
From: David White [mailto:davidw@wnbtrust.com]
Sent: Monday, May 03, 2010 10:26 AM
To: EBSA, E-ORI - EBSA
Subject: FW: 2010 Investment Advice Proposed Rule

From: David White
Sent: Friday, April 30, 2010 2:19 PM
To: 'ORI@dol.gov'
Subject: FW: 2010 Investment Advice Proposed Rule

From: David White
Sent: Wednesday, April 28, 2010 2:20 PM
To: 'ORI@dol.gov'
Subject: 2010 Investment Advice Proposed Rule

Thank you for the opportunity to comment on the proposed rule, Please consider the following comments, questions and suggestions, all relating to the annual audit requirement, as you craft the final regulation.

Winona National Bank acts as trustee for 401(k) plans maintained, in the main, by smaller-size employers.

Respectfully submitted,

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COMMENT re:

Section 2550.408g-1 (a)(6) Annual audit. (i) Please provide amplification of what is meant by "appropriate technical training or experience and proficiency:"
For example, what skills would such an auditor need ? If the fiduciary adviser were an OCC-regulated bank or trust company, would the independent auditor that currently provides the bank's annual audits automatically meet (as a result of the auditor's meeting OCC standards) the standard under (a)(6)?

If not, as audits of investment advice arrangements would be a totally new requirement, is the Department aware of whether a sufficient number of such experienced and skilled auditors now exists ? Are there are now acceptable independent agencies that profess to certify the qualifications of such auditors, whose selection is to be a fiduciary act on the part of the fiduciary adviser? Does the auditor also become a fiduciary to the plan?

The facts and circumstances of each eligible investment advice arrangement seem peculiar to each advised participant, not just to each plan. As the cost of such an annual compliance audit initially falls on the fiduciary adviser (but as a cost of doing business is certain to be passed on to the advice recipients), has the Department any estimate, under its cost burden analysis in issuing this proposed rule, of the impact on employee retirement savings of this single expense each year? Will the audit expense be borne disproportionately by participants in smaller-size retirement plans?

Should there be a less costly (ultimately to the advised plan participants) alternative to the annual compliance audit under the proposed rule? As advisers are themselves already in regulated industries, are periodic examinations by their current regulators sufficient to protect plan participants? In addition to being subject to their current regulators, all fiduciary advisers would, by dint of the proposed rule, be subject to The Department's regulatory audits and examinations to protect plan participants.