

CLIENT BULLETIN

DOL Releases Guidance on Duties of Plan Fiduciaries of Employee Benefit Plans in Wake of Bernard L. Madoff Investment Securities LLC \$50 Billion Ponzi Scheme

The Department of Labor (DOL) announced guidance on the duties of employee benefit plan fiduciaries (Trustees in multiemployer plans) in light of alleged abuses involving Bernard L. Madoff Investment Securities LLC. According to the DOL press release, the DOL is providing guidance to fiduciaries, investment managers and other investment service providers to plans who believe they may have exposure to losses on investments with entities related to the Madoff firm. The guidance provides steps to assess and protect the interests of plans, participants and beneficiaries under the *Employee Retirement Income Security Act (ERISA)*.

Quick action is needed as according to a press release by the Madoff bankruptcy trustee, **customer claims must be filed by March 4, 2009** and **general creditor claims must be filed by July 2, 2009**. Affected plans may have already received a claim form. Claim forms and information are available at: <http://www.madofftrustee.com/ClaimsPackages.html>

For more information, see the Madoff bankruptcy trustee press release at: http://www.madofftrustee.com/press/010509_Madoff_claims_news_release_FINAL4.pdf

Madoff ran what was probably the largest Ponzi scheme in history with losses to investors projected to be as high as \$50 BILLION. Background on the Madoff scheme can be found by searching the internet. The following link to an article in the New York Times details some of the disaster: http://topics.nytimes.com/top/reference/timestopics/people/m/bernard_l_madoff/index.html?inline=nyt-per.

According to some published reports, at least a half-dozen construction unions, including locals of the International Brotherhood of Electrical Workers and the Plumbers & Steamfitters union, had entrusted pension funds and health care money to Mr. Madoff. The roster also includes locals representing roofers, carpenters and laborers, mostly in upstate New York.

Trustees of employee benefit plans should make efforts to determine if their plan had money invested with the Madoff firm and follow through with the suggestions contained in the DOL guidance in order to fulfill their fiduciary duties.

The DOL guidance is available at: <http://www.dol.gov/ebsa/pdf/madoffguidance.pdf> and is reproduced below in its entirety.

**STATEMENT OF EMPLOYEE BENEFITS SECURITY ADMINISTRATION
"DUTIES OF FIDUCIARIES IN LIGHT OF RECENT EVENTS REGARDING
BERNARD L. MADOFF INVESTMENT SECURITIES LLC"**

Recent events regarding Bernard L. Madoff Investment Securities LLC have resulted in fiduciaries, investment managers and other investment service providers asking the Department of Labor about steps they should be taking in connection with employee benefit plans they believe may have exposure to losses as a result of plan assets being invested with Madoff entities. Fiduciaries of employee benefit plans covered by the Employee Retirement Income Security Act of 1974 (*ERISA*) should address these events in a manner consistent with their fiduciary duties of prudence and loyalty to the plan's participants and beneficiaries.

Where plan fiduciaries determine that plan assets were invested with Madoff entities and material losses are likely, appropriate steps should be taken to assess and protect the interests of the plan and its participants and beneficiaries. Such steps may include (1) requesting disclosures from investment managers, fund managers and other investment intermediaries regarding the plan's potential exposure to Madoff-related losses; (2) seeking advice regarding the likelihood of losses due to investments that may be at risk; (3) making appropriate disclosures to other plan fiduciaries and plan participants and beneficiaries; and (4) considering whether the plan has claims that are reasonably likely to lead to recovery of Madoff-related losses that should be asserted against responsible fiduciaries or other intermediaries who placed plan assets with Madoff entities, as well as claims against the Madoff bankruptcy estate. Fiduciaries must ensure that claims are filed in accordance with applicable filing deadlines such as those applicable to bankruptcy claims and for coverage by the Securities Investor Protection Corporation (SIPC).

The website of the court-appointed trustee for the liquidation of Bernard L. Madoff Investment Securities LLC is www.madofftrustee.com. This website contains the liquidation notice, claim forms and related claims information, and deadlines for the filing of claims with the trustee.

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As we go to press, the PBGC also released guidance on the subject. The PBGC guidance is available at: <http://www.pbgc.gov/media/news-archive/news-releases/2009/pr09-14.html>.

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