

3Q 2009



Update on Investment Advice Regulation

In early 2009, the DOL announced the final regulations concerning investment advice to 401(k) plan participants. The effective date was originally set for the end of the first quarter, but was delayed twice while the EBSA sought more comments and was then delayed indefinitely a few weeks ago. The original regulations allowed investment advice by investment companies, who may be perceived as having conflicts of interest based on the advice provided. The original final regulations met strong opposition in Congress, specifically led by Congressmen Rob Andrews (D-NJ) and George Miller (D-CA).

Near the end of the second quarter of 2009, Andrews and Miller introduced the 401(k) Fair Disclosure for Retirement Security Act and the Conflicted Investment Advice Prohibition Act. Andrews' and Miller's Conflicted Investment Advice Prohibition Act will change the way investment advice is given to employees as many employees currently have access to a self-interested or conflicted investment adviser. This Act would require investment advice to be given by an independent investment adviser. The Act also states that an independent adviser must not provide or manage any plan assets and the fees charged for their advice must not vary based on the advice provided. These fees must be flat-dollar, flat percentage based on assets or based on a per-participant fee.

It is unclear as to whether the 401(k) Fair Disclosure for Retirement Security Act or the Conflicted Investment Advice Prohibition Act will become law in the immediate future. PEI will continue to monitor the proposed regulations and update our clients as soon as more information is available.



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