



AMERICAN BENEFITS
COUNCIL

March 6, 2009

Filed Electronically

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

Re: Comment on Final Regulations and Class Exemption for Investment Advice Provided to Participants and Self-Directed Individual Account Plans and IRAs

Dear Sir or Madam,

The American Benefits Council (Council) appreciates the opportunity to comment on the final regulations and class exemption that the Employee Benefits Security Administration (EBSA) published on January 21, 2009, which covers the provision of investment advice to participants in individual account plans and IRA owners under the statutory exception to the prohibited transaction rules added in the Pension Protection Act of 2006 (PPA). The Council is a public policy organization principally representing Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council's members either sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans.

This letter is in response to the proposed delayed effective date and request for additional comments made by EBSA in a notice released on February 2. That notice was consistent with the January 20 memorandum from the Assistant to the President and Chief of Staff Rahm Emanuel entitled "Regulatory Review". Since the Council previously filed comments regarding EBSA's proposed regulation,

this letter will be brief, focusing on the two issues most important to the Council's members.

The Council believes it is very important for plan participants to have expert investment advice, especially in the current economic environment. We understand that some have expressed concerns about the final regulations and we expect they will undergo extensive review and perhaps significant revisions. While going through this process, it is important to keep in mind that many employees currently receive investment advice through long-standing models based on prior EBSA guidance commonly referred to as the "SunAmerica" model. Given the current financial crisis and participants' need for expert advice, the Council recommends that EBSA clarify that pre-existing advice models which existed before PPA are still available and not affected by any review or revision of the final regulations.

The Council is also concerned that revised regulatory requirements could actually discourage employers from providing investment advice unless the new rules include a confirmation that a plan sponsor or other plan fiduciary will not be adversely affected if, notwithstanding prudent selection and monitoring, a fiduciary adviser fails to satisfy the requirements of revised regulations or a class exemption. Previously-issued Field Assistance Bulletin 2007-1 indicated that monitoring does not involve specific investment advice but rather involves a variety of facts and circumstances. This confirmation is included in the current final regulations and the Council strongly urges EBSA to include such a confirmation in any revised guidance.

Again, we appreciate the opportunity to comment on the investment advice guidance. We believe that the American Benefits Council offers an important and unique perspective of both the employer sponsors of retirement plans and the service providers that assist them, and we look forward to working with you on these important changes.

Sincerely,

A handwritten signature in black ink, appearing to read "Jan Jacobson", written in a cursive style.

Jan M. Jacobson
Senior Counsel, Retirement Policy
American Benefits Council