

**March 9, 2010**

## **Expansion of Availability of Investment Advice**

The Pension Protection Act of 2006 (PPA) created a new statutory exemption from the prohibited transaction rules to expand the availability of investment advice to participants in 401(k)-type plans and individual retirement accounts, as long as certain safeguards and conditions were met. The Department of Labor, in the March 2, 2010 *Federal Register*, included a proposed rule to implement these provisions, thus making investment advice more accessible to many retirement plan participants.

Under the proposed rule, investment advice given under the statutory exemption may be given in two ways: (1) using a computer model certified as unbiased and (2) using an advisor compensated on a "level-fee" basis (i.e., fees do not vary based on selected investments). These fees must be disclosed to plan participants. The final rule also established certain safeguards and conditions, which include the following:

- A requirement that plan fiduciaries select the computer model or fee leveling investment advice arrangement;
- The imposition of recordkeeping requirements for investment advisers relying on the exemptions;
- Requiring certain disclosures by advisers to plan participants;
- Requiring that an independent expert certify the computer model or fee leveling as unbiased and the establishment of a selection process for the expert who performs the certification;
- Establishing a process for the investment expert who must perform the certification;
- Clarification that the fee-leveling requirements do not allow investment advisers to receive compensation based on investment advice; and
- The establishment of at least annual audits of investment advice arrangements.

If you have any questions about the proposed rule or the provision of investment advice to plan participants generally, please contact Dana Thrasher (205-226-5464), Bob Ellerbrock (205-226-5462), Jay Turner (205-226-5468), or Dave Pearson (813-222-1367).

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