



One Minute Memo®

DOL Delays Final Participant Investment Regulations

On January 16, 2009, the U.S. Department of Labor (DOL) released final regulations allowing employers to provide investment advice to 401(k) and other individual account plan participants without violating the fiduciary rules of ERISA. The final regulations were published in the Federal Register on January 21, 2009, with an effective date of March 22, 2009. However, on account of and consistent with the Memorandum issued by the President's Chief of Staff on January 20, 2009, the DOL has proposed to extend for an additional 60 days the effective date of the regulations and to reopen the regulations for comments.

It should also be noted that Representative George Miller, a Democrat and Chair of the Education and Labor Committee, has announced his intention to block the regulations on the grounds that the regulations would allow "potentially conflicted investment advice." The House Republican leader, John Boehner, has announced his intention to vigorously oppose any attempt to block the regulations.

The final regulations are similar to the proposed regulations in many respects, requiring advice to be provided by a "fiduciary adviser" under an "eligible investment advice arrangement," which either uses fee leveling or a computer model. Unlike the proposed regulations, the final regulations combine into one document both the statutory exemption under ERISA §408(b)(14) and §408(g) and the class exemption issued by the DOL.

In addition, the final regulations apply to IRAs as well as qualified plans and plans covered by ERISA.

Because of the high likelihood that additional changes could be made to the regulations, further description of the regulations is not appropriate at this time. Once the DOL announces the end of the extension, and publishes any changes to the regulations, we would anticipate preparing a more complete description of the regulations for distribution.

If you have any questions about the Participant Investment Advice regulations, or any other employee benefit plan investment matter, please contact the Seyfarth attorney with whom you work, or any other attorney on our website (www.seyfarth.com).