



DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2509

RIN 1210-AC32

Removal of Interpretive Bulletins Relating to the Employee Retirement Income Security Act of 1974

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Direct final rule (DFR); request for comments.

SUMMARY: This DFR removes from the Code of Federal Regulations prospectively certain interpretive bulletins under the Employee Retirement Income Security Act of 1974 that the Department of Labor (DOL) believes are obsolete. The obsolete interpretive bulletins were published shortly after ERISA's enactment in 1974 to provide compliance assistance for employee benefit plans, plan sponsors and fiduciaries. Because of subsequent guidance issued by the DOL, and the effect of Reorganization Plan No. 4 of 1978, the DOL believes the interpretive bulletins are no longer needed, and if left on the books, add potential confusion and unnecessary complexity. Removing obsolete regulations eliminates the burden on the public of having to determine whether they need to comply with the regulations. This action is being taken pursuant to Executive Order 14192, titled Unleashing Prosperity Through Deregulation (90 FR 9065, Feb. 6, 2025). This action improves the daily lives of the American people by reducing unnecessary, burdensome, and costly Federal regulations.

DATES: The final rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], unless significant adverse comments are received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Significant adverse comments are ones which oppose the rule and raise, alone or in combination, a serious enough issue related to each of the independent grounds

for the rule that a substantive response is required. If significant adverse comments are received, notification will be published in the *Federal Register* before the effective date either withdrawing the rule or issuing a new final rule which responds to significant adverse comments.

ADDRESSES: The Employee Benefits Security Administration (EBSA) encourages interested persons to submit their comments on this request for information online. You may submit comments, identified by RIN 1210-AC32, by either of the following methods:

Federal eRulemaking Portal: <https://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N-5655, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, Attn: Removal of Interpretive Bulletins Relating to the Employee Retirement Income Security Act of 1974 RIN 1210-AC32.

Instructions: All submissions must include the agency name and Regulatory Identifier Number RIN 1210-AC32 for this request. If you submit comments online, do not submit paper copies. All comments received will be posted without change on <https://www.regulations.gov> and <https://www.dol.gov/agencies/ebsa> and will be made available for public inspection at the Public Disclosure Room, N-1513, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210.

Warning: Do not include any personally identifiable or confidential business information that you do not want publicly disclosed. Comments are public records that are posted online as received and can be retrieved by most internet search engines.

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

SUPPLEMENTARY INFORMATION:

I. Background and Discussion

The Employee Retirement Income Security Act of 1974 (ERISA) is a comprehensive Federal law that sets minimum standards for most voluntarily established employee benefit plans in private industry. Title I of ERISA protects the interests of participants and their beneficiaries in employee benefit plans by, among other things, requiring that those individuals who manage plans (and other fiduciaries) (1) meet certain standards of conduct, derived from the common law of trusts and made applicable (with certain modifications) to all fiduciaries, and (2) comply with certain “prohibited transactions” restrictions described in the statute. Title II of ERISA, which amended the Internal Revenue Code (Code) to parallel many of the Title I provisions, contains standards that must be met by employee retirement benefit plans in order to qualify for favorable tax treatment. Under ERISA as originally enacted, the DOL and the U.S. Treasury Department’s Internal Revenue Service (IRS) had overlapping responsibility for administration of the parallel provisions of Title I of ERISA and the Code.

Shortly after ERISA’s enactment, the DOL published in the *Federal Register* a number of Interpretive Bulletins to provide a concise and ready reference to its interpretations of ERISA.¹ Interpretive Bulletin 75-2, codified at 29 CFR 2509.75-2, provided the DOL’s views on whether a “party in interest”² has engaged in a prohibited transaction with an employee benefit plan where the party in interest has engaged in a transaction with an entity in which the plan has invested.³ However, since publication of Interpretive Bulletin 75-2, the DOL has provided further guidance on prohibited transaction issues in subregulatory guidance.⁴ The DOL believes the Interpretive Bulletin no longer serves its intended purpose of providing a concise and ready reference to the

¹ 40 FR 31598 (July 28, 1975), redesignated by 41 FR 1906 (Jan. 13, 1976).

² ERISA section 3(14), 29 USC 1002(14).

³ 40 FR 31598. In 1986, the DOL revised Interpretive Bulletin 75-2 in connection with adoption of the DOL’s regulation at 29 CFR 2510.3-101. See 51 FR 41280 (Nov. 13, 1986). In 1996, the Interpretive Bulletin was further revised following the Supreme Court decision in *John Hancock Mutual Life Insurance Co. v. Harris Trust & Savings Bank*, 510 U.S. 86 (1993). See 61 FR 33847 (July 1, 1996).

⁴ See, e.g., Advisory Opinion 2006-09A (Dec. 19, 2006)(individual retirement account (IRA) investment in notes offered by a corporation in which a son-in-law of the IRA owner is the majority stockholder); 2006-01A (Jan. 6, 2006)(IRA investment in a limited liability company that would purchase real estate and lease it to an entity in which the IRA owner has a 68% ownership interest).

DOL's interpretations of ERISA's prohibited transaction restrictions. The DOL therefore is removing this Interpretive Bulletin.

Interpretive Bulletin 75-6, codified at 29 CFR 2509.75-6, related to ERISA section 408(c)(2) and whether a plan could make an advance to a fiduciary to cover expenses to be properly and actually incurred by such person in performing duties with respect to the plan.⁵ However, in 1977, the Department issued a final regulation under section 408(c)(2) at 29 CFR 2550.408c-2 that replaced Interpretive Bulletin 75-6.⁶ Accordingly, the Department believes that Interpretive Bulletin 75-6 is no longer necessary. There is no reason to permit identical standards for the same conduct to exist in two different parts of the Code of Federal Regulations. Indeed, analyzing both regulations to determine whether they are different or cover different conduct only wastes time and resources that could be more productively employed.

Interpretive Bulletin 75-10, codified at 29 CFR 2509.75-10, addressed ambiguity arising from the joint jurisdiction of the Department and IRS with respect to parallel provisions in title I of ERISA and the Code. Interpretive Bulletin 75-10 cross referenced specific guidance documents issued by the IRS on the application of the qualification requirements of the Code, as added or amended by ERISA, and requirements of the provisions of parts 2 and 3 of Title I of ERISA paralleling such qualification requirements. It stated that plans complying with the IRS guidance documents would be considered by the Department as satisfying the requirements of the parallel provisions of Title I of ERISA.⁷ A few years later, the Reorganization Plan No. 4 of 1978 generally resolved issues related to joint interpretive jurisdiction of the parallel provisions by, with certain exceptions, assigning responsibility to one or the other agency.⁸ The DOL therefore believes Interpretive Bulletin 75-10 is no longer necessary.

⁵ 40 FR 31755 (July 29, 1975), redesignated by 41 FR 1906 (Jan. 13, 1976).

⁶ 42 FR 32389, 32390 (June 24, 1977) ("The attention of interested parties is directed to the fact that regulation 2550.408c-2 replaces Interpretive Bulletin 75-6").

⁷ 41 FR 3289 (Jan. 22, 1976).

⁸ 43 FR 47713 (Oct. 17, 1978). Congress subsequently ratified Reorganization Plan No. 4 in 1984. See Sec. 1, Public Law 98-532, 98 Stat. 2705 (Oct. 19, 1984).

For the reasons mentioned above, the DOL believes the interpretive bulletins are no longer needed, and if left on the books, add potential confusion and unnecessary complexity. Removing obsolete regulations eliminates the burden on the public of having to determine whether they need to comply with the regulations.

This direct final rule removes these obsolete interpretive bulletins prospectively as of the effective date and has no effect on their legal effectiveness prior to that date. Members of the public are invited to provide comments on the DOL's reasoning and decision to remove the obsolete interpretive bulletins from the Code of Federal Regulations.

II. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866

Executive Order (E.O.) 12866, "Regulatory Planning and Review," 58 FR 51735 (Oct. 4, 1993), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits; (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

Section 6(a) of E.O. 12866 also requires agencies to submit "significant regulatory actions" to OIRA for review. OIRA has determined that this direct final rule does not constitute a "significant regulatory action" under section 3(f) of E.O. 12866. Accordingly, this direct final

rule was not submitted to OIRA for review under E.O. 12866.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

DOL reviewed this rescission under the provisions of the Regulatory Flexibility Act. This rule eliminates obsolete regulations and the burden associated with imposing the obligation to determine obsolescence on the public. Therefore, DOL has concluded that the impacts of the rescission would not have a “significant economic impact on a substantial number of small entities,” and that the preparation of an FRFA is not warranted. DOL will transmit this certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act

This rescission imposes no new information or record-keeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act. (44 U.S.C. 3501 *et seq.*).

D. Review Under Executive Order 13132

E.O. 13132, “Federalism,” 64 FR 43255 (August 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.

DOL has examined this rescission and has determined that it would not have a substantial

direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

E. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, “Civil Justice Reform,” imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General.

Section 3(c) of E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOL has completed the required review and determined that, to the extent permitted by law, this rescission meets the relevant standards of E.O. 12988.

F. Review Under the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year

(adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. 2 U.S.C. 1532(a), (b)). The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a “significant intergovernmental mandate,” and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them.

DOL examined this rescission according to UMRA and its statement of policy and determined that the rescission does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of \$100 million or more in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. As a result, the analytical requirements of UMRA do not apply.

G. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rescission would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOL has concluded that it is not necessary to prepare a Family Policymaking Assessment.

H. Review Under Executive Order 12630

Pursuant to E.O. 12630, “Governmental Actions and Interference with Constitutionally Protected Property Rights,” 53 FR 8859 (March 18, 1988), DOL has determined that this rescission would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

I. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the

public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002). DOL has reviewed this rescission under the OMB and has concluded that it is consistent with applicable policies in those guidelines.

J. Review Under Additional Executive Orders and Presidential Memoranda

DOL has examined this rescission and has determined that it is consistent with the policies and directives outlined in E.O. 14154, "Unleashing American Energy," E.O. 14192, "Unleashing Prosperity Through Deregulation," and Presidential Memorandum, "Delivering Emergency Price Relief for American Families and Defeating the Cost-of-Living Crisis." This rescission is expected to be an Executive Order 14192 deregulatory action.

K. Congressional Notification

As required by 5 U.S.C. 801, DOL will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 29 CFR Part 2509

Employee benefit plans, Employee Retirement Income Security Act, Fiduciaries, Pensions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Department amends part 2509 of title 29 of the Code of Federal Regulations, as set forth below:

Subchapter A – General

**PART 2509 – INTERPRETIVE BULLEINS RELATING TO THE EMPLOYEE
RETIREMENT INCOME SECURITY ACT OF 1974**

1. The authority citation for part 2509 is revised to read as follows:

Authority: 29 U.S.C. 1135. Secretary of Labor's Order 1-2003, 68 FR 5374 (Feb. 3, 2003). Section 2509.75-5 also issued under 29 U.S.C. 1002. Sec. 2509.95-1 also issued under sec. 625, Pub. L. 109-280, 120 Stat. 780.

§§ 2509.75-2, 2509.75-6, 2509.75-10 [Removed]

2. Sections 2509.75-2, 2509.75-6 and 2509.75-10 are removed.

Signed at Washington DC, this 18th day of June, 2025.

Timothy D. Hauser,
Employee Benefits Security Administration,
Department of Labor.

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