



Comments on Proposal to Extend Effective and Applicability Date on the Final Investment Advice Regulation

February 18, 2009

Employee Benefits Security Administration
Department of Labor

29 CFR Part 2550
RIN 1210-AB13

The American Society of Pension Professionals & Actuaries (ASPPA) and the Council of Independent 401(k) Recordkeepers (CIKR) appreciate this opportunity to comment on the proposal to extend the effective and applicability date of the final investment advice regulation issued on January 21, 2009, with an effective date of March 23, 2009. The Department of Labor (DOL) asked for comments on extending this effective date for 60 days to May 22, 2009.

ASPPA is a national organization of more than 6,500 members who provide consulting and administrative services for qualified retirement plans covering millions of American workers. ASPPA members are retirement professionals of all disciplines, including consultants, investment professionals, administrators, actuaries, accountants and attorneys. Our large and broad-based membership gives ASPPA a unique insight into current practical applications of ERISA and qualified retirement plans, with a particular focus on the issues faced by small- to medium-sized employers. ASPPA's membership is diverse but united by a common dedication to the employer-sponsored retirement plan system.

CIKR is a national organization of 401(k) plan service providers. CIKR members are unique in that they are primarily in the business of providing retirement plan services as compared to financial services companies who primarily are in the business of selling investments. As a consequence, the independent members of CIKR offer plan sponsors and participants a wide variety of investment options from various financial services companies without an inherent conflict of interest. By focusing their businesses on efficient retirement plan operations and innovative plan sponsor and participant services, CIKR members are a significant and important segment of the retirement plan service provider marketplace. Collectively, the members of CIKR provide services to approximately 68,000 plans covering 2.8 million participants and holding in excess of \$120 billion in assets.

Recommendation

The DOL is seeking comments by February 18, 2009 as to whether the effective date of the final investment regulation should be extended until May 22, 2009.¹ In addition, the DOL is seeking substantive public comments by March 6, 2009 concerning questions of law and policy on the final regulation, and on the merits of rescinding, modifying or retaining the regulation.

There is a current lack of certainty as to whether the final investment advice regulation will be finalized, withdrawn or amended pending the DOL's review of the substantive comments on issues of law and policy. Given this lack of certainty, the current March 23, 2009 effective date would impose unreasonably high costs of compliance for those service providers who choose to rely on the exemptive relief currently being provided in the final investment advice regulation. Accordingly, extending the effective date of the final regulation by 60 days would provide the DOL the time it needs to make a final determination on how to ultimately proceed on this guidance.

ASPPA and CIKR recommend that the DOL extend the effective and applicability date of the final investment advice regulation to May 22, 2009 given the lack of certainty over the ultimate status of the regulation's final outcome.

We note that these comments relate only to the DOL's request for comments by February 18, 2009 on whether to extend the effective and applicability date of the final investment advice regulations.



These comments were prepared by ASPPA's DOL Subcommittee of the Government Affairs Committee, Michael A. Marx, APM, Chair. Please contact us if you have any comments or questions regarding the matters discussed above. Thank you for your consideration of these comments.

Sincerely,

/s/
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/s/
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/s/
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/s/
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Co-chair, Administrative Relations Committee

¹ Pursuant to the memorandum issued by White House Chief of Staff, Rahm Emmanuel dated January 20, 2009, the new Administration has directed government agency heads to consider extending the effective date of regulations published in the **Federal Register**, but not yet taken effect.