

Qualified Plan Consulting Alert

DOL Withdraws Final Investment Advice Regulations

December 30, 2009/09-9

On November 19, 2009, the DOL announced that it is withdrawing its investment advice regulations and related prohibited transaction exemption and will re-propose these regulations early in 2010. The withdrawal of the regulations was based on public comments solicited by the DOL that expressed concerns that the regulations do not adequately mitigate the possibility of conflicts of interest on the part of investment advisers and as a result participants and beneficiaries are not adequately protected from advice that might be tainted.

The Final Investment Advice Regulations provide relief for the provision of investment advice to participants and beneficiaries in self-directed individual account plans subject to Title I of ERISA and to IRAs. The regulations provide two options: 1) a fee leveling arrangement where the investment adviser and its representatives receive level compensation that does not vary based on the investment option selected and 2) investment advice based on a computer model when certain design requirements are met. The regulations also contain an important prohibited transaction exemption that applies the "fee-leveling arrangement" option only to compensation received by the individual employee, agent or representative and not to the level of the financial institution (i.e., the fiduciary adviser). See QPN 2009-2 for an overview of the final regulations.

Just prior to withdrawal of the final regulations the DOL had extended the effective date of the regulations for the third time to May 17, 2010, but shortly after that decided to withdraw the regulations.

ING is monitoring this situation and will provide an update when the re-proposed regulations are released.

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