



## Labor Department Proposes a Revised Investment Advice Regulation

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On March 2, 2010, the Department of Labor published in the Federal Register a revised regulation on the provision of investment advice to plan participants and beneficiaries and holders of individual retirement accounts. The regulation implements the statutory prohibited transaction exemption that was enacted as part of the Pension Protection Act that expands the availability of investment advice to plan participants and IRA holders. The regulation, if enacted, will replace the final investment advice regulation that was withdrawn on November 19, 2009. (See [Client Alert](#) dated November 25, 2009).

The revised regulation is almost identical to the withdrawn final regulation except that it contains clarifying language addressing several provisions in the final regulation. The most significant clarification is that the receipt by a fiduciary adviser of any payment from any party (including an affiliate of the fiduciary adviser), or the use of any payment for the benefit of such fiduciary adviser, that is based, in whole or part, on investments selected by a participant or beneficiary, would be inconsistent with the fee-leveling requirement of the statutory exemption. The revised regulation further clarifies that this limitation applies both to an entity that is retained to render investment advice as well as to any employee, agent or registered representative of such entity.

Other changes in the revised regulation include: (1) the withdrawal of a prohibited transaction class exemption that would have provided additional relief for investment advice provided to individuals following the furnishing of recommendations generated by a computer model; and (2) a requirement that the investment advice generated by a computer model may not take into account distinctions between investment options based on factors that cannot confidently be expected to persist in the future.

Written comments on the proposed regulation are due on or before May 5, 2010.

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