

---

## 29 C.F.R. § 2509.96-1

---

### Interpretive bulletin relating to participant investment education.

---

- (a) *Scope.* This interpretive bulletin sets forth the Department of Labor's interpretation of section 3(21)(A)(ii) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and 29 CFR 2510.3-21(c) as applied to the provision of investment-related educational information to participants and beneficiaries in participant-directed individual account pension plans (*i.e.*, pension plans that permit participants and beneficiaries to direct the investment of assets in their individual accounts, including plans that meet the requirements of the Department's regulations at 29 CFR 2550.404c-1).
- (b) *General.* Fiduciaries of an employee benefit plan are charged with carrying out their duties prudently and solely in the interest of participants and beneficiaries of the plan, and are subject to personal liability to, among other things, make good any losses to the plan resulting from a breach of their fiduciary duties. ERISA sections 403, 404 and 409, 29 U.S.C. 1103, 1104, and 1109. Section 404(c) of ERISA provides a limited exception to these rules for a pension plan that permits a participant or beneficiary to exercise control over the assets in his or her individual account. The Department of Labor's regulation, at 29 CFR 2550.404c-1, describes the kinds of plans to which section 404(c) applies, the circumstances under which a participant or beneficiary will be considered to have exercised independent control over the assets in his or her account, and the consequences of a participant's or beneficiary's exercise of such control. <sup>[1]</sup> With both an increase in the number of participant-directed individual account plans and the number of investment options available to participants and beneficiaries under such plans, there has been an increasing recognition of the importance of providing participants and beneficiaries whose investment decisions will directly affect their income at retirement, with information designed to assist them in making investment and retirement-related decisions appropriate to their particular situations. Concerns have been raised, however, that the provision of such information may in some situations be viewed as rendering “investment advice for a fee or other compensation,” within the meaning of ERISA section 3(21)(A)(ii), thereby giving rise to fiduciary status and potential liability under ERISA for investment decisions of plan participants and beneficiaries. In response to these concerns, the Department of Labor is clarifying herein the applicability of ERISA section 3(21)(A)(ii) and 29 CFR 2510.3-21(c) to the provision of investment-related educational information to participants and beneficiaries in participant directed individual account plans. <sup>[2]</sup> In providing this clarification, the Department does not address the “fee or other compensation, direct or indirect,” which is a necessary element of fiduciary status under ERISA section 3(21)(A)(ii). <sup>[3]</sup>
- (c) *Investment advice.* Under ERISA section 3(21)(A)(ii), a person is considered a fiduciary with respect to an employee benefit plan to the extent that person “renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority to do so . . . .” The Department issued a regulation, at 29 CFR 2510.3-21(c), describing the circumstances under which a person will be considered to be rendering “investment advice” within the meaning of section 3(21)(A)(ii). Because section 3(21)(A)(ii) applies to advice with respect to “any moneys or other property” of a plan and 29 CFR 2510.3-21(c) is intended to clarify the application of that section, it

is the view of the Department of Labor that the criteria set forth in the regulation apply to determine whether a person renders “investment advice” to a pension plan participant or beneficiary who is permitted to direct the investment of assets in his or her individual account. Applying 29 CFR 2510.3-21(c) in the context of providing investment-related information to participants and beneficiaries of participant-directed individual account pension plans, a person will be considered to be rendering “investment advice,” within the meaning of ERISA section 3(21)(A)(ii), to a participant or beneficiary only if:

This document is only available to subscribers. Please log in or purchase access.

[Purchase Login](#)