

## **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:** Notice of proposed extension of effective date and applicability date; request for public comments on legal and policy questions relating to the final rule.

**SUMMARY:** Consistent with the memorandum of January 20, 2009, from the Assistant to the President and Chief of Staff, entitled "Regulatory Review," this document proposes to extend for 60 days 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. Extending the effective date would allow the Department of Labor to evaluate comments on questions of law and policy concerning the rules. Thus, this document also seeks comments generally on the rules and on the merits of rescinding, modifying or retaining the rules.

**DATES:** Comments on the proposal to extend the effective and applicability date should be submitted to the Department on or before [INSERT DATE 14 DAYS FROM THE DATE OF PUBLICATION]. Comments on the provisions of 29 CFR §§ 2550.408g-1 and 2550.408g-2 should be submitted to the Department on or before [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION].

**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.

**ADDRESSES:** To facilitate the receipt and processing of comment letters, EBSA encourages interested persons to submit their comments electronically by e-mail to [e-ORI@dol.gov](mailto:e-ORI@dol.gov) (enter into subject line: Investment Advice Final Rule) or by using the Federal eRulemaking portal at <http://www.regulations.gov>. Persons submitting comments electronically are encouraged not to submit paper copies. Persons interested in submitting paper copies should send or deliver their comments to the Office of Regulations and Interpretations, Employee Benefits Security Administration, Attn: Investment Advice Final Rule, Room N-5655, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. All comments will be available to the public, without charge, online at <http://www.regulations.gov> and <http://www.dol.gov/ebsa> and at the Public Disclosure Room, N-1513, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

**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 (74 FR 3822). The rules contain regulations implementing a statutory prohibited transaction exemption under ERISA § 408(b)(14) and § 408(g) and an administrative class exemption granting additional relief. As published, these rules were to be effective on March 23, 2009. Paragraph (g) of § 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 is proposing to extend the effective date for these rules until May 22, 2009, and to make a conforming amendment to the applicability date of § 2550.408g-1.

Extending the effective date for 60 days will allow the public to comment on whether the rules raise significant policy and legal issues and for the Department to review these comments and the rules before the relief granted by the rules becomes available. The exemptive relief granted by the rules would serve little purpose if the Department were to withdraw or amend the rules after plans and investment advisers had implemented procedures and incurred expenses in order to make use of the exemptive relief.

The Department solicits comments on the proposal to extend the effective and applicability dates for 60 days. For this purpose, the comment period will end on [ENTER DATE 14 DAYS FROM DATE OF PUBLICATION]. At the same time, the Department also solicits comments on issues of law and policy concerning all the provisions of these rules. The purpose of these comments is to assist the Department in its review of these rules. Upon completion of this review, the Department may decide to allow the rules to take effect, issue a further extension, withdraw the rules, or propose amendments. The Department requests

comments on each of these possible outcomes. The comment period for this broader purpose will end on [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION].

### **List of Subjects in 29 CFR Part 2550**

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

For the reasons set forth above, the publication on January 21, 2009 (73 FR 3822), of the final rule amending 29 CFR Part 2550, is proposed to be 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. 1–2003, 68 FR 5374 (Feb.3, 2003). Sec. 2550.401b–1 also issued under sec. 102, Reorganization Plan No. 4 of 1978, 43 FR 47713 (Oct. 17, 1978), 3 CFR, 1978 Comp. 332, effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978), 3 CFR, 1978 Comp. 332. 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, Pub. L. 107–16, 115 Stat. 38). Sec. 2550.408b–1 also issued under 29 U.S.C. 1108(b)(1) and sec. 102, Reorganization Plan No. 4 of 1978, 3 CFR, 1978 Comp. p. 332, effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978), and 3 CFR, 1978 Comp. 332. Sec. 2550.408b–19 also issued under sec. 611, Public Law 109–280, 120 Stat. 780, 972, and sec. 102, Reorganization Plan No. 4 of 1978, 3 CFR, 1978 Comp. p.332, effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978), and 3 CFR, 1978 Comp. 332. Sec. 2550.408g–1 also issued under sec. 102, Reorganization Plan No. 4 of 1978, 3 CFR, 1978 Comp. p. 332, effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978), and 3 CFR, 1978 Comp. 332. Sec. 2550.408g–2 also issued under 29 U.S.C. 1108(g) and sec. 102,

Reorganization Plan No. 4 of 1978, 3 CFR, 1978 Comp. p. 332, effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978), and 3 CFR, 1978 Comp. 332. Sec. 2550.412-1 also issued under 29 U.S.C. 1112.

2. Section 2550.408g-1 is amended by removing the date “March 23, 2009” and adding in its place “May 22, 2009” in paragraph (g).

Signed at Washington, DC, this \_\_29<sup>th</sup>\_\_ day of \_\_\_\_\_January\_\_\_\_\_, 2009.

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**Alan D. Lebowitz,**

*Deputy Assistant Secretary for Program Operations, Employee Benefits Security Administration,  
Department of Labor.*

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