

manner as provided in the instructions thereto.

(b) *Requirement of statement with respect to stock purchased under an employee stock purchase plan under section 6039(a)(2).* (1) Every corporation filing a return under § 1.6039-1(b) shall furnish to each person whose name is set forth in such return a written statement with respect to the transfer or transfers made by such person during such year. This statement must include the information described in § 1.6039-1(b)(1).

(2) Each statement required by this paragraph (b) to be furnished to any person must be furnished to such person on Form 3922, Transfer of Stock Acquired Through an Employee Stock Purchase Plan Under Section 423(c) (or its designated successor) and be delivered at such time and in such manner as provided in the instructions thereto.

(3) If the statement required by this paragraph is made by the authorized transfer agent of the corporation, it is deemed to have been made by the corporation. The term *transfer agent*, as used in this section, means any designee authorized to keep the stock ownership records of a corporation and to record a transfer of title of the stock of such corporation on behalf of such corporation.

(c) *Time for furnishing statements—*(1) *In general.* Each statement required by this section to be furnished to any person for a calendar year must be furnished to such person on or before January 31 of the year following the year for which the statement is required.

(2) *Extension of time.* An extension of time to furnish statements required by this section may be granted in accordance with the guidelines and procedures set forth in the instructions to Form 3921 and Form 3922.

(d) *Penalty.* For provisions relating to the penalty applicable to the failure to furnish a statement under this section, see section 6722.

(e) *Effective/applicability date—*(1) *In general.* This section is effective on November 17, 2009. This section will apply as of January 1, 2007.

(2) *Reliance and transition period.* Notwithstanding § 1.6039-1(g), corporations must furnish information statements to employees in accordance with this section for stock transfers that are subject to § 1.6039-1(a) and (b), and occur during the 2007, 2008 and 2009 calendar years. For purposes of furnishing information statements for stock transfers that occur during the 2007 or 2008 calendar years, taxpayers may rely on § 1.6039-1 of the 2004 final regulations (69 FR 46401) or § 1.6039-

2 of the 2008 proposed regulations REG-103146-08 (73 FR 40999). For purposes of furnishing information statements for stock transfers that occur during the 2009 calendar year, taxpayers may rely on § 1.6039-1 of the 2004 final regulations (69 FR 46401), § 1.6039-2 of the 2008 proposed regulations (REG-103146-08) (73 FR 40999), or this section.

**Linda E. Stiff,**  
*Deputy Commissioner for Services and Enforcement.*

Approved: November 9, 2009.

**Michael Mandaca,**  
*Acting Assistant Secretary of the Treasury (Tax Policy).*  
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## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

#### 29 CFR 2550

#### RIN 1210-AB13

### Investment Advice—Participants and Beneficiaries

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

**ACTION:** Final rule; delay of effective and applicability date.

**SUMMARY:** This document delays the effective and applicability dates of final rules under the Employee Retirement Income Security Act, and parallel provisions of the Internal Revenue Code of 1986, relating to the provision of investment advice to participants and beneficiaries in individual account plans, such as 401(k) plans, and beneficiaries of individual retirement accounts (and certain similar plans). These rules were published in the **Federal Register** on January 21, 2009. The effective and applicability dates of the final rules were deferred until November 18, 2009, in order to permit a review of policy and legal issues raised with respect to the rules. This document further delays the effective and applicability dates of these final rules from November 18, 2009, until May 17, 2010, to allow additional time for the Department to complete its analysis of questions of law and policy concerning the rules.

**DATES:** The effective and applicability date of the rule amending 29 CFR Part 2550, published January 21, 2009, at 74 FR 3822, delayed March 20, 2009, at 74 FR 11847, and May 22, 2009, at 74 FR

23951, is further delayed until May 17, 2010.

**FOR FURTHER INFORMATION CONTACT:** Fred Wong, Office of Regulations and Interpretations, Employee Benefits Security Administration (EBSA), (202) 693-8500. This is not a toll-free number.

#### **SUPPLEMENTARY INFORMATION:**

On January 21, 2009, the Department of Labor published final rules on the provision of investment advice to participants and beneficiaries of participant-directed individual account plans and to beneficiaries of individual retirement accounts and certain similar plans (IRAs) (74 FR 3822). The rules implement a statutory prohibited transaction exemption under ERISA Sec. 408(b)(14) and Sec. 408(g), and under section 4975 of the Internal Revenue Code of 1986 (Code),<sup>1</sup> and also contain an administrative class exemption granting additional relief. As published, these rules were to be effective on March 23, 2009. Paragraph (g) of Sec. 2550.408g-1 provided that the rule would apply to covered transactions occurring on or after March 23, 2009.

By memorandum dated January 20, 2009, Rahm Emanuel, Assistant to the President and Chief of Staff, directed Agency Heads to consider extending for 60 days the effective date of regulations that have been published in the **Federal Register** but not yet taken effect. The memorandum further advised that, where such regulations are extended, agencies should allow 30 days for interested persons to comment on issues of law and policy raised by the rules. In accordance with that memorandum, and taking into account the considerations listed in the Memorandum of January 21, 2009, from Peter R. Orszag, Director of the Office of Management and Budget, the Department published in the **Federal Register** on February 4, 2009, a document seeking comment on a proposed 60-day extension of the effective dates for these rules until May 22, 2009, and a proposed conforming amendment to the applicability date of Sec. 2550.408g-1 (74 FR 6007). The document also requested comment on issues of law and policy raised by the final rules. The Department indicated that upon completion of its review, it might decide to allow the rules to take effect, issue a further extension, withdraw the rules, or propose amendments, and solicited comment on each of these possible outcomes. In response to this invitation, the Department received 28 comment

<sup>1</sup> These provisions were added to ERISA and the Code by the Pension Protection Act of 2006 (PPA), Public Law 109-280, 120 Stat. 780 (Aug. 17, 2006).

letters.<sup>2</sup> A number of these comments expressed the view that the final rules raise significant issues of law and policy. Among these, some expressed disagreement with the final rules' interpretation of the statutory exemption, and further questioned the adequacy of the class exemption's conditions in mitigating against the potential for investment adviser self-dealing.

On March 20, 2009, the Department adopted the 60-day extension of the final rule's effective and applicability date for agency review of questions of law and policy raised by commenters (74 FR 11847). On May 22, 2009, in order to afford the Department additional time to consider the issues raised by commenters, the Department adopted a further delay of these dates until November 18, 2009 (74 FR 23951). The Department believes that the complexity and significance of the issues involved justify delaying the effective and applicability dates of the final rule for an additional 180 days. This additional time will allow the Department to complete its analysis of the issues of law and policy and determine the appropriate steps to be taken. Accordingly, the Department is adopting herein a 180 day delay of the effective and applicability date of the final rule published on January 21, 2009. With the adoption of this delay, the effective and applicability date of the final rule will be May 17, 2010.

#### List of Subjects in 29 CFR Part 2550

Employee benefit plans, Exemptions, Fiduciaries, Investments, Pensions, Prohibited transactions, Reporting and recordkeeping requirements, and Securities.

■ For the reasons set forth above, the publication on January 21, 2009 (74 FR 3822), of the final rule amending 29 CFR Part 2550, is further amended as follows:

#### PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

■ 1. The authority citation for part 2550 is revised to read as follows:

**Authority:** 29 U.S.C. 1135; and Secretary of Labor's Order No. 6–2009, 74 FR 21524 (May 7, 2009). Secs. 2550.401b–1, 2550.408b–1, 2550.408b–19, 2550.408g–1, and 2550.408g–2 also issued under sec. 102, Reorganization Plan No. 4 of 1978, 5 U.S.C. App. Sec. 2550.401c–1 also issued under 29 U.S.C. 1101. Sections 2550.404c–1 and 2550.404c–5 also issued under 29 U.S.C.

1104. Sec. 2550.407c–3 also issued under 29 U.S.C. 1107. Sec. 2550.404a–2 also issued under 26 U.S.C. 401 note (sec. 657(c)(2), Pub. L. 107–16, 115 Stat. 38, 136 (2001)). Sec. 2550.408b–1 also issued under 29 U.S.C. 1108(b)(1). Sec. 2550.408b–19 also issued under sec. 611(g)(3), Public Law 109–280, 120 Stat. 780, 975 (2006).

#### § 2550.408g–1 [Amended]

■ 2. Section 2550.408g–1 is amended by removing the date “November 18, 2009” and adding in its place “May 17, 2010” in paragraph (g).

Signed at Washington, DC, this 10th day of November 2009.

**Phyllis C. Borzi,**

*Assistant Secretary, Employee Benefits Security Administration, Department of Labor.*

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### PENSION BENEFIT GUARANTY CORPORATION

#### 29 CFR Parts 4001 and 4022

**RIN 1212–AB19**

#### USERRA Benefits Under Title IV of ERISA

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Uniformed Services Employment and Reemployment Rights Act of 1994 (“USERRA”) provides that an individual who leaves his or her job to serve in the uniformed services is generally entitled to reemployment by his or her previous employer and, upon reemployment, to receive credit for benefits, including employee pension plan benefits, that would have accrued but for the employee's absence due to the military service. This final rule amends PBGC's regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR part 4022) to address a narrow but important issue regarding PBGC's guarantee of benefits for participants who are serving in the uniformed services at the time that their pension plan terminates. Under PBGC's existing regulations, a benefit is guaranteed only if the participant satisfies the conditions for entitlement to the benefit on or before the plan's termination date. PBGC is providing an exception to this rule in the unique circumstances of persons serving in the uniformed services as of the plan's termination date, consistent with USERRA's statutory mandate to treat such persons, upon reemployment, as if they had never left the employ of their

former employer. This final rule provides that so long as a service member is reemployed within the time limits set by USERRA, even if the reemployment occurs after the plan's termination date, PBGC will treat the participant as having satisfied the reemployment condition as of the termination date. This will ensure that the pension benefits of reemployed service members, like those of other employees, would generally be guaranteed for periods up to the plan's termination date.

**DATES:** Effective December 17, 2009.

(See Applicability in **SUPPLEMENTARY INFORMATION.**)

**FOR FURTHER INFORMATION CONTACT:** John H. Hanley, Director, or Constance Markakis, Attorney, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, Suite 12300, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (TTY and TTD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Pension Benefit Guaranty Corporation (“PBGC”) administers the single-employer pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974 (“ERISA”). When a covered plan terminates in either a distress termination under section 4041(c) of ERISA, or an involuntary termination (one initiated by PBGC) under section 4042 of ERISA, PBGC typically becomes statutory trustee of the plan with responsibility for paying benefits in accordance with the provisions of Title IV.

The amount of benefits paid by PBGC under a terminated, trustee plan is generally determined as of the plan's termination date.<sup>1</sup> Under section 4022(a) of ERISA, PBGC guarantees the payment of nonforfeitable benefits

<sup>1</sup> Section 404 of the Pension Protection Act of 2006 (“PPA 2006”), Public Law 109–280, added sections 4022(g) and 4044(e) of ERISA, which provide that, when an underfunded plan terminates during the bankruptcy of the plan sponsor, the date the sponsor's bankruptcy petition was filed is treated as the termination date of the plan for purposes of determining the amount of benefits PBGC guarantees and the amount of benefits in priority category 3 in the section 4044 asset allocation. These changes apply to plan terminations that occur during the bankruptcy of the plan sponsor if the bankruptcy filing date is on or after September 16, 2006. See PBGC proposed rule on Bankruptcy Filing Date Treated as Plan Termination Date for Certain Purposes, 73 FR 37390 (Jul. 1, 2008). For convenience, this preamble generally will refer to the plan's termination date, although in many cases this reference will instead apply to the bankruptcy filing date.

<sup>2</sup> These comments are available on the Department's Web site at: <http://www.dol.gov/ebsa/regs/cmt-investmentadvicefinalrule.html>.