

April 28, 2010

DOL Publishes 2010 Regulatory Agenda for Employee Benefits

On April 26, 2010, the U.S. Department of Labor issued its Spring 2010 Semi-Annual Regulatory Agenda. This publication takes the form of a [Federal Register notice](#) to comply with certain administrative requirements. The agenda itself is available on the DOL Website with most entries supported by a fact sheet (click here for [Fall 2009](#) and [Spring 2010](#) entries).

DOL's agenda and related materials include 20 pending projects related to employee benefits, which are listed below in order of the projected timetable for next steps. (In the ordinary course, dates projected in the agenda may prove ambitious.) New projects highlighted by DOL are shown in bold.

In addition, three pending developments regarding ERISA class exemptions are not included in the regulatory agenda but are currently under review by the Office of Management and Budget (specifically, its Office of Information and Regulatory Affairs) and are also noted below.

Guidance Project	Next Step	Projected Date	Pending at OMB
Timing and order of domestic relations orders <ul style="list-style-type: none"> ▪ Implement Pension Protection Act (PPA) §1001 	Final regulation	4/2010	X
Lifetime income options in retirement plans <ul style="list-style-type: none"> ▪ Joint request for information with Treasury 	Comment period closes	5/3/2010	
Enhanced fee disclosure for retirement plans <ul style="list-style-type: none"> ▪ Under ERISA service provider exemption 	Interim final rule	5/2010	X
Target date funds <ul style="list-style-type: none"> ▪ Evaluation and selection of target date funds by plan fiduciaries 	Compliance assistance checklist, published jointly with SEC	Spring 2010	
Definition of "fiduciary" <ul style="list-style-type: none"> ▪ Expand to include more persons, such as pension consultants, as fiduciaries 	Proposed regulation	6/2010	
Target date funds <ul style="list-style-type: none"> ▪ Increased disclosure to participants 	Proposed amendment to QDIA regulation	8/2010	
Annual funding notice <ul style="list-style-type: none"> ▪ Implement PPA §501 	Proposed regulation	8/2010	
Pension benefit statements <ul style="list-style-type: none"> ▪ Implement PPA §508 	Proposed regulation	9/2010	
Enhanced fee disclosure for plan participants <ul style="list-style-type: none"> ▪ Under ERISA §404 	Final regulation	9/2010	
Definition of "welfare plan" <ul style="list-style-type: none"> ▪ Clarify when a health care arrangement established by a State or local government that covers private sector employees does not constitute an "employee welfare benefit plan" 	Proposed regulation	9/2010	X

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Guidance Project	Next Step	Projected Date	Pending at OMB
Health plan self-compliance tool <ul style="list-style-type: none"> Reflecting Genetic Information Nondiscrimination Act (GINA), Mental Health Parity and Addiction Equity Act (MHPAEA) and Children's Health Insurance Program Reauthorization Act (CHIPRA) 	Compliance assistance checklist	9/2010	
Statutory exemption for investment advice in participant-directed plans	Final regulation	12/2010	
Enhanced fee disclosure for welfare plans <ul style="list-style-type: none"> Under ERISA service provider exemption 	Proposed regulation	3/2011	
Claims procedure <ul style="list-style-type: none"> Notice, timing, appeals and other elements of the claims procedure regulation 	Proposed amendment to existing regulation	4/2011	
CHIPRA notice requirement	Proposed regulation	4/2011	
Guidance under MHPAEA	Proposed regulation	4/2011	
Penalties for GINA noncompliance	Proposed regulation	4/2011	
HIPAA regulations	Final regulation	9/2011	
Regulations under Patient Protection and Affordable Care Act (PPACA)	Undetermined		
Delinquent Filer Voluntary Compliance Program (DFVCP)	Conform to EFAST2 electronic filing system for Form 5500		
PTE 96-23 for plan asset transactions determined by in-house asset managers (INHAM)	Proposed amendment		X
PTE 84-24 for plan asset transactions determined by qualified professional asset managers (QPAM)	Proposed amendment		X
Proposed PTE for release of claims and extensions of credit in connection with litigation	Proposed exemption		X

The [narrative to the agenda](#) also reports that DOL's Employee Benefits Security Administration (EBSA) will be working with DOL's Wage and Hour Division (WHD) with respect to settlements with employers regarding misclassification of employees as independent contractors. WHD will require settling employers to review their benefit plans, resolve the benefit rights of misclassified employees and report related violations of plan provisions and ERISA to EBSA.



If you have any questions about this development, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

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