



## **DEPARTMENT OF LABOR**

### **Employee Benefits Security Administration**

#### **29 CFR Parts 2509, 2510, and 2550**

#### **RIN 1210-AB32; 1210-ZA25**

### **Hearing on Definition of the Term “Fiduciary”; Conflict of Interest Rule-Retirement Investment Advice and Related Proposed Prohibited Transaction Exemptions**

**AGENCY:** Employee Benefits Security Administration, Labor.

**ACTION:** Notice of hearing and extension of comment period.

**SUMMARY:** Notice is hereby given that the Employee Benefits Security Administration (EBSA) will hold a public hearing on August 10, 11, and 12, and continuing through August 13, 2015 (if necessary) to consider issues attendant to adopting a regulation concerning its proposed conflict of interest rule and related proposed prohibited transaction exemptions. The Department also is extending the date by which comments may be submitted on the proposed rule and proposed new and amended exemptions. Public comments on the proposals may now be submitted to the Department on or before July 21, 2015.

**DATES:** The comment periods for the proposed rule and six proposed prohibited transaction exemptions published on April 20, 2015 (80 FR 21928, 21960, 22004, 22034, 22010, 22021, and 21989) have been extended, and comments on the proposals must be received on or before July 21, 2015. The hearing will be held on August 10, 11, and 12, and continuing through August 13, 2015 (if necessary) beginning each day at 9 a.m. EDT.

**ADDRESSES:** The hearing will be held in the César E. Chávez Memorial Auditorium at the U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue, NW, Washington, DC 20210. You may submit a request to testify at the hearing by any of the following methods:

- Email to [e-ORI@dol.gov](mailto:e-ORI@dol.gov), subject line: Conflict of Interest Rule Hearing.
- Mail: Office of Regulations and Interpretations, Employee Benefits Security Administration, Attn: Conflict of Interest Rule Hearing, Room N-5655, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Requests to testify must be received by 5:00 pm EDT, July 24, 2015.

You may submit comments on the proposed rule and proposed prohibited transaction exemptions by the methods identified below.

For the proposed rule, identified by RIN 1210-AB32, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow instructions for submitting comments.

Email: [e-ORI@dol.gov](mailto:e-ORI@dol.gov). Include RIN 1210-AB32 in the subject line of the message.

Mail: Office of Regulations and Interpretations, Employee Benefits Security Administration, Attn: Conflict of Interest Rule, Room N-5655, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Hand Delivery/Courier: Office of Regulations and Interpretations, Employee Benefits Security Administration, Attn: Conflict of Interest Rule, Room N-5655, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

For the proposed prohibited transactions exemptions, identified by RIN 1210-ZA25, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov> at Docket ID number: EBSA-2014-0016. Follow the instructions for submitting comments.

Email to: [e-OED@dol.gov](mailto:e-OED@dol.gov). Include RIN 1210-ZA25 in the subject line of the message.

Fax to: (202) 693-8474. Include RIN 1210-ZA25 in the subject line of the message.

Mail: Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Suite 400, Washington DC 20210. Please include the application number(s) of the proposed prohibited transaction exemption upon which you are commenting: D-11712; D-11713; D-11687; D-11327; D-11820; or D-11850; or any combination thereof.

Hand Delivery/Courier: Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, 122 C St. NW., Suite 400, Washington DC 20001. Please include the application number(s) of the proposed prohibited transaction exemption upon which you are commenting: D-11712; D-11713; D-11687; D-11327; D-11820; or D-11850; or any combination thereof.

**FOR FURTHER INFORMATION CONTACT:** Fred Wong, Office of Regulations and Interpretations, Employee Benefits Security Administration (EBSA), (202) 693-8510. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** EBSA published in the **Federal Register** on April 20, 2015, a proposed rule that, upon adoption, would define who is a “fiduciary” of an employee benefit plan under the Employee Retirement Income Security Act of 1974 (ERISA) as a result of giving investment advice to a plan or its participants or beneficiaries. The proposal also applies to the definition of a “fiduciary” of a plan, including an IRA, under section 4975 of the Internal Revenue Code (Code).<sup>1</sup> If adopted, the proposal would treat persons who provide investment advice or recommendations to an employee benefit plan, plan fiduciary, plan participant or beneficiary, IRA, or IRA owner as fiduciaries in a wider array of advice relationships than the existing ERISA and Code regulations, which would be replaced. In the same edition of the **Federal Register** as the proposed regulation, EBSA also proposed new exemptions and amendments to existing exemptions from the prohibited transaction rules applicable to fiduciaries under ERISA and the Code. If adopted, these proposals would allow certain broker-dealers, insurance agents, and others that act as investment advice fiduciaries to continue to receive many common forms of compensation that otherwise would be prohibited as conflicts of interest. The proposed rule, and related exemptions, would increase consumer protection for plan sponsors, fiduciaries, participants, beneficiaries, and IRA owners. For a full discussion of the proposed rule changes see 80 FR 21928 or visit EBSA’s website at <http://www.dol.gov/ebsa>.

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<sup>1</sup> Under section 102 of Reorganization Plan No. 4 of 1978, the authority of the Secretary of the Treasury to interpret section 4975 of the Code was transferred, with certain exceptions not here relevant, to the Secretary of Labor. References in this document to sections of ERISA should be read to refer also to the corresponding sections of the Code.

see Proposed Rules. For a full discussion of the proposed prohibited transaction exemptions and amendments to existing exemptions, see 80 FR 21960, *et seq.*, or visit EBSA's website at <http://www.dol.gov/ebsa> (see Proposed Rules).

Since publication in the **Federal Register**, there has been considerable interest expressed in the proposed rule, the related proposed prohibited transaction exemptions, and the accompanying Regulatory Impact Analysis, as well as several public comments requesting an extension of the comment period. The April 20 Federal Register documents provided a 75-day public comment period and required public comments to be submitted on or before July 6, 2015. Although the proposed rule included a 75-day comment period from the date of publication, the Department made clear that the opportunity for public input would not end after 75 days.

In order to ensure that interested persons have sufficient time to share their views on the proposed rule and proposed new and amended prohibited transaction exemptions, EBSA is extending the comment period for submitting comments until July 21, 2015.

The Federal Register documents published on April 20 also explained that the Department intended to hold a public hearing within 30 days of the close of the initial comment period, after which the comment period will reopen until approximately two weeks after the hearing transcript is published – a process that we anticipate will provide an additional 30 to 45 days of public comment.

The hearing on this proposed rulemaking will be held on August 10, 11, and 12, and continuing through August 13, 2015 (if necessary) beginning each day at 9 a.m. EDT, in the César E. Chávez Memorial Auditorium of the U.S. Department of Labor, Frances Perkins

Building, at 200 Constitution Avenue, NW, Washington, DC 20210. The hearing will be transcribed and the comment period will remain open after the conclusion of the hearing until 14 days after the official transcript is posted on EBSA's website. Thus, with the 15-day extension of the public comment period announced in this document, the initial comment period will be more than 90 days and, following the public hearing and opening of the comment period until 14 days after the hearing transcript is posted, we anticipate the opportunity for public testimony and comments may be more than 140 days in total.

Persons interested in presenting testimony and answering questions at this public hearing must submit, by 5:00 p.m. EDT, July 24, 2015, a written request to testify and an outline of the issues they would like to address at the hearing. In addition to the outline, all requests to testify must clearly identify: (1) the name of the person desiring to serve as a witness; (2) the organization or organizations represented, if any; (3) contact information (address, telephone, and email), and (4) an indication of whether the person or organization submitted a written comment on the proposal, and, if so, the date of the comment letter. The hearing will be open to the general public. Any individuals with disabilities who need special accommodations should contact EBSA after submitting their written request to testify concerning the scheduling of their testimony.

In addition to testimony on the proposed rule and proposed prohibited transaction exemptions, a portion of the hearing will focus specifically on the Department's Regulatory Impact Analysis, which addresses the effects of conflicts of interest in the market for retirement investment advice and the need for regulation, the anticipated economic effects of the proposal, and the relative merits of certain regulatory alternatives. Thus, a portion of the hearing will be

dedicated to testimony from panels of witnesses who specifically request an opportunity to present testimony focused on just the Department's Regulatory Impact Analysis. Persons or organizations who want to have a witness testify during this portion of the hearing should so state in their request to testify and should limit the outline for that witness' testimony accordingly.

Depending upon the number and nature of the requests to testify, and in light of the limited time and space available for the public hearing, EBSA may need to limit the number of those testifying in order to provide an opportunity for the presentation of the broadest array of points of view on all aspects of the proposal during the period allotted for the hearing. The Department expects to organize the hearing into panels of witnesses with three or more witnesses on each panel. The Department will give preference in assigning panel slots to those persons or organizations who have submitted substantive comment letters regarding the proposals by the close of the comment period on July 21. The Department will also give preference, to the extent feasible, to parties with similar interests who select a common representative to testify on their behalf. Any persons not afforded an opportunity to testify will still have an opportunity to submit a written statement on the issues specified in their request to testify. Such statements will be included in the record.

To facilitate the receipt and processing of requests to testify, EBSA encourages interested persons to submit their request to testify at the hearing and outlines by e-mail to [e-ORI@dol.gov](mailto:ORI@dol.gov), subject line: Conflict of Interest Rule Hearing. Persons submitting requests and outlines electronically should not submit paper copies. Persons submitting requests and outlines on paper should send or deliver their requests and outlines to the Office of Regulations and

Interpretations, Employee Benefits Security Administration, Attn: Conflict of Interest Rule Hearing, Room N-5655, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. All requests and outlines submitted will be available to the public, without charge, online at <http://www.dol.gov/ebsa> and at the Public Disclosure Room, N-1515, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

EBSA will prepare an agenda indicating the order of presentation of oral testimony. In the absence of special circumstances, each presenter will be allotted ten (10) minutes in which to complete his or her presentation. Those individuals who make oral comments and present testimony at the hearing should be prepared to answer questions regarding their information and comments. Those requesting to testify also should be prepared to participate as part of a panel. Information about the agenda for the hearing will be posted on <http://www.dol.gov/ebsa> no later than August 3, 2015.

The hearings will be open to the public, but seating will be limited and will be provided on a first-come, first-serve basis. Witnesses and persons accompanying witnesses will be given priority in seating. To expedite visitor security access entrance into the building, individuals planning to attend the hearing can provide contact information by e-mail to [e-ORI@dol.gov](mailto:e-ORI@dol.gov), and arrive at least 20 minutes prior to the start of the hearing.

### **Notice of Public Hearing**

Notice is hereby given that a public hearing will be held on August 10, 11, and 12, and continuing through August 13, 2015 (if necessary) concerning the proposed Conflict of Interest

Rule and proposed prohibited transaction exemptions published in the Federal Register on April 20, 2015 (80 FR 21928). The hearing will be held beginning at 9 a.m. EDT in the César E. Chávez Memorial Auditorium of the U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue, NW, Washington, DC 20210.

### **Notice of Extension of Comment Period**

Notice is hereby given that the period for submitting comments on the proposed Conflict of Interest Rule and proposed prohibited transaction exemptions published in the **Federal Register** on April 20, 2015 (80 FR 21928, *et seq.*) is being extended until July 21, 2015. Information on how to submit comments by email, mail, by hand, or by courier is in the Notice of Proposed Rulemaking and Notices of Proposed Exemptions published in the Federal Register on April 20, 2015. Those documents are also available electronically at [www.dol.gov/ebsa/regs/conflictsofinterest.html](http://www.dol.gov/ebsa/regs/conflictsofinterest.html). All comments will be available to the public, without charge, online at <http://www.regulations.gov> and <http://www.dol.gov/ebsa> or at the Public Disclosure Room, N-1513, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. *Warning:* Do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed. All comments may be posted on the Internet and can be retrieved by most Internet search engines. Comments may be submitted anonymously.

Signed at Washington, DC, this 12th day of June, 2015.

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**Phyllis C. Borzi,**

*Assistant Secretary for Employee Benefits Security  
Department of Labor.*

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