

DOL Issues Final Rule Regarding Investment Advice

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As we reported last week, the Department of Labor (DOL) issued a final regulation relating to the provision of investment advice to participants and beneficiaries in individual account plans, such as 401(k) plans and individual retirement accounts. The final regulation implements an exemption to the prohibited transaction rules of ERISA added by the Pension Protection Act of 2006, allowing investment advisers to provide advice to participants and beneficiaries provided that the arrangement either: (1) meets certain fee-leveling requirements, or (2) uses an acceptable investment advice computer model. The DOL had issued a proposed regulation in 2010, replacing a final regulation that was withdrawn in 2009. The final regulation will go into effect and will be applicable to all transactions occurring on or after December 27, 2011. The final regulation's requirements for a fee-leveling arrangement are largely unchanged from the proposed regulation. With respect to the computer model requirements, the final regulation clarifies that the advice must take into account both employer securities and target date funds. The final regulation also clarifies that the relief provided by this exemption applies to simplified employee pension (SEP) plans and simple retirement accounts (SIMPLE IRAs). Note that this final regulation does not invalidate or otherwise affect previously issued DOL guidance relating to the provision of investment advice and the circumstances under which such advice may or may not constitute a prohibited transaction. The final regulation is available [here](#).