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## **In settling ERISA violation case, ING Life will pay \$5.2 million**

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By Editor Test      *Thu, Feb 7, 2013*

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ING Life Insurance and Annuity Co. (ILIAC) has agreed to pay \$5.2 million to certain of its retirement plan clients after settling Department of Labor charges that the insurer had an "undisclosed practice of keeping investment gains [that were] realized when it failed to process requested transactions in a timely manner."

The DoL said that the \$5.2 million represents "net gains pocketed by the company due to how certain transaction processing errors were handled between 2008 and 2011. ING's failure to disclose its policy on reconciling transaction processing errors to retirement plan clients resulted in ING receiving compensation in violation of the Employee Retirement Income Security Act, or ERISA," DoL said.

The settlement will restore funds to roughly 1,400 retirement plans, said Acting DoL Secretary Seth D. Harris. ILIAC, which has offices in Connecticut, has approximately 35,000 ERISA-covered plan clients. It provides, among other things, custodial and third party administration services to employer-sponsored defined contribution plans.

"Gains and losses result when the share or unit value differs between the contract date and the actual trade date. Any gains in share or unit value between the contract date and trade date are kept by ILIAC, whereas ILIAC is obligated, by contract, to make plans whole for any losses," detailed the DoL in its announcement of the fine.

According to terms of the agreement:

- ILIAC must disclose its policy on how it corrects transaction processing errors to plan clients covered by ERISA. Its transaction policy must be presented to current and prospective ERISA plan clients in writing. Current plan clients have the opportunity to object to the policy within 30 days of receipt. Prospective plan clients will be informed of the policy by way of its incorporation in ILIAC's contracts and service agreements.
- The disclosure also will state that ILIAC will track the effect of the corrections for each affected plan on an annual basis and will make that information available to its ERISA plan clients.
- In addition, ILIAC will acknowledge in the disclosure that any gains it keeps as a result of the policy constitute additional compensation for the services the company provides and it will report such compensation in accordance with ERISA Section 408(b)(2).
- ILIAC has agreed to pay a \$524,500 civil penalty.
- ILIAC will further adopt procedures for properly terminating abandoned plans through the Employee Benefits Security Administration's Abandoned Plan Program. If the company attempts to contact the sponsor of an abandoned plan, but is unsuccessful, ILIAC will then become that plan's qualified termination administrator.

ILIAC issued a statement in which it said, that the settlement with the DoL “enhances our broader efforts to increase transparency in the industry and help our clients better understand how their plan services work.”

“Under terms of the agreement, ING Life Insurance and Annuity Company will continue applying its policy - which was communicated to sponsors during the 408(b)(2) fee disclosures in July 2012 and again recently as part of a sponsor mailing,” the ILIAC statement said.

The settlement was the result of an investigation conducted by EBSA’s Boston Regional Office. It was reached with the assistance of the DoL’s Regional Office of the Solicitor in Boston.

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