (such amounts to be adjusted for inflation 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 furnish any document or documents requested by the Department.

(2) For purposes of calculating the amount to be assessed under this section, the date of a failure or refusal to furnish documents shall not be earlier than the thirtieth day after service of the request under section 104(a)(6) of ERISA and § 2520.104a–8 of this chapter.

(c) *Notice of intent to assess a penalty.* Prior to the assessment of any penalty under section 502(c)(6) of the Act, the Department shall provide to the administrator of the plan a written notice that indicates the Department's intent to assess a penalty under section 502(c)(6) of the Act, the amount of the penalty, the period to which the penalty applies, and the reason(s) for the penalty.

(d) *Reconsideration or waiver of penalty to be assessed.* The Department may determine that all or part of the penalty amount in the notice of intent to assess a penalty shall not be assessed on a showing that the administrator complied with the requirements of section 104(a)(6) of the Act or on a showing by the administrator of mitigating circumstances regarding the degree or willfulness of the noncompliance.

(e) *Showing of reasonable cause.* Upon issuance by the Department of a notice of intent to assess a penalty, the administrator shall have thirty (30) days from the date of service of the notice, as described in paragraph (i) of this section, to file a statement of reasonable cause explaining why the penalty, as calculated, should be reduced or not be assessed, for the reasons set forth in paragraph (d) of this section. Such statement must be made in writing and set forth all the facts alleged as reasonable cause for the reduction or nonassessment of the penalty. The statement must contain a declaration by the administrator that the statement is made under the penalties of perjury.

(f) *Failure to file a statement of reasonable cause.* Failure to file a statement

of reasonable cause within the 30 day period described in paragraph (e) of this section shall be deemed to constitute a waiver of the right to appear and contest the facts alleged in the notice of intent, and such failure shall be deemed an admission of the facts alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(6) of the Act. Such notice shall then become a final order of the Secretary, within the meaning of §2570.111(g) of this chapter, forty-five (45) days from the date of service of the notice.

(g) *Notice of determination on statement of reasonable cause.* (1) The Department, following a review of all of the facts alleged in support of no assessment or a complete or partial waiver of the penalty, shall notify the administrator, in writing, of its determination not to assess or to waive the penalty, in whole or in part, and/or assess a penalty. If it is the determination of the Department to assess a penalty, the notice shall indicate the amount of the penalty, not to exceed the amount described in paragraph (c) of this section. This notice is a ''pleading'' for purposes of §2570.111(m) of this chapter.

(2) Except as provided in paragraph (h) of this section, a notice issued pursuant to paragraph (g)(1) of this section, indicating the Department's intention to assess a penalty, shall become a final order, within the meaning of §2570.111(g) of this chapter, forty-five (45) days from the date of service of the notice.

(h) *Administrative hearing.* A notice issued pursuant to paragraph (g) of this section will not become a final order, within the meaning of §2570.91(g) of this chapter, if, within thirty (30) days from the date of the service of the notice, the administrator or a representative thereof files a request for a hearing under §§2570.110 through 2570.121 of this chapter, and files an answer to the notice. The request for hearing and answer must be filed in accordance with §2570.112 of this chapter and §18.4 of this title. The answer opposing the proposed sanction shall be in writing, and supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to paragraph (g) of this section.

(i) *Service of notices and filing of statements.* (1) Service of a notice for purposes of paragraphs (c) and (g) of this section shall be made:

(i) By delivering a copy to the administrator or representative thereof;

(ii) By leaving a copy at the principal office, place of business, or residence of the administrator or representative thereof; or

(iii) By mailing a copy to the last known address of the administrator or representative thereof.

(2) If service is accomplished by certified mail, service is complete upon mailing. If service is by regular mail, service is complete upon receipt by the addressee. When service of a notice under paragraph (c) or (g) of this section is by certified mail, five (5) days shall be added to the time allowed by these rules for the filing of a statement, or a request for hearing and answer, as applicable.

(3) For purposes of this section, a statement of reasonable cause shall be considered filed:

(i) Upon mailing, if accomplished using United States Postal Service certified mail or Express Mail;

(ii) Upon receipt by the delivery service, if accomplished using a ''designated private delivery service'' within the meaning of 26 U.S.C. 7502(f);

(iii) Upon transmittal, if transmitted in a manner specified in the notice of intent to assess a penalty as a method of transmittal to be accorded such special treatment; or

(iv) In the case of any other method of filing, upon receipt by the Department at the address provided in the notice of intent to assess a penalty.

(j) *Liability.* (1) If more than one person is responsible as administrator for the failure to furnish the document or documents requested under section 104(a)(6) of the Act and its implementing regulations (§2520.104a–8 of this chapter), all such persons shall be jointly and severally liable with respect to such failure.

(2) Any person, or persons under paragraph (j)(1) of this section, against whom a civil penalty has been assessed under section 502(c)(6) of the Act pursuant to a final order, within the meaning of §2570.111(g) of this chapter, shall

be personally liable for the payment of such penalty.

(k) *Cross-reference.* See §§ 2570.110 through 2570.121 of this chapter for procedural rules relating to administrative hearings under section 502(c)(6) of the Act.

[67 FR 785, Jan. 7, 2002, as amended at 68 FR 3735, Jan. 24, 2003; 81 FR 43453, July 1, 2016]

§ 2560.502c–7 Civil penalties under section 502(c)(7).

(a) *In general.* (1) Pursuant to the authority granted the Secretary under section 502(c)(7) of the Employee Retirement Income Security Act of 1974, as amended (the Act), the administrator (within the meaning of section 3(16)(A) of the Act) of an individual account plan (within the meaning of section 101(i)(8) of the Act and § 2520.101–3(d)(2) of this chapter), who fails or refuses to provide notice of a blackout period to affected participants and beneficiaries in accordance with section 101(i) of the Act and § 2520.101–3 of this chapter, or the administrator (within the meaning of section 3(16)(A) of the Act) of an applicable individual account plan (within the meaning of section 101(m) of the Act), who fails or refuses to provide notice of diversification rights to applicable individuals in accordance with section 101(m) of the Act, shall be liable for civil penalties assessed by the Secretary under section 502(c)(7) of the Act.

(2) For purposes of this section, a failure or refusal to provide a notice of blackout period shall mean a failure or refusal, in whole or in part, to provide notice of a blackout period to an affected plan participant or beneficiary at the time and in the manner prescribed by section 101(i) of the Act and § 2520.101–3 of this chapter, and a failure or refusal to provide a notice of diversification rights shall mean a failure or refusal, in whole or in part, to provide notice of diversification rights to an applicable individual at the time and in the manner prescribed by section 101(m) of the Act.

(b) *Amount assessed.* (1) The amount assessed under section 502(c)(7) of the Act for each separate violation shall be determined by the Department of Labor, taking into consideration the degree and/or willfulness of the failure or refusal to provide a notice of blackout period or notice of diversification rights. However, the amount assessed for each violation under section 502(c)(7) of the Act shall not exceed $100 a day (adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended), computed from, in the case of a notice of blackout period under section 101(i) of the Act, the date of the administrator's failure or refusal to provide a notice of blackout period up to and including the date that is the final day of the blackout period for which the notice was required, or in the case of a notice of diversification rights under section 101(m) of the Act, computed from the date that is 30 days before the first date on which rights are exercisable under section 204(j) of the Act up to the date such a notice is furnished.

(2) For purposes of calculating the amount to be assessed under this section, a failure or refusal to provide a notice of blackout period or a notice of diversification rights with respect to any single participant or beneficiary shall be treated as a separate violation under section 101(i) of the Act and § 2520.101–3 of this chapter or section 101(m) of the Act.

(c) *Notice of intent to assess a penalty.* Prior to the assessment of any penalty under section 502(c)(7) of the Act, the Department shall provide to the administrator of the plan a written notice indicating the Department's intent to assess a penalty under section 502(c)(7) of the Act, the amount of such penalty, the number of participants and beneficiaries on which the penalty is based, the period to which the penalty applies, and the reason(s) for the penalty.

(d) *Reconsideration or waiver of penalty to be assessed.* The Department may determine that all or part of the penalty amount in the notice of intent to assess a penalty shall not be assessed on a showing that the administrator complied with the applicable requirements of section 101(i) or section 101(m) of the Act or on a showing by the administrator of mitigating circumstances regarding the degree or willfulness of the noncompliance.

(e) *Showing of reasonable cause.* Upon issuance by the Department of a notice of intent to assess a penalty, the administrator shall have thirty (30) days from the date of service of the notice, as described in paragraph (i) of this section, to file a statement of reasonable cause explaining why the penalty, as calculated, should be reduced, or not be assessed, for the reasons set forth in paragraph (d) of this section. Such statement must be made in writing and set forth all the facts alleged as reasonable cause for the reduction or nonassessment of the penalty. The statement must contain a declaration by the administrator that the statement is made under the penalties of perjury.

(f) *Failure to file a statement of reasonable cause.* Failure to file a statement of reasonable cause within the 30 day period described in paragraph (e) of this section shall be deemed to constitute a waiver of the right to appear and contest the facts alleged in the notice of intent, and such failure shall be deemed an admission of the facts alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(7) of the Act. Such notice shall then become a final order of the Secretary, within the meaning of §2570.131(g) of this chapter, forty-five (45) days from the date of service of the notice.

(g) *Notice of determination on statement of reasonable cause.* (1) The Department, following a review of all of the facts in a statement of reasonable cause alleged in support of no assessment or a complete or partial waiver of the penalty, shall notify the administrator, in writing, of its determination on the statement of reasonable cause and its determination whether to waive the penalty in whole or in part, and/or assess a penalty. If it is the determination of the Department to assess a penalty, the notice shall indicate the amount of the penalty assessment, not to exceed the amount described in paragraph (c) of this section. This notice is a ''pleading'' for purposes of §2570.131(m) of this chapter.

(2) Except as provided in paragraph (h) of this section, a notice issued pursuant to paragraph (g)(1) of this section, indicating the Department's determination to assess a penalty, shall become a final order, within the meaning of §2570.131(g) of this chapter, forty-five (45) days from the date of service of the notice.

(h) *Administrative hearing.* A notice issued pursuant to paragraph (g) of this section will not become a final order, within the meaning of §2570.131(g) of this chapter, if, within thirty (30) days from the date of the service of the notice, the administrator or a representative thereof files a request for a hearing under §§2570.130 through 2570.141 of this chapter, and files an answer to the notice. The request for hearing and answer must be filed in accordance with §2570.132 of this chapter and §18.4 of this title. The answer opposing the proposed sanction shall be in writing, and supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to paragraph (g) of this section.

(i) *Service of notices and filing of statements.* (1) Service of a notice for purposes of paragraphs (c) and (g) of this section shall be made:

(i) By delivering a copy to the administrator or representative thereof;

(ii) By leaving a copy at the principal office, place of business, or residence of the administrator or representative thereof; or

(iii) By mailing a copy to the last known address of the administrator or representative thereof.

(2) If service is accomplished by certified mail, service is complete upon mailing. If service is by regular mail, service is complete upon receipt by the addressee. When service of a notice under paragraph (c) or (g) of this section is by certified mail, five (5) days shall be added to the time allowed by these rules for the filing of a statement or a request for hearing and answer, as applicable.

(3) For purposes of this section, a statement of reasonable cause shall be considered filed:

(i) Upon mailing, if accomplished using United States Postal Service certified mail or Express Mail;

(ii) Upon receipt by the delivery service, if accomplished using a ''designated private delivery service'' within the meaning of 26 U.S.C. 7502(f);

(iii) Upon transmittal, if transmitted in a manner specified in the notice of

intent to assess a penalty as a method of transmittal to be accorded such special treatment; or

(iv) In the case of any other method of filing, upon receipt by the Department at the address provided in the notice of intent to assess a penalty.

(j) *Liability.* (1) If more than one person is responsible as administrator for the failure to provide a notice of blackout period under section 101(i) of the Act and its implementing regulations (§ 2520.101–3 of this chapter), or the failure to provide a notice of diversification rights under section 101(m) of the Act, all such persons shall be jointly and severally liable for such failure.

(2) Any person, or persons under paragraph (j)(1) of this section, against whom a civil penalty has been assessed under section 502(c)(7) of the Act, pursuant to a final order, within the meaning of § 2570.131(g) of this chapter, shall be personally liable for the payment of such penalty.

(k) *Cross-reference.* See §§ 2570.130 through 2570.141 of this chapter for procedural rules relating to administrative hearings under section 502(c)(7) of the Act.

[68 FR 3736, Jan. 24, 2003, as amended at 72 FR 44972, Aug. 10, 2007; 81 FR 43453, July 1, 2016]

§ 2560.502c–8 Civil penalties under section 502(c)(8).

(a) *In general.* (1) Pursuant to the authority granted the Secretary under section 502(c)(8) of the Employee Retirement Income Security Act of 1974, as amended (the Act), the plan sponsor (within the meaning of section 3(16)(B)(iii) of the Act) shall be liable for civil penalties assessed by the Secretary under section 502(c)(8) of the Act, for:

(i) Each violation by such sponsor of the requirement under section 305 of the Act to adopt by the deadline established in that section a funding improvement plan or rehabilitation plan with respect to a multiemployer plan which is in endangered or critical status; or

(ii) In the case of a plan in endangered status which is not in seriously endangered status, a failure by the plan to meet the applicable benchmarks under section 305 by the end of the funding improvement period with respect to the plan.

(2) For purposes of this section, violations or failures referred to in paragraph (a)(1) of this section shall mean a failure or refusal, in whole or in part, to adopt a funding improvement or rehabilitation plan, or to meet the applicable benchmarks, at the relevant times and manners prescribed in section 305 of the Act.

(b) *Amount assessed.* The amount assessed under section 502(c)(8) of the Act for each separate violation shall be determined by the Department of Labor, taking into consideration the degree or willfulness of the failure or refusal to comply with the specific requirements referred to in paragraph (a) of this section. However, the amount assessed for each violation under section 502(c)(8) of the Act shall not exceed $1,100 a day (adjusted for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended), computed from the date of the plan sponsor's failure or refusal to comply with the specific requirements referred to in paragraph (a) of this section.

(c) *Notice of intent to assess a penalty.* Prior to the assessment of any penalty under section 502(c)(8) of the Act, the Department shall provide to the plan sponsor of the plan a written notice indicating the Department's intent to assess a penalty under section 502(c)(8) of the Act, the amount of such penalty, the period to which the penalty applies, and the reason(s) for the penalty.

(d) *Reconsideration or waiver of penalty to be assessed.* The Department may determine that all or part of the penalty amount in the notice of intent to assess a penalty shall not be assessed on a showing that the plan sponsor complied with the requirements of section 305 of the Act, or on a showing by the plan sponsor of mitigating circumstances regarding the degree or willfulness of the noncompliance.

(e) *Showing of reasonable cause.* Upon issuance by the Department of a notice of intent to assess a penalty, the plan sponsor shall have thirty (30) days from the date of service of the notice, as described in paragraph (i) of this section, to file a statement of reasonable cause explaining why the penalty, as calculated, should be reduced, or not be

assessed, for the reasons set forth in paragraph (d) of this section. Such statement must be made in writing and set forth all the facts alleged as reasonable cause for the reduction or nonassessment of the penalty. The statement must contain a declaration by the plan sponsor that the statement is made under the penalties of perjury.

(f) *Failure to file a statement of reasonable cause.* Failure to file a statement of reasonable cause within the thirty (30) day period described in paragraph (e) of this section shall be deemed to constitute a waiver of the right to appear and contest the facts alleged in the notice of intent, and such failure shall be deemed an admission of the facts alleged in the notice for purposes of any proceeding involving the assessment of a civil penalty under section 502(c)(8) of the Act. Such notice shall then become a final order of the Secretary, within the meaning of §2570.161(g) of this chapter, forty-five (45) days from the date of service of the notice.

(g) *Notice of determination on statement of reasonable cause.* (1) The Department, following a review of all of the facts in a statement of reasonable cause alleged in support of nonassessment or a complete or partial waiver of the penalty, shall notify the plan sponsor, in writing, of its determination on the statement of reasonable cause and its determination whether to waive the penalty in whole or in part, and/or assess a penalty. If it is the determination of the Department to assess a penalty, the notice shall indicate the amount of the penalty assessment, not to exceed the amount described in paragraph (c) of this section. This notice is a ''pleading'' for purposes of §2570.161(m) of this chapter.

(2) Except as provided in paragraph (h) of this section, a notice issued pursuant to paragraph (g)(1) of this section, indicating the Department's determination to assess a penalty, shall become a final order, within the meaning of §2570.161(g) of this chapter, forty-five (45) days from the date of service of the notice.

(h) *Administrative hearing.* A notice issued pursuant to paragraph (g) of this section will not become a final order, within the meaning of §2570.161(g) of this chapter, if, within thirty (30) days from the date of the service of the notice, the plan sponsor or a representative thereof files a request for a hearing under §§2570.160 through 2570.171 of this chapter, and files an answer to the notice. The request for hearing and answer must be filed in accordance with §2570.162 of this chapter and §18.4 of this title. The answer opposing the proposed sanction shall be in writing, and supported by reference to specific circumstances or facts surrounding the notice of determination issued pursuant to paragraph (g) of this section.

(i) *Service of notices and filing of statements.* (1) Service of a notice for purposes of paragraphs (c) and (g) of this section shall be made:

(i) By delivering a copy to the plan sponsor or representative thereof;

(ii) By leaving a copy at the principal office, place of business, or residence of the plan sponsor or representative thereof; or

(iii) By mailing a copy to the last known address of the plan sponsor or representative thereof.

(2) If service is accomplished by certified mail, service is complete upon mailing. If service is by regular mail, service is complete upon receipt by the addressee. When service of a notice under paragraph (c) or (g) of this section is by certified mail, five days shall be added to the time allowed by these rules for the filing of a statement or a request for hearing and answer, as applicable.

(3) For purposes of this section, a statement of reasonable cause shall be considered filed:

(i) Upon mailing, if accomplished using United States Postal Service certified mail or express mail;

(ii) Upon receipt by the delivery service, if accomplished using a ''designated private delivery service'' within the meaning of 26 U.S.C. 7502(f);

(iii) Upon transmittal, if transmitted in a manner specified in the notice of intent to assess a penalty as a method of transmittal to be accorded such special treatment; or

(iv) In the case of any other method of filing, upon receipt by the Department at the address provided in the notice of intent to assess a penalty.

(j) *Liability.* (1) If more than one person is responsible as plan sponsor for violations referred to in paragraph (a) of this section, all such persons shall be jointly and severally liable for such violations.

(2) Any person, or persons under paragraph (j)(1) of this section, against whom a civil penalty has been assessed under section 502(c)(8) of the Act, pursuant to a final order within the meaning of § 2570.161(g) of this chapter, shall be personally liable for the payment of such penalty.

(k) *Cross-reference.* See §§ 2570.160 through 2570.171 of this chapter for procedural rules relating to administrative hearings under section 502(c)(8) of the Act.

[75 FR 8800, Feb. 26, 2010, as amended at 81 FR 43454, July 1, 2016]

§ 2560.502i–1 Civil penalties under section 502(i).

(a) *In general.* Section 502(i) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) permits the Secretary of Labor to assess a civil penalty against a party in interest who engages in a prohibited transaction with respect to an employee benefit plan other than a plan described in section 4975(e)(1) of the Internal Revenue Code (the Code). The initial penalty under section 502(i) is five percent of the total ''amount involved'' in the prohibited transaction (unless a lesser amount is otherwise agreed to by the parties). However, if the prohibited transaction is not corrected during the ''correction period,'' the civil penalty shall be 100 percent of the ''amount involved'' (unless a lesser amount is otherwise agreed to by the parties). Paragraph (b) of this section defines the term ''amount involved,'' paragraph (c) defines the term ''correction,'' and paragraph (d) defines the term ''correction period.'' Paragraph (e) illustrates the computation of the civil penalty under section 502(i). Paragraph (f) is a cross reference to the Department's procedural rules for section 502(i) proceedings.

(b) *Amount involved.* Section 502(i) of ERISA states that the term ''amount involved'' in that section shall be defined as it is defined under section 4975(f)(4) of the Code. As provided in 26 CFR 141.4975.13, 26 CFR 53.4941(e)–1(b) is controlling with respect to the interpretation of the term ''amount involved'' under section 4975 of the Code. Accordingly, the Department of Labor will apply the principles set out at 26 CFR 53.4941(e)–1(b) in determining the ''amount involved'' in a transaction subject to the civil penalty provided by section 502(i) of the Act and this section.

(c) *Correction.* Section 502(i) of ERISA states that the term ''correction'' shall be defined in a manner that is consistent with the definition of that term under section 4975(f)(5) of the Code. As provided in 26 CFR 141.4975–13, 26 CFR 53.4941(e)–1(c) is controlling with respect to the interpretation of the term ''correction'' for purposes of section 4975 of the Code. Accordingly, the Department of Labor will apply the principles set out in 26 CFR 53.4941(e)–(1)(c) in interpreting the term ''correction'' under section 502(i) of the Act and this section.

(d) *Correction period.* (1) In general, the ''correction period'' begins on the date the prohibited transaction occurs and ends 90 days after a final agency order with respect to such transaction.

(2) When a party in interest seeks judicial review within 90 days of a final agency order in an ERISA section 502(i) proceeding, the correction period will end 90 days after the entry of a final order in the judicial action.

(3) The following examples illustrate the operation of this paragraph:

(i) A party in interest receives notice of the Department's intent to impose the section 502(i) penalty and does not invoke the ERISA section 502(i) prohibited transaction penalty proceedings described in § 2570.1 of this chapter within 30 days of such notice. As provided in § 2570.5 of this chapter, the notice of the intent to impose a penalty becomes a final order after 30 days. Thus, the ''correction period'' ends 90 days after the expiration of the 30 day period.

(ii) A party in interest contests a proposed section 502(i) penalty, but does not appeal an adverse decision of the administrative law judge in the proceeding. As provided in § 2570.10(a) of this chapter, the decision of the administrative law judge becomes a final order of the Department unless the decision is appealed within 20 days after the date of such order. Thus, the correction period ends 90 days after the expiration of such 20 day period.

(iii) The Secretary of Labor issues to a party in interest a decision upholding an administrative law judge's adverse decision. As provided in §2570.12(b) of this chapter, the decision of the Secretary becomes a final order of the Department immediately. Thus, the correction period will end 90 days after the issuance of the Secretary's order unless the party in interest judicially contests the order within that 90 day period. If the party in interest so contests the order, the correction period will end 90 days after the entry of a final order in the judicial action.

(e) *Computation of the section 502(i) penalty.* (1) In general, the civil penalty under section 502(i) is determined by applying the applicable percentage (five percent or one hundred percent) to the aggregate amount involved in the transaction. However, a continuing prohibited transaction, such as a lease or a loan, is treated as giving rise to a separate event subject to the sanction for each year (as measured from the anniversary date of the transaction) in which the transaction occurs.

(2) The following examples illustrate the computation of the section 502(i) penalty:

(i) An employee benefit plan purchases property from a party in interest at a price of $10,000. The fair market value of the property is $5,000. The ''amount involved'' in that transaction, as determined under 26 CFR 53.4941(e)–1(b), is $10,000 (the greater of the amount paid by the plan or the fair market value of the property). The initial five percent penalty under section 502(i) is $500 (five percent of $10,000).

(ii) An employee benefit plan executes a four year lease with a party in interest at an annual rental of $10,000 (which is the fair rental value of the property). The amount involved in each year of that transaction, as determined under 26 CFR 53.4941(e)–1(b), is $10,000. The amount of the initial sanction under ERISA section 502(i) would be a total of $5,000: $2,000 ($10,000 × 5% × 4 with respect to the rentals paid in the first year of the lease); $1,500 ($10,000 × 5% × 3 with respect to the second year); $1,000 ($10,000 × 5% × 2 with respect to the third year); $500 ($10,000 × 5% × 1 with respect to the fourth year).

(f) *Cross reference.* See §§2570.1–2570.12 of this chapter for procedural rules relating to section 502(i) penalty proceedings.

[53 FR 37476, Sept. 26, 1988]

§ 2560.503–1 Claims procedure.

(a) *Scope and purpose.* In accordance with the authority of sections 503 and 505 of the Employee Retirement Income Security Act of 1974 (ERISA or the Act), 29 U.S.C. 1133, 1135, this section sets forth minimum requirements for employee benefit plan procedures pertaining to claims for benefits by participants and beneficiaries (hereinafter referred to as claimants). Except as otherwise specifically provided in this section, these requirements apply to every employee benefit plan described in section 4(a) and not exempted under section 4(b) of the Act.

(b) *Obligation to establish and maintain reasonable claims procedures.* Every employee benefit plan shall establish and maintain reasonable procedures governing the filing of benefit claims, notification of benefit determinations, and appeal of adverse benefit determinations (hereinafter collectively referred to as claims procedures). The claims procedures for a plan will be deemed to be reasonable only if—

(1) The claims procedures comply with the requirements of paragraphs (c), (d), (e), (f), (g), (h), (i), and (j) of this section, as appropriate, except to the extent that the claims procedures are deemed to comply with some or all of such provisions pursuant to paragraph (b)(6) of this section;

(2) A description of all claims procedures (including, in the case of a group health plan within the meaning of paragraph (m)(6) of this section, any procedures for obtaining prior approval as a prerequisite for obtaining a benefit, such as preauthorization procedures or utilization review procedures) and the applicable time frames is included as part of a summary plan description meeting the requirements of 29 CFR 2520.102–3;

(3) The claims procedures do not contain any provision, and are not administered in a way, that unduly inhibits or hampers the initiation or processing of claims for benefits. For example, a provision or practice that requires payment of a fee or costs as a condition to making a claim or to appealing an adverse benefit determination would be considered to unduly inhibit the initiation and processing of claims for benefits. Also, the denial of a claim for

failure to obtain a prior approval under circumstances that would make obtaining such prior approval impossible or where application of the prior approval process could seriously jeopardize the life or health of the claimant (e.g., in the case of a group health plan, the claimant is unconscious and in need of immediate care at the time medical treatment is required) would constitute a practice that unduly inhibits the initiation and processing of a claim;

(4) The claims procedures do not preclude an authorized representative of a claimant from acting on behalf of such claimant in pursuing a benefit claim or appeal of an adverse benefit determination. Nevertheless, a plan may establish reasonable procedures for determining whether an individual has been authorized to act on behalf of a claimant, provided that, in the case of a claim involving urgent care, within the meaning of paragraph (m)(1) of this section, a health care professional, within the meaning of paragraph (m)(7) of this section, with knowledge of a claimant's medical condition shall be permitted to act as the authorized representative of the claimant; and

(5) The claims procedures contain administrative processes and safeguards designed to ensure and to verify that benefit claim determinations are made in accordance with governing plan documents and that, where appropriate, the plan provisions have been applied consistently with respect to similarly situated claimants.

(6) In the case of a plan established and maintained pursuant to a collective bargaining agreement (other than a plan subject to the provisions of section 302(c)(5) of the Labor Management Relations Act, 1947 concerning joint representation on the board of trustees)—

(i) Such plan will be deemed to comply with the provisions of paragraphs (c) through (j) of this section if the collective bargaining agreement pursuant to which the plan is established or maintained sets forth or incorporates by specific reference—

(A) Provisions concerning the filing of benefit claims and the initial disposition of benefit claims, and

(B) A grievance and arbitration procedure to which adverse benefit determinations are subject.

(ii) Such plan will be deemed to comply with the provisions of paragraphs (h), (i), and (j) of this section (but will not be deemed to comply with paragraphs (c) through (g) of this section) if the collective bargaining agreement pursuant to which the plan is established or maintained sets forth or incorporates by specific reference a grievance and arbitration procedure to which adverse benefit determinations are subject (but not provisions concerning the filing and initial disposition of benefit claims).

(7) In the case of a plan providing disability benefits, the plan must ensure that all claims and appeals for disability benefits are adjudicated in a manner designed to ensure the independence and impartiality of the persons involved in making the decision. Accordingly, decisions regarding hiring, compensation, termination, promotion, or other similar matters with respect to any individual (such as a claims adjudicator or medical or vocational expert) must not be made based upon the likelihood that the individual will support the denial of benefits.

(c) *Group health plans.* The claims procedures of a group health plan will be deemed to be reasonable only if, in addition to complying with the requirements of paragraph (b) of this section—

(1)(i) The claims procedures provide that, in the case of a failure by a claimant or an authorized representative of a claimant to follow the plan's procedures for filing a pre-service claim, within the meaning of paragraph (m)(2) of this section, the claimant or representative shall be notified of the failure and the proper procedures to be followed in filing a claim for benefits. This notification shall be provided to the claimant or authorized representative, as appropriate, as soon as possible, but not later than 5 days (24 hours in the case of a failure to file a claim involving urgent care) following the failure. Notification may be oral, unless written notification is requested by the claimant or authorized representative.

(ii) Paragraph (c)(1)(i) of this section shall apply only in the case of a failure that—

(A) Is a communication by a claimant or an authorized representative of a claimant that is received by a person or organizational unit customarily responsible for handling benefit matters; and

(B) Is a communication that names a specific claimant; a specific medical condition or symptom; and a specific treatment, service, or product for which approval is requested.

(2) The claims procedures do not contain any provision, and are not administered in a way, that requires a claimant to file more than two appeals of an adverse benefit determination prior to bringing a civil action under section 502(a) of the Act;

(3) To the extent that a plan offers voluntary levels of appeal (except to the extent that the plan is required to do so by State law), including voluntary arbitration or any other form of dispute resolution, in addition to those permitted by paragraph (c)(2) of this section, the claims procedures provide that:

(i) The plan waives any right to assert that a claimant has failed to exhaust administrative remedies because the claimant did not elect to submit a benefit dispute to any such voluntary level of appeal provided by the plan;

(ii) The plan agrees that any statute of limitations or other defense based on timeliness is tolled during the time that any such voluntary appeal is pending;

(iii) The claims procedures provide that a claimant may elect to submit a benefit dispute to such voluntary level of appeal only after exhaustion of the appeals permitted by paragraph (c)(2) of this section;

(iv) The plan provides to any claimant, upon request, sufficient information relating to the voluntary level of appeal to enable the claimant to make an informed judgment about whether to submit a benefit dispute to the voluntary level of appeal, including a statement that the decision of a claimant as to whether or not to submit a benefit dispute to the voluntary level of appeal will have no effect on the claimant's rights to any other benefits under the plan and information about the applicable rules, the claimant's right to representation, the process for selecting the decisionmaker, and the circumstances, if any, that may affect the impartiality of the decisionmaker, such as any financial or personal interests in the result or any past or present relationship with any party to the review process; and

(v) No fees or costs are imposed on the claimant as part of the voluntary level of appeal.

(4) The claims procedures do not contain any provision for the mandatory arbitration of adverse benefit determinations, except to the extent that the plan or procedures provide that:

(i) The arbitration is conducted as one of the two appeals described in paragraph (c)(2) of this section and in accordance with the requirements applicable to such appeals; and

(ii) The claimant is not precluded from challenging the decision under section 502(a) of the Act or other applicable law.

(d) *Plans providing disability benefits.* The claims procedures of a plan that provides disability benefits will be deemed to be reasonable only if the claims procedures comply, with respect to claims for disability benefits, with the requirements of paragraphs (b), (c)(2), (c)(3), and (c)(4) of this section.

(e) *Claim for benefits.* For purposes of this section, a claim for benefits is a request for a plan benefit or benefits made by a claimant in accordance with a plan's reasonable procedure for filing benefit claims. In the case of a group health plan, a claim for benefits includes any pre-service claims within the meaning of paragraph (m)(2) of this section and any post-service claims within the meaning of paragraph (m)(3) of this section.

(f) *Timing of notification of benefit determination*—(1) *In general.* Except as provided in paragraphs (f)(2) and (f)(3) of this section, if a claim is wholly or partially denied, the plan administrator shall notify the claimant, in accordance with paragraph (g) of this section, of the plan's adverse benefit determination within a reasonable period of time, but not later than 90 days after receipt of the claim by the plan, unless the plan administrator determines that

special circumstances require an extension of time for processing the claim. If the plan administrator determines that an extension of time for processing is required, written notice of the extension shall be furnished to the claimant prior to the termination of the initial 90-day period. In no event shall such extension exceed a period of 90 days from the end of such initial period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the plan expects to render the benefit determination.

(2) *Group health plans.* In the case of a group health plan, the plan administrator shall notify a claimant of the plan's benefit determination in accordance with paragraph (f)(2)(i), (f)(2)(ii), or (f)(2)(iii) of this section, as appropriate.

(i) *Urgent care claims.* In the case of a claim involving urgent care, the plan administrator shall notify the claimant of the plan's benefit determination (whether adverse or not) as soon as possible, taking into account the medical exigencies, but not later than 72 hours after receipt of the claim by the plan, unless the claimant fails to provide sufficient information to determine whether, or to what extent, benefits are covered or payable under the plan. In the case of such a failure, the plan administrator shall notify the claimant as soon as possible, but not later than 24 hours after receipt of the claim by the plan, of the specific information necessary to complete the claim. The claimant shall be afforded a reasonable amount of time, taking into account the circumstances, but not less than 48 hours, to provide the specified information. Notification of any adverse benefit determination pursuant to this paragraph (f)(2)(i) shall be made in accordance with paragraph (g) of this section. The plan administrator shall notify the claimant of the plan's benefit determination as soon as possible, but in no case later than 48 hours after the earlier of—

(A) The plan's receipt of the specified information, or

(B) The end of the period afforded the claimant to provide the specified additional information.

(ii) *Concurrent care decisions.* If a group health plan has approved an ongoing course of treatment to be provided over a period of time or number of treatments—

(A) Any reduction or termination by the plan of such course of treatment (other than by plan amendment or termination) before the end of such period of time or number of treatments shall constitute an adverse benefit determination. The plan administrator shall notify the claimant, in accordance with paragraph (g) of this section, of the adverse benefit determination at a time sufficiently in advance of the reduction or termination to allow the claimant to appeal and obtain a determination on review of that adverse benefit determination before the benefit is reduced or terminated.

(B) Any request by a claimant to extend the course of treatment beyond the period of time or number of treatments that is a claim involving urgent care shall be decided as soon as possible, taking into account the medical exigencies, and the plan administrator shall notify the claimant of the benefit determination, whether adverse or not, within 24 hours after receipt of the claim by the plan, provided that any such claim is made to the plan at least 24 hours prior to the expiration of the prescribed period of time or number of treatments. Notification of any adverse benefit determination concerning a request to extend the course of treatment, whether involving urgent care or not, shall be made in accordance with paragraph (g) of this section, and appeal shall be governed by paragraph (i)(2)(i), (i)(2)(ii), or (i)(2)(iii), as appropriate.

(iii) *Other claims.* In the case of a claim not described in paragraphs (f)(2)(i) or (f)(2)(ii) of this section, the plan administrator shall notify the claimant of the plan's benefit determination in accordance with either paragraph (f)(2)(iii)(A) or (f)(2)(iii)(B) of this section, as appropriate.

(A) *Pre-service claims.* In the case of a pre-service claim, the plan administrator shall notify the claimant of the plan's benefit determination (whether adverse or not) within a reasonable period of time appropriate to the medical circumstances, but not later than 15

days after receipt of the claim by the plan. This period may be extended one time by the plan for up to 15 days, provided that the plan administrator both determines that such an extension is necessary due to matters beyond the control of the plan and notifies the claimant, prior to the expiration of the initial 15-day period, of the circumstances requiring the extension of time and the date by which the plan expects to render a decision. If such an extension is necessary due to a failure of the claimant to submit the information necessary to decide the claim, the notice of extension shall specifically describe the required information, and the claimant shall be afforded at least 45 days from receipt of the notice within which to provide the specified information. Notification of any adverse benefit determination pursuant to this paragraph (f)(2)(iii)(A) shall be made in accordance with paragraph (g) of this section.

(B) *Post-service claims.* In the case of a post-service claim, the plan administrator shall notify the claimant, in accordance with paragraph (g) of this section, of the plan's adverse benefit determination within a reasonable period of time, but not later than 30 days after receipt of the claim. This period may be extended one time by the plan for up to 15 days, provided that the plan administrator both determines that such an extension is necessary due to matters beyond the control of the plan and notifies the claimant, prior to the expiration of the initial 30-day period, of the circumstances requiring the extension of time and the date by which the plan expects to render a decision. If such an extension is necessary due to a failure of the claimant to submit the information necessary to decide the claim, the notice of extension shall specifically describe the required information, and the claimant shall be afforded at least 45 days from receipt of the notice within which to provide the specified information.

(3) *Disability claims.* In the case of a claim for disability benefits, the plan administrator shall notify the claimant, in accordance with paragraph (g) of this section, of the plan's adverse benefit determination within a reasonable period of time, but not later than 45 days after receipt of the claim by the plan. This period may be extended by the plan for up to 30 days, provided that the plan administrator both determines that such an extension is necessary due to matters beyond the control of the plan and notifies the claimant, prior to the expiration of the initial 45-day period, of the circumstances requiring the extension of time and the date by which the plan expects to render a decision. If, prior to the end of the first 30-day extension period, the administrator determines that, due to matters beyond the control of the plan, a decision cannot be rendered within that extension period, the period for making the determination may be extended for up to an additional 30 days, provided that the plan administrator notifies the claimant, prior to the expiration of the first 30-day extension period, of the circumstances requiring the extension and the date as of which the plan expects to render a decision. In the case of any extension under this paragraph (f)(3), the notice of extension shall specifically explain the standards on which entitlement to a benefit is based, the unresolved issues that prevent a decision on the claim, and the additional information needed to resolve those issues, and the claimant shall be afforded at least 45 days within which to provide the specified information.

(4) *Calculating time periods.* For purposes of paragraph (f) of this section, the period of time within which a benefit determination is required to be made shall begin at the time a claim is filed in accordance with the reasonable procedures of a plan, without regard to whether all the information necessary to make a benefit determination accompanies the filing. In the event that a period of time is extended as permitted pursuant to paragraph (f)(2)(iii) or (f)(3) of this section due to a claimant's failure to submit information necessary to decide a claim, the period for making the benefit determination shall be tolled from the date on which the notification of the extension is sent to the claimant until the date on which the claimant responds to the request for additional information.

(g) *Manner and content of notification of benefit determination.* (1) Except as

provided in paragraph (g)(2) of this section, the plan administrator shall provide a claimant with written or electronic notification of any adverse benefit determination. Any electronic notification shall comply with the standards imposed by 29 CFR 2520.104b–1(c)(1)(i), (iii), and (iv), or with the standards imposed by 29 CFR 2520.104b–31 (for pension benefit plans). The notification shall set forth, in a manner calculated to be understood by the claimant—

(i) The specific reason or reasons for the adverse determination;

(ii) Reference to the specific plan provisions on which the determination is based;

(iii) A description of any additional material or information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary;

(iv) A description of the plan's review procedures and the time limits applicable to such procedures, including a statement of the claimant's right to bring a civil action under section 502(a) of the Act following an adverse benefit determination on review;

(v) In the case of an adverse benefit determination by a group health plan—

(A) If an internal rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination, either the specific rule, guideline, protocol, or other similar criterion; or a statement that such a rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination and that a copy of such rule, guideline, protocol, or other criterion will be provided free of charge to the claimant upon request; or

(B) If the adverse benefit determination is based on a medical necessity or experimental treatment or similar exclusion or limit, either an explanation of the scientific or clinical judgment for the determination, applying the terms of the plan to the claimant's medical circumstances, or a statement that such explanation will be provided free of charge upon request.

(vi) In the case of an adverse benefit determination by a group health plan concerning a claim involving urgent care, a description of the expedited review process applicable to such claims.

(vii) In the case of an adverse benefit determination with respect to disability benefits—

(A) A discussion of the decision, including an explanation of the basis for disagreeing with or not following:

(*i*) The views presented by the claimant to the plan of health care professionals treating the claimant and vocational professionals who evaluated the claimant;

(*ii*) The views of medical or vocational experts whose advice was obtained on behalf of the plan in connection with a claimant's adverse benefit determination, without regard to whether the advice was relied upon in making the benefit determination; and

(*iii*) A disability determination regarding the claimant presented by the claimant to the plan made by the Social Security Administration;

(B) If the adverse benefit determination is based on a medical necessity or experimental treatment or similar exclusion or limit, either an explanation of the scientific or clinical judgment for the determination, applying the terms of the plan to the claimant's medical circumstances, or a statement that such explanation will be provided free of charge upon request;

(C) Either the specific internal rules, guidelines, protocols, standards or other similar criteria of the plan relied upon in making the adverse determination or, alternatively, a statement that such rules, guidelines, protocols, standards or other similar criteria of the plan do not exist; and

(D) A statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits. Whether a document, record, or other information is relevant to a claim for benefits shall be determined by reference to paragraph (m)(8) of this section.

(viii) In the case of an adverse benefit determination with respect to disability benefits, the notification shall be provided in a culturally and linguistically appropriate manner (as described in paragraph (o) of this section).

(2) In the case of an adverse benefit determination by a group health plan concerning a claim involving urgent care, the information described in paragraph (g)(1) of this section may be provided to the claimant orally within the time frame prescribed in paragraph (f)(2)(i) of this section, provided that a written or electronic notification in accordance with paragraph (g)(1) of this section is furnished to the claimant not later than 3 days after the oral notification.

(h) *Appeal of adverse benefit determinations*—(1) *In general.* Every employee benefit plan shall establish and maintain a procedure by which a claimant shall have a reasonable opportunity to appeal an adverse benefit determination to an appropriate named fiduciary of the plan, and under which there will be a full and fair review of the claim and the adverse benefit determination.

(2) *Full and fair review.* Except as provided in paragraphs (h)(3) and (h)(4) of this section, the claims procedures of a plan will not be deemed to provide a claimant with a reasonable opportunity for a full and fair review of a claim and adverse benefit determination unless the claims procedures—

(i) Provide claimants at least 60 days following receipt of a notification of an adverse benefit determination within which to appeal the determination;

(ii) Provide claimants the opportunity to submit written comments, documents, records, and other information relating to the claim for benefits;

(iii) Provide that a claimant shall be provided, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits. Whether a document, record, or other information is relevant to a claim for benefits shall be determined by reference to paragraph (m)(8) of this section;

(iv) Provide for a review that takes into account all comments, documents, records, and other information submitted by the claimant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination.

(3) *Group health plans.* The claims procedures of a group health plan will not be deemed to provide a claimant with a reasonable opportunity for a full and fair review of a claim and adverse benefit determination unless, in addition to complying with the requirements of paragraphs (h)(2)(ii) through (iv) of this section, the claims procedures—

(i) Provide claimants at least 180 days following receipt of a notification of an adverse benefit determination within which to appeal the determination;

(ii) Provide for a review that does not afford deference to the initial adverse benefit determination and that is conducted by an appropriate named fiduciary of the plan who is neither the individual who made the adverse benefit determination that is the subject of the appeal, nor the subordinate of such individual;

(iii) Provide that, in deciding an appeal of any adverse benefit determination that is based in whole or in part on a medical judgment, including determinations with regard to whether a particular treatment, drug, or other item is experimental, investigational, or not medically necessary or appropriate, the appropriate named fiduciary shall consult with a health care professional who has appropriate training and experience in the field of medicine involved in the medical judgment;

(iv) Provide for the identification of medical or vocational experts whose advice was obtained on behalf of the plan in connection with a claimant's adverse benefit determination, without regard to whether the advice was relied upon in making the benefit determination;

(v) Provide that the health care professional engaged for purposes of a consultation under paragraph (h)(3)(iii) of this section shall be an individual who is neither an individual who was consulted in connection with the adverse benefit determination that is the subject of the appeal, nor the subordinate of any such individual; and

(vi) Provide, in the case of a claim involving urgent care, for an expedited review process pursuant to which—

(A) A request for an expedited appeal of an adverse benefit determination may be submitted orally or in writing by the claimant; and

(B) All necessary information, including the plan's benefit determination on review, shall be transmitted between the plan and the claimant by telephone, facsimile, or other available similarly expeditious method.

(4) *Plans providing disability benefits.* The claims procedures of a plan providing disability benefits will not, with respect to claims for such benefits, be deemed to provide a claimant with a reasonable opportunity for a full and fair review of a claim and adverse benefit determination unless, in addition to complying with the requirements of paragraphs (h)(2)(ii) through (iv) and (h)(3)(i) through (v) of this section, the claims procedures—

(i) Provide that before the plan can issue an adverse benefit determination on review on a disability benefit claim, the plan administrator shall provide the claimant, free of charge, with any new or additional evidence considered, relied upon, or generated by the plan, insurer, or other person making the benefit determination (or at the direction of the plan, insurer or such other person) in connection with the claim; such evidence must be provided as soon as possible and sufficiently in advance of the date on which the notice of adverse benefit determination on review is required to be provided under paragraph (i) of this section to give the claimant a reasonable opportunity to respond prior to that date; and

(ii) Provide that, before the plan can issue an adverse benefit determination on review on a disability benefit claim based on a new or additional rationale, the plan administrator shall provide the claimant, free of charge, with the rationale; the rationale must be provided as soon as possible and sufficiently in advance of the date on which the notice of adverse benefit determination on review is required to be provided under paragraph (i) of this section to give the claimant a reasonable opportunity to respond prior to that date.

(i) *Timing of notification of benefit determination on review*—(1) *In general.* (i) Except as provided in paragraphs (i)(1)(ii), (i)(2), and (i)(3) of this section, the plan administrator shall notify a claimant in accordance with paragraph (j) of this section of the plan's benefit determination on review within a reasonable period of time, but not later than 60 days after receipt of the claimant's request for review by the plan, unless the plan administrator determines that special circumstances (such as the need to hold a hearing, if the plan's procedures provide for a hearing) require an extension of time for processing the claim. If the plan administrator determines that an extension of time for processing is required, written notice of the extension shall be furnished to the claimant prior to the termination of the initial 60-day period. In no event shall such extension exceed a period of 60 days from the end of the initial period. The extension notice shall indicate the special circumstances requiring an extension of time and the date by which the plan expects to render the determination on review.

(ii) In the case of a plan with a committee or board of trustees designated as the appropriate named fiduciary that holds regularly scheduled meetings at least quarterly, paragraph (i)(1)(i) of this section shall not apply, and, except as provided in paragraphs (i)(2) and (i)(3) of this section, the appropriate named fiduciary shall instead make a benefit determination no later than the date of the meeting of the committee or board that immediately follows the plan's receipt of a request for review, unless the request for review is filed within 30 days preceding the date of such meeting. In such case, a benefit determination may be made by no later than the date of the second meeting following the plan's receipt of the request for review. If special circumstances (such as the need to hold a hearing, if the plan's procedures provide for a hearing) require a further extension of time for processing, a benefit determination shall be rendered not later than the third meeting of the committee or board following the plan's receipt of the request for review. If such an extension of time for review is required because of special circumstances, the plan administrator shall provide the claimant with written notice of the extension, describing the special circumstances and the date as of which the benefit determination will be made, prior to the commencement

of the extension. The plan administrator shall notify the claimant, in accordance with paragraph (j) of this section, of the benefit determination as soon as possible, but not later than 5 days after the benefit determination is made.

(2) *Group health plans.* In the case of a group health plan, the plan administrator shall notify a claimant of the plan's benefit determination on review in accordance with paragraphs (i)(2)(i) through (iii), as appropriate.

(i) *Urgent care claims.* In the case of a claim involving urgent care, the plan administrator shall notify the claimant, in accordance with paragraph (j) of this section, of the plan's benefit determination on review as soon as possible, taking into account the medical exigencies, but not later than 72 hours after receipt of the claimant's request for review of an adverse benefit determination by the plan.

(ii) *Pre-service claims.* In the case of a pre-service claim, the plan administrator shall notify the claimant, in accordance with paragraph (j) of this section, of the plan's benefit determination on review within a reasonable period of time appropriate to the medical circumstances. In the case of a group health plan that provides for one appeal of an adverse benefit determination, such notification shall be provided not later than 30 days after receipt by the plan of the claimant's request for review of an adverse benefit determination. In the case of a group health plan that provides for two appeals of an adverse determination, such notification shall be provided, with respect to any one of such two appeals, not later than 15 days after receipt by the plan of the claimant's request for review of the adverse determination.

(iii) *Post-service claims.* (A) In the case of a post-service claim, except as provided in paragraph (i)(2)(iii)(B) of this section, the plan administrator shall notify the claimant, in accordance with paragraph (j) of this section, of the plan's benefit determination on review within a reasonable period of time. In the case of a group health plan that provides for one appeal of an adverse benefit determination, such notification shall be provided not later than 60 days after receipt by the plan of the claimant's request for review of an adverse benefit determination. In the case of a group health plan that provides for two appeals of an adverse determination, such notification shall be provided, with respect to any one of such two appeals, not later than 30 days after receipt by the plan of the claimant's request for review of the adverse determination.

(B) In the case of a multiemployer plan with a committee or board of trustees designated as the appropriate named fiduciary that holds regularly scheduled meetings at least quarterly, paragraph (i)(2)(iii)(A) of this section shall not apply, and the appropriate named fiduciary shall instead make a benefit determination no later than the date of the meeting of the committee or board that immediately follows the plan's receipt of a request for review, unless the request for review is filed within 30 days preceding the date of such meeting. In such case, a benefit determination may be made by no later than the date of the second meeting following the plan's receipt of the request for review. If special circumstances (such as the need to hold a hearing, if the plan's procedures provide for a hearing) require a further extension of time for processing, a benefit determination shall be rendered not later than the third meeting of the committee or board following the plan's receipt of the request for review. If such an extension of time for review is required because of special circumstances, the plan administrator shall notify the claimant in writing of the extension, describing the special circumstances and the date as of which the benefit determination will be made, prior to the commencement of the extension. The plan administrator shall notify the claimant, in accordance with paragraph (j) of this section, of the benefit determination as soon as possible, but not later than 5 days after the benefit determination is made.

(3) *Disability claims.* (i) Except as provided in paragraph (i)(3)(ii) of this section, claims involving disability benefits (whether the plan provides for one or two appeals) shall be governed by paragraph (i)(1)(i) of this section, except that a period of 45 days shall apply

instead of 60 days for purposes of that paragraph.

(ii) In the case of a multiemployer plan with a committee or board of trustees designated as the appropriate named fiduciary that holds regularly scheduled meetings at least quarterly, paragraph (i)(3)(i) of this section shall not apply, and the appropriate named fiduciary shall instead make a benefit determination no later than the date of the meeting of the committee or board that immediately follows the plan's receipt of a request for review, unless the request for review is filed within 30 days preceding the date of such meeting. In such case, a benefit determination may be made by no later than the date of the second meeting following the plan's receipt of the request for review. If special circumstances (such as the need to hold a hearing, if the plan's procedures provide for a hearing) require a further extension of time for processing, a benefit determination shall be rendered not later than the third meeting of the committee or board following the plan's receipt of the request for review. If such an extension of time for review is required because of special circumstances, the plan administrator shall notify the claimant in writing of the extension, describing the special circumstances and the date as of which the benefit determination will be made, prior to the commencement of the extension. The plan administrator shall notify the claimant, in accordance with paragraph (j) of this section, of the benefit determination as soon as possible, but not later than 5 days after the benefit determination is made.

(4) *Calculating time periods.* For purposes of paragraph (i) of this section, the period of time within which a benefit determination on review is required to be made shall begin at the time an appeal is filed in accordance with the reasonable procedures of a plan, without regard to whether all the information necessary to make a benefit determination on review accompanies the filing. In the event that a period of time is extended as permitted pursuant to paragraph (i)(1), (i)(2)(iii)(B), or (i)(3) of this section due to a claimant's failure to submit information necessary to decide a claim, the period for making the benefit determination on review shall be tolled from the date on which the notification of the extension is sent to the claimant until the date on which the claimant responds to the request for additional information.

(5) *Furnishing documents.* In the case of an adverse benefit determination on review, the plan administrator shall provide such access to, and copies of, documents, records, and other information described in paragraphs (j)(3), (j)(4), and (j)(5) of this section as is appropriate.

(j) *Manner and content of notification of benefit determination on review.* The plan administrator shall provide a claimant with written or electronic notification of a plan's benefit determination on review. Any electronic notification shall comply with the standards imposed by 29 CFR 2520.104b–1(c)(1)(i), (iii), and (iv), or with the standards imposed by 29 CFR 2520.104b–31 (for pension benefit plans). In the case of an adverse benefit determination, the notification shall set forth, in a manner calculated to be understood by the claimant—

(1) The specific reason or reasons for the adverse determination;

(2) Reference to the specific plan provisions on which the benefit determination is based;

(3) A statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits. Whether a document, record, or other information is relevant to a claim for benefits shall be determined by reference to paragraph (m)(8) of this section;

(4)(i) A statement describing any voluntary appeal procedures offered by the plan and the claimant's right to obtain the information about such procedures described in paragraph (c)(3)(iv) of this section, and a statement of the claimant's right to bring an action under section 502(a) of the Act; and,

(ii) In the case of a plan providing disability benefits, in addition to the information described in paragraph (j)(4)(i) of this section, the statement of the claimant's right to bring an action under section 502(a) of the Act

shall also describe any applicable contractual limitations period that applies to the claimant's right to bring such an action, including the calendar date on which the contractual limitations period expires for the claim.

(5) In the case of a group health plan—

(i) If an internal rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination, either the specific rule, guideline, protocol, or other similar criterion; or a statement that such rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination and that a copy of the rule, guideline, protocol, or other similar criterion will be provided free of charge to the claimant upon request;

(ii) If the adverse benefit determination is based on a medical necessity or experimental treatment or similar exclusion or limit, either an explanation of the scientific or clinical judgment for the determination, applying the terms of the plan to the claimant's medical circumstances, or a statement that such explanation will be provided free of charge upon request; and

(iii) The following statement: ''You and your plan may have other voluntary alternative dispute resolution options, such as mediation. One way to find out what may be available is to contact your local U.S. Department of Labor Office and your State insurance regulatory agency.''

(6) In the case of an adverse benefit decision with respect to disability benefits—

(i) A discussion of the decision, including an explanation of the basis for disagreeing with or not following:

(A) The views presented by the claimant to the plan of health care professionals treating the claimant and vocational professionals who evaluated the claimant;

(B) The views of medical or vocational experts whose advice was obtained on behalf of the plan in connection with a claimant's adverse benefit determination, without regard to whether the advice was relied upon in making the benefit determination; and

(C) A disability determination regarding the claimant presented by the claimant to the plan made by the Social Security Administration;

(ii) If the adverse benefit determination is based on a medical necessity or experimental treatment or similar exclusion or limit, either an explanation of the scientific or clinical judgment for the determination, applying the terms of the plan to the claimant's medical circumstances, or a statement that such explanation will be provided free of change upon request; and

(iii) Either the specific internal rules, guidelines, protocols, standards or other similar criteria of the plan relied upon in making the adverse determination or, alternatively, a statement that such rules, guidelines, protocols, standards or other similar criteria of the plan do not exist.

(7) In the case of an adverse benefit determination on review with respect to a claim for disability benefits, the notification shall be provided in a culturally and linguistically appropriate manner (as described in paragraph (o) of this section).

(k) *Preemption of State law.* (1) Nothing in this section shall be construed to supersede any provision of State law that regulates insurance, except to the extent that such law prevents the application of a requirement of this section.

(2)(i) For purposes of paragraph (k)(1) of this section, a State law regulating insurance shall not be considered to prevent the application of a requirement of this section merely because such State law establishes a review procedure to evaluate and resolve disputes involving adverse benefit determinations under group health plans so long as the review procedure is conducted by a person or entity other than the insurer, the plan, plan fiduciaries, the employer, or any employee or agent of any of the foregoing.

(ii) The State law procedures described in paragraph (k)(2)(i) of this section are not part of the full and fair review required by section 503 of the Act. Claimants therefore need not exhaust such State law procedures prior to bringing suit under section 502(a) of the Act.

(l) *Failure to establish and follow reasonable claims procedures*—(1) *In general.* Except as provided in paragraph (l)(2)

of this section, in the case of the failure of a plan to establish or follow claims procedures consistent with the requirements of this section, a claimant shall be deemed to have exhausted the administrative remedies available under the plan and shall be entitled to pursue any available remedies under section 502(a) of the Act on the basis that the plan has failed to provide a reasonable claims procedure that would yield a decision on the merits of the claim.

(2) *Plans providing disability benefits.* (i) In the case of a claim for disability benefits, if the plan fails to strictly adhere to all the requirements of this section with respect to a claim, the claimant is deemed to have exhausted the administrative remedies available under the plan, except as provided in paragraph (l)(2)(ii) of this section. Accordingly, the claimant is entitled to pursue any available remedies under section 502(a) of the Act on the basis that the plan has failed to provide a reasonable claims procedure that would yield a decision on the merits of the claim. If a claimant chooses to pursue remedies under section 502(a) of the Act under such circumstances, the claim or appeal is deemed denied on review without the exercise of discretion by an appropriate fiduciary.

(ii) Notwithstanding paragraph (l)(2)(i) of this section, the administrative remedies available under a plan with respect to claims for disability benefits will not be deemed exhausted based on *de minimis* violations that do not cause, and are not likely to cause, prejudice or harm to the claimant so long as the plan demonstrates that the violation was for good cause or due to matters beyond the control of the plan and that the violation occurred in the context of an ongoing, good faith exchange of information between the plan and the claimant. This exception is not available if the violation is part of a pattern or practice of violations by the plan. The claimant may request a written explanation of the violation from the plan, and the plan must provide such explanation within 10 days, including a specific description of its bases, if any, for asserting that the violation should not cause the administrative remedies available under the plan to be deemed exhausted. If a court rejects the claimant's request for immediate review under paragraph (l)(2)(i) of this section on the basis that the plan met the standards for the exception under this paragraph (l)(2)(ii), the claim shall be considered as re-filed on appeal upon the plan's receipt of the decision of the court. Within a reasonable time after the receipt of the decision, the plan shall provide the claimant with notice of the resubmission.

(m) *Definitions.* The following terms shall have the meaning ascribed to such terms in this paragraph (m) whenever such term is used in this section:

(1)(i) A ''claim involving urgent care'' is any claim for medical care or treatment with respect to which the application of the time periods for making non-urgent care determinations—

(A) Could seriously jeopardize the life or health of the claimant or the ability of the claimant to regain maximum function, or,

(B) In the opinion of a physician with knowledge of the claimant's medical condition, would subject the claimant to severe pain that cannot be adequately managed without the care or treatment that is the subject of the claim.

(ii) Except as provided in paragraph (m)(1)(iii) of this section, whether a claim is a ''claim involving urgent care'' within the meaning of paragraph (m)(1)(i)(A) of this section is to be determined by an individual acting on behalf of the plan applying the judgment of a prudent layperson who possesses an average knowledge of health and medicine.

(iii) Any claim that a physician with knowledge of the claimant's medical condition determines is a ''claim involving urgent care'' within the meaning of paragraph (m)(1)(i) of this section shall be treated as a ''claim involving urgent care'' for purposes of this section.

(2) The term ''pre-service claim'' means any claim for a benefit under a group health plan with respect to which the terms of the plan condition receipt of the benefit, in whole or in part, on approval of the benefit in advance of obtaining medical care.

(3) The term ''post-service claim'' means any claim for a benefit under a group health plan that is not a pre-service claim within the meaning of paragraph (m)(2) of this section.

(4) The term ''adverse benefit determination'' means:

(i) Any of the following: A denial, reduction, or termination of, or a failure to provide or make payment (in whole or in part) for, a benefit, including any such denial, reduction, termination, or failure to provide or make payment that is based on a determination of a participant's or beneficiary's eligibility to participate in a plan, and including, with respect to group health plans, a denial, reduction, or termination of, or a failure to provide or make payment (in whole or in part) for, a benefit resulting from the application of any utilization review, as well as a failure to cover an item or service for which benefits are otherwise provided because it is determined to be experimental or investigational or not medically necessary or appropriate; and

(ii) In the case of a plan providing disability benefits, the term ''adverse benefit determination'' also means any rescission of disability coverage with respect to a participant or beneficiary (whether or not, in connection with the rescission, there is an adverse effect on any particular benefit at that time). For this purpose, the term ''rescission'' means a cancellation or discontinuance of coverage that has retroactive effect, except to the extent it is attributable to a failure to timely pay required premiums or contributions towards the cost of coverage.

(5) The term ''notice'' or ''notification'' means the delivery or furnishing of information to an individual in a manner that satisfies the standards of 29 CFR 2520.104b–1(b) as appropriate with respect to material required to be furnished or made available to an individual.

(6) The term ''group health plan'' means an employee welfare benefit plan within the meaning of section 3(1) of the Act to the extent that such plan provides ''medical care'' within the meaning of section 733(a) of the Act.

(7) The term ''health care professional'' means a physician or other health care professional licensed, accredited, or certified to perform specified health services consistent with State law.

(8) A document, record, or other information shall be considered ''relevant'' to a claimant's claim if such document, record, or other information

(i) Was relied upon in making the benefit determination;

(ii) Was submitted, considered, or generated in the course of making the benefit determination, without regard to whether such document, record, or other information was relied upon in making the benefit determination;

(iii) Demonstrates compliance with the administrative processes and safeguards required pursuant to paragraph (b)(5) of this section in making the benefit determination; or

(iv) In the case of a group health plan or a plan providing disability benefits, constitutes a statement of policy or guidance with respect to the plan concerning the denied treatment option or benefit for the claimant's diagnosis, without regard to whether such advice or statement was relied upon in making the benefit determination.

(n) *Apprenticeship plans.* This section does not apply to employee benefit plans that solely provide apprenticeship training benefits.

(o) *Standards for culturally and linguistically appropriate notices.* A plan is considered to provide relevant notices in a ''culturally and linguistically appropriate manner'' if the plan meets all the requirements of paragraph (o)(1) of this section with respect to the applicable non-English languages described in paragraph (o)(2) of this section.

(1) *Requirements.* (i) The plan must provide oral language services (such as a telephone customer assistance hotline) that include answering questions in any applicable non-English language and providing assistance with filing claims and appeals in any applicable non-English language;

(ii) The plan must provide, upon request, a notice in any applicable non-English language; and

(iii) The plan must include in the English versions of all notices, a statement prominently displayed in any applicable non-English language clearly

indicating how to access the language services provided by the plan.

(2) *Applicable non-English language.* With respect to an address in any United States county to which a notice is sent, a non-English language is an applicable non-English language if ten percent or more of the population residing in the county is literate only in the same non-English language, as determined in guidance published by the Secretary.

(p) *Applicability dates and temporarily applicable provisions.* (1) Except as provided in paragraphs (p)(2), (p)(3) and (p)(4) of this section, this section shall apply to claims filed under a plan on or after January 1, 2002.

(2) This section shall apply to claims filed under a group health plan on or after the first day of the first plan year beginning on or after July 1, 2002, but in no event later than January 1, 2003.

(3) Paragraphs (b)(7), (g)(1)(vii) and (viii), (j)(4)(ii), (j)(6) and (7), (l)(2), (m)(4)(ii), and (o) of this section shall apply to claims for disability benefits filed under a plan after April 1, 2018, in addition to the other paragraphs in this rule applicable to such claims.

(4) With respect to claims for disability benefits filed under a plan from January 18, 2017 through April 1, 2018, this paragraph (p)(4) shall apply instead of paragraphs (g)(1)(vii), (g)(1)(viii), (h)(4), (j)(6) and (j)(7).

(i) In the case of a notification of benefit determination and a notification of benefit determination on review by a plan providing disability benefits, the notification shall set forth, in a manner calculated to be understood by the claimant—

(A) If an internal rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination, either the specific rule, guideline, protocol, or other similar criterion; or a statement that such a rule, guideline, protocol, or other similar criterion was relied upon in making the adverse determination and that a copy of such rule, guideline, protocol, or other criterion will be provided free of charge to the claimant upon request; and

(B) If the adverse benefit determination is based on a medical necessity or experimental treatment or similar exclusion or limit, either an explanation of the scientific or clinical judgment for the determination, applying the terms of the plan to the claimant's medical circumstances, or a statement that such explanation will be provided free of charge upon request.

(ii) The claims procedures of a plan providing disability benefits will not, with respect to claims for such benefits, be deemed to provide a claimant with a reasonable opportunity for a full and fair review of a claim and adverse benefit determination unless the claims procedures comply with the requirements of paragraphs (h)(2)(ii) through (iv) and (h)(3)(i) through (v) of this section.

[65 FR 70265, Nov. 21, 2000, as amended at 66 FR 35887, July 9, 2001; 81 FR 92341, Dec. 19, 2016; 82 FR 56566, Nov. 29, 2017; 85 FR 31924, May 27, 2020; 85 FR 39831, July 2, 2020]

§ 2560.521–1 Cease and desist and seizure orders under section 521.

(a) *Purpose.* Section 521(a) of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1151(a), authorizes the Secretary of Labor to issue an ex parte cease and desist order if it appears to the Secretary that the alleged conduct of a multiple employer welfare arrangement (MEWA) under section 3(40) of ERISA is fraudulent, or creates an immediate danger to the public safety or welfare, or is causing or can be reasonably expected to cause significant, imminent, and irreparable public injury. Section 521(e) of ERISA authorizes the Secretary to issue a summary seizure order if it appears that a MEWA is in a financially hazardous condition. An order may apply to a MEWA or to persons having custody or control of assets of the subject MEWA, any authority over management of the subject MEWA, or any role in the transaction of the subject MEWA's business. This section sets forth standards and procedures for the Secretary to issue ex parte cease and desist and summary seizure orders and for administrative review of the issuance of such cease and desist orders.

(b) *Definitions.* When used in this section, the following terms shall have the meanings ascribed in this paragraph (b).

(1) *Multiple employer welfare arrangement* (MEWA) is an arrangement as defined in section 3(40) of ERISA that either is an employee welfare benefit plan subject to Title I of ERISA or offers benefits in connection with one or more employee welfare benefit plans subject to Title I of ERISA. For purposes of section 521 of ERISA, a MEWA does not include a health insurance issuer (including a health maintenance organization) that is licensed to offer or provide health insurance coverage to the public and employers at large in each State in which it offers or provides health insurance coverage, and that, in each such State, is subject to comprehensive licensure, solvency, and examination requirements that the State customarily requires for issuing health insurance policies to the public and employers at large. The term health insurance issuer does not include group health plans. For purposes of this section, the term ''health insurance coverage'' has the same meaning as in ERISA section 733(b)(1).

(2) *The conduct of a MEWA is fraudulent:*

(i) When the MEWA or any person acting as an agent or employee of the MEWA commits an act or omission knowingly and with an intent to deceive or defraud plan participants, plan beneficiaries, employers or employee organizations, or other members of the public, the Secretary, or a State regarding:

(A) The financial condition of the MEWA (including the MEWA's solvency and the management of plan assets);

(B) The benefits provided by or in connection with the MEWA;

(C) The management, control, or administration of the MEWA;

(D) The existing or lawful regulatory status of the MEWA under Federal or State law; or,

(E) Any other material fact, as determined by the Secretary, relating to the MEWA or its operation.

(ii) Fraudulent conduct includes any false statement regarding any of paragraphs (b)(2)(i)(A) through (b)(2)(i)(E) of this section that is made with knowledge of its falsity or that is made with reckless indifference to the statement's truth or falsity, and the knowing concealment of material information regarding any of paragraphs (b)(2)(i)(A) through (b)(2)(i)(E) of this section. Examples of fraudulent conduct include, but are not limited to, misrepresenting the terms of the benefits offered by or in connection with the MEWA or the financial condition of the MEWA or engaging in deceptive acts or omissions in connection with marketing or sales or fees charged to employers or employee organizations.

(3) *The conduct of a MEWA creates an immediate danger to the public safety or welfare* if the conduct of a MEWA or any person acting as an agent or employee of the MEWA impairs, or threatens to impair, a MEWA's ability to pay claims or otherwise unreasonably increases the risk of nonpayment of benefits. Intent to create an immediate danger is not required for this criterion. Examples of such conduct include, but are not limited to, a systematic failure to properly process or pay benefit claims, including failure to establish and maintain a claims procedure that complies with the Secretary's claims procedure regulations (29 CFR 2560.503–1 and 29 CFR 2590.715–2719), failure to establish or maintain a recordkeeping system that tracks the claims made, paid, or processed or the MEWA's financial condition, a substantial failure to meet applicable disclosure, reporting, and other filing requirements, including the annual reporting and registration requirements under sections 101(g) and 104 of ERISA, failure to establish and implement a policy or method to determine that the MEWA is actuarially sound with appropriate reserves and adequate underwriting, failure to comply with a cease and desist order issued by a government agency or court, and failure to hold plan assets in trust.

(4) *The conduct of a MEWA is causing or can be reasonably expected to cause significant, imminent, and irreparable public injury:*

(i) If the conduct of a MEWA, or of a person acting as an agent or employee of the MEWA, is having, or is reasonably expected to have, a significant and imminent negative effect on one or more of the following:

(A) An employee welfare benefit plan that is, or offers benefits in connection with, a MEWA;

(B) The sponsor of such plan or the employer or employee organization that makes payments for benefits provided by or in connection with a MEWA; or

(C) Plan participants and plan beneficiaries; and

(ii) If it is not reasonable to expect that such effect will be fully repaired or rectified.

Intent to cause injury is not required for this criterion. Examples of such conduct include, but are not limited to, conversion or concealment of property of the MEWA; improper disposal, transfer, or removal of funds or other property of the MEWA, including unreasonable compensation or payments to MEWA operators and service providers (e.g. brokers, marketers, and third party administrators); employment by the MEWA of a person prohibited from such employment pursuant to section 411 of ERISA, and embezzlement from the MEWA. For purposes of section 521 of ERISA, compensation that would be excessive under 26 CFR 1.162–7 will be considered unreasonable compensation or payments for purposes of this regulation. Depending upon the facts and circumstances, compensation may be unreasonable under this regulation even it is not excessive under 26 CFR 1.162–7.

(5) *A MEWA is in a financially hazardous condition if:*

(i) The Secretary has probable cause to believe that a MEWA:

(A) Is, or is in imminent danger of becoming, unable to pay benefit claims as they come due, or

(B) Has sustained, or is in imminent danger of sustaining, a significant loss of assets; or

(ii) A person responsible for management, control, or administration of the MEWA's assets is the subject of a cease and desist order issued by the Secretary.

(6) A *person*, for purposes of this section, is an individual, partnership, corporation, employee welfare benefit plan, association, or other entity or organization.

(c) *Temporary cease and desist order.* (1)(i) The Secretary may issue a temporary cease and desist order when the Secretary finds there is reasonable cause to believe that the conduct of a MEWA, or any person acting as an agent or employee of the MEWA, is –

(A) Fraudulent;

(B) Creates an immediate danger to the public safety or welfare; or

(C) Is causing or can be reasonably expected to cause significant, imminent, and irreparable public injury.

(ii) A single act or omission may be the basis for a temporary cease and desist order.

(2) A temporary cease and desist order, as the Secretary determines is necessary and appropriate to stop the conduct on which the order is based, and to protect the interests of plan participants, plan beneficiaries, employers or employee organizations, or other members of the public, may—

(i) Prohibit specific conduct or prohibit the transaction of any business of the MEWA;

(ii) Prohibit any person from taking specified actions, or exercising authority or control, concerning funds or property of a MEWA or of any employee benefit plan, regardless of whether such funds or property have been commingled with other funds or property; and,

(iii) Bar any person either directly or indirectly, from providing management, administrative, or other services to any MEWA or to an employee benefit plan or trust.

(3) The Secretary may require documentation from the subject of the order verifying compliance.

(d) *Effect of order on other remedies.* The issuance of a temporary or final cease and desist order shall not foreclose the Secretary from seeking additional remedies under ERISA.

(e) *Administrative hearing.* (1) A temporary cease and desist order shall become a final order as to any MEWA or other person named in the order 30 days after such person receives notice of the order unless, within this period, such person requests a hearing in accordance with the requirements of this paragraph (e).

(2) A person requesting a hearing must file a written request and an answer to the order showing cause why the order should be modified or set

aside. The request and the answer must be filed in accordance with 29 CFR part 2571 and § 18.4 of this title.

(3) A hearing shall be held expeditiously following the receipt of the request for a hearing by the Office of the Administrative Law Judges, unless the parties mutually consent, in writing, to a later date.

(4) The decision of the administrative law judge shall be issued expeditiously after the conclusion of the hearing.

(5) The Secretary must offer evidence supporting the findings made in issuing the order that there is reasonable cause to believe that the MEWA (or a person acting as an employee or agent of the MEWA) engaged in conduct specified in paragraph (c)(1) of this section.

(6) The person requesting the hearing has the burden to show that the order should be modified or set aside. To meet this burden such person must show by a preponderance of the evidence that the MEWA (or a person acting as an employee or agent of the MEWA) did not engage in conduct specified in paragraph (c)(1) of this section or must show that the requirements imposed by the order, are, in whole or part, arbitrary and capricious.

(7) Any temporary cease and desist order for which a hearing has been requested shall remain in effect and enforceable, pending completion of the administrative proceedings, unless stayed by the Secretary, an administrative law judge, or by a court.

(8) The Secretary may require that the hearing and all evidence be treated as confidential.

(f) *Summary seizure order.* (1) Subject to paragraphs (f)(2) and (3) of this section, the Secretary may issue a summary seizure order when the Secretary finds there is probable cause to believe that a MEWA is in a financially hazardous condition.

(2) Except as provided in paragraph (f)(3) of this section, the Secretary, before issuing a summary seizure order to remove assets and records from the control and management of the MEWA or any persons having custody or control of such assets or records, shall obtain judicial authorization from a federal court in the form of a warrant or other appropriate form of authorization and may at that time pursue other actions such as those set forth in paragraph (f)(5) of this section.

(3) If the Secretary reasonably believes that any delay in issuing the order is likely to result in the removal, dissipation, or concealment of plan assets or records, the Secretary may issue and serve a summary seizure order before seeking court authorization. Promptly following service of the order, the Secretary shall seek authorization from a federal court and may at that time pursue other actions such as those set forth in paragraph (f)(5) of this section.

(4) A summary seizure order may authorize the Secretary to take possession or control of all or part of the books, records, accounts, and property of the MEWA (including the premises in which the MEWA transacts its business) to protect the benefits of plan participants, plan beneficiaries, employers or employee organizations, or other members of the public, and to safeguard the assets of employee welfare benefit plans. The order may also direct any person having control and custody of the assets that are the subject of the order not to allow any transfer or disposition of such assets except upon the written direction of the Secretary, or of a receiver or independent fiduciary appointed by a court.

(5) In connection with or following the execution of a summary seizure order, the Secretary may—

(i) Secure court appointment of a receiver or independent fiduciary to perform any necessary functions of the MEWA;

(ii) Obtain court authorization for the Secretary, the receiver or independent fiduciary to take any other action to seize, secure, maintain, or preserve the availability of the MEWA's assets; and

(iii) Obtain such other appropriate relief available under ERISA to protect the interest of employee welfare benefit plan participants, plan beneficiaries, employers or employee organizations or other members of the public. Other appropriate equitable relief may include the liquidation and winding up of the MEWA's affairs and, where applicable, the affairs of any person sponsoring the MEWA.

(g) *Effective date of orders.* Cease and desist and summary seizure orders are effective immediately upon issuance by the Secretary and shall remain effective, except to the extent and until any provision is modified or the order is set aside by the Secretary, an administrative law judge, or a court.

(h) *Service of orders.* (1) As soon as practicable after the issuance of a temporary or final cease and desist order and no later than five business days after issuance of a summary seizure order, the Secretary shall serve the order either:

(i) By delivering a copy to the person who is the subject of the order. If the person is a partnership, service may be made to any partner. If the person is a corporation, association, or other entity or organization, service may be made to any officer of such entity or any person designated for service of process under State law or the applicable plan document. If the person is an employee welfare benefit plan, service may be made to a trustee or administrator. A person's attorney may accept service on behalf of such person;

(ii) By leaving a copy at the principal office, place of business, or residence of such person or attorney; or

(iii) By mailing a copy to the last known address of such person or attorney.

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

(3) Service of a temporary or final cease and desist order and of a summary seizure order shall include a statement of the Secretary's findings giving rise to the order, and, where applicable, a copy of any warrant or other authorization by a court.

[78 FR 13805, Mar. 1, 2013]

§ 2560.521–2 Disclosure of order and proceedings.

(a) Notwithstanding § 2560.521–1(e)(8), the Secretary shall make available to the public final cease and desist and summary seizure orders or modifications and terminations of such final orders.

(b) Except as prohibited by applicable law, and at his or her discretion, the Secretary may disclose the issuance of a temporary cease and desist order or summary seizure order and information and evidence of any proceedings and hearings related to an order, to any Federal, State, or foreign authorities responsible for enforcing laws that apply to MEWAs and parties associated with, or providing services to, MEWAs.

(c) The sharing of such documents, material, or other information and evidence under this section does not constitute a waiver of any applicable privilege or claim of confidentiality.

[78 FR 13805, Mar. 1, 2013]

§ 2560.521–3 Effect on other enforcement authority.

The Secretary's authority under section 521 shall not be construed to limit the Secretary's ability to exercise his or her enforcement or investigatory authority under any other provision of title I of ERISA. 29 U.S.C. 1001 *et seq.* The Secretary may, in his or her sole discretion, initiate court proceedings without using the procedures in this section.

[78 FR 13805, Mar. 1, 2013]

§ 2560.521–4 Cross-reference.

See 29 CFR 2571.1 through 2571.13 for procedural rules relating to administrative hearings under section 521 of ERISA.

[78 FR 13805, Mar. 1, 2013]

PART 2570—PROCEDURAL REGULATIONS UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT

Subpart A—Procedures for the Assessment of Civil Sanctions Under ERISA Section 502(i)

Sec.