

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR 2550

RIN 1210-AB13

Investment Advice – Participants and Beneficiaries

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Final rule; delay of effective and applicability date.

SUMMARY: This document delays the effective and applicability dates of final rules under the Employee Retirement Income Security Act, and parallel provisions of the Internal Revenue Code of 1986, relating to the provision of investment advice to participants and beneficiaries in individual account plans, such as 401(k) plans, and beneficiaries of individual retirement accounts (and certain similar plans). These rules were published in the **Federal Register** on January 21, 2009. The effective and applicability dates of the final rules were deferred until November 18, 2009, in order to permit a review of policy and legal issues raised with respect to the rules. This document further delays the effective and applicability dates of these final rules from November 18, 2009, until May 17, 2010, to allow additional time for the Department to complete its analysis of questions of law and policy concerning the rules.

DATES: The effective and applicability date of the rule amending 29 CFR Part 2550, published January 21, 2009, at 74 FR 3822, delayed March 20, 2009, at 74 FR 11847, and May 22, 2009, at 74 FR 23951, is further delayed until May 17, 2010.

FOR FURTHER INFORMATION CONTACT: Fred Wong, Office of Regulations and Interpretations, Employee Benefits Security Administration (EBSA), (202) 693-8500. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

On January 21, 2009, the Department of Labor published final rules on the provision of investment advice to participants and beneficiaries of participant-directed individual account plans and to beneficiaries of individual retirement accounts and certain similar plans (IRAs) (74 FR 3822). The rules implement a statutory prohibited transaction exemption under ERISA Sec. 408(b)(14) and Sec. 408(g), and under section 4975 of the Internal Revenue Code of 1986 (Code),¹ and also contain an administrative class exemption granting additional relief. As published, these rules were to be effective on March 23, 2009. Paragraph (g) of Sec. 2550.408g-1 provided that the rule would apply to covered transactions occurring on or after March 23, 2009.

By memorandum dated January 20, 2009, Rahm Emanuel, Assistant to the President and Chief of Staff, directed Agency Heads to consider extending for 60 days the effective date of regulations that have been published in the **Federal Register** but not yet taken effect. The memorandum further advised that, where such regulations are extended, agencies should allow 30 days for interested persons to comment on issues of law and policy raised by the rules. In accordance with that memorandum, and taking into account the considerations listed in the Memorandum of January 21, 2009, from Peter R. Orszag, Director of the Office of Management and Budget, the Department published in the **Federal Register** on February 4, 2009, a document seeking comment on a proposed 60-day extension of the effective dates for these rules until May 22, 2009, and a proposed conforming amendment to the applicability date of Sec. 2550.408g-1 (74 FR 6007). The document also requested comment on issues of law and policy raised by the final rules. The Department indicated that upon completion of its review, it might decide to

¹ These provisions were added to ERISA and the Code by the Pension Protection Act of 2006 (PPA), Public Law 109-280, 120 Stat. 780 (Aug. 17, 2006).

allow the rules to take effect, issue a further extension, withdraw the rules, or propose amendments, and solicited comment on each of these possible outcomes. In response to this invitation, the Department received 28 comment letters.² A number of these comments expressed the view that the final rules raise significant issues of law and policy. Among these, some expressed disagreement with the final rules' interpretation of the statutory exemption, and further questioned the adequacy of the class exemption's conditions in mitigating against the potential for investment adviser self-dealing.

On March 20, 2009, the Department adopted the 60-day extension of the final rule's effective and applicability date for agency review of questions of law and policy raised by commenters (74 FR 11847). On May 22, 2009, in order to afford the Department additional time to consider the issues raised by commenters, the Department adopted a further delay of these dates until November 18, 2009 (74 FR 23951). The Department believes that the complexity and significance of the issues involved justify delaying the effective and applicability dates of the final rule for an additional 180 days. This additional time will allow the Department to complete its analysis of the issues of law and policy and determine the appropriate steps to be taken. Accordingly, the Department is adopting herein a 180 day delay of the effective and applicability date of the final rule published on January 21, 2009. With the adoption of this delay, the effective and applicability date of the final rule will be May 17, 2010.

List of Subjects in 29 CFR Part 2550

Employee benefit plans, Exemptions, Fiduciaries, Investments, Pensions, Prohibited transactions, Reporting and recordkeeping requirements, and Securities.

² These comments are available on the Department's website at: <http://www.dol.gov/ebsa/regs/cmt-investmentadvicefinalrule.html>.

For the reasons set forth above, the publication on January 21, 2009 (74 FR 3822), of the final rule amending 29 CFR Part 2550, is further amended as follows:

PART 2550--RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

1. The authority citation for part 2550 is revised to read as follows:

Authority: 29 U.S.C. 1135; and Secretary of Labor's Order No. 6-2009, 74 FR 21524 (May 7, 2009). Secs. 2550.401b-1, 2550.408b-1, 2550.408b-19, 2550.408g-1, and 2550.408g-2 also issued under sec. 102, Reorganization Plan No. 4 of 1978, 5 U.S.C. App. Sec. 2550.401c-1 also issued under 29 U.S.C. 1101. Sections 2550.404c-1 and 2550.404c-5 also issued under 29 U.S.C. 1104. Sec. 2550.407c-3 also issued under 29 U.S.C. 1107. Sec. 2550.404a-2 also issued under 26 U.S.C. 401 note (sec. 657(c)(2), Pub. L. 107-16, 115 Stat. 38, 136 (2001)). Sec. 2550.408b-1 also issued under 29 U.S.C. 1108(b)(1). Sec. 2550.408b-19 also issued under sec. 611(g)(3), Public Law 109-280, 120 Stat. 780, 975 (2006).

§ 2550.408g-1 [Amended]

2. Section 2550.408g-1 is amended by removing the date “November 18, 2009” and adding in its place “May 17, 2010” in paragraph (g).

Signed at Washington, DC, this 10th day of November, 2009.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

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