

January 28, 2009

## DOL Finalizes PPA Investment Advice Regulations; Future Status Is Uncertain

On January 21, 2009, the Department of Labor (DOL) published in the Federal Register its [final regulations](#) implementing the ERISA participant investment advice exemptions enacted in the Pension Protection Act of 2006 (PPA). That guidance is the culmination of the most substantial effort to date, on the part of Congress and DOL, to support retirement plan participants and IRA beneficiaries directing the investment of their retirement accounts with professional investment advice. At this time, however, it is unclear whether the Obama Administration or the new Congress will allow that guidance to take effect — further delaying both business plans and, in turn, the important objective of expanding the reach of investment advice for plan participants.

### Background and Status

The shift, over the past 20 years, in employer-sponsored retirement plans away from defined benefit plans to defined contribution plans has been well-documented. For both design and legal reasons, those defined contribution plans most often allow participants and beneficiaries to direct the investment of some or all of their plan accounts. Also, an increasing share of retirement savings is shifting to individual retirement accounts, where the IRA beneficiary necessarily is making investment choices.

These trends had the unintended consequence of reducing the portion of retirement assets that are invested with the benefit of professional investment advice. Moreover, the firms best positioned to provide that advice — the retirement platform, product and service providers that evolved to serve the defined contribution and IRA markets — often were impeded by ERISA from providing investment advice. To the extent those providers (or an affiliate) had an economic stake in the investment options available and thus in the investment choices made under the retirement plan or IRA, an ERISA prohibited transaction generally would occur if the investment advice would cause the provider to be an ERISA fiduciary. (Providing “investment advice for a fee,” within the meaning of ERISA § 3(21) and an implementing [regulation](#), is one of the three ways to become an ERISA fiduciary.)

As the trend toward participant direction emerged, DOL issued guidance elucidating circumstances in which investment support for participants would not raise a prohibited transaction concern:

- Investment “education” is not, in DOL’s judgment, investment “advice” and thus can be provided to participants without committing a prohibited transaction.<sup>1</sup>
- If properly structured, the investment advice function can be outsourced to an independent financial expert, as a means to avoid the prohibited transaction concern.<sup>2</sup>
- Similarly, reducing the amount due to the provider for its services by the fees or other economic benefits accruing to the provider or its affiliate by reason of the investment choices made under the plan — that is, enterprise-wide fee leveling — avoids the prohibited transaction concern.<sup>3</sup>

<sup>1</sup> [Interpretive Bulletin 96-1](#), 29 CFR § 2509.96-1.

<sup>2</sup> [Advisory Opinion 2001-09A](#) (Dec. 14, 2001).

<sup>3</sup> [Advisory Opinion 2005-10A](#) (May 11, 2005); [Advisory Opinion 97-15A](#) (May 22, 1997).

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Also, certain class exemptions issued by DOL providing relief for specific investment transactions at least arguably include relief for any investment advice leading to those transactions. Where prohibited transaction concerns were present, however, there was no comprehensive ERISA solution for providing investment advice to participants, and that regulatory gap (coupled with incremental cost of investment advice) meant that no more than 10% of participants and IRA beneficiaries were making investment choices with the benefit of professional assistance.

Recognizing the importance to national retirement security of improving the quality of the investment choices made by plan participants and IRA beneficiaries, Congress undertook in the PPA to provide at least that comprehensive legal solution. Both the House and Senate versions of the bill contained an investment advice exemption that would allow these well-positioned providers, among others, to offer investment “advice” without enterprise-wide fee leveling; a more conditional exemption was included in the House bill, a somewhat less conditional version in the Senate bill. The conference committee agreement generally favored the House version, which was enacted as § 601 of the PPA and provides relief for certain level fee and computer model advice arrangements.

Following enactment, DOL engaged in a considered, two-year process to develop guidance implementing the new exemption.

- In December 2006, DOL published requests for certain information to [assist in the promulgation of regulations](#) and to [evaluate the feasibility of computer model investment advice programs for IRAs](#).
- In February 2007, DOL issued initial guidance ([FAB 2007-01](#)) on three significant issues under the statutory exemption.
- In July 2007, DOL held a [hearing](#) on computer advice programs for IRAs.
- In August 2008, DOL proposed regulations under the statutory exemption, with additional guidance necessitated by the legislation. (Click [here](#) for a copy of our Legal Alert describing that development.)
- DOL received more than 40 written comments on its proposal, and additionally held a hearing in October 2008.

The final regulations, described below, are faithful to the requirements of the statutory exemption, and enhance the likelihood that these arrangements will be feasible in practice and will actually improve investment results for participants and IRA beneficiaries. The regulations also address important questions left to the regulators by Congress.

The regulations were approved in the final two weeks of the Bush Administration and published in the Federal Register on January 21, 2009, the first full day of the Obama Administration, with an effective date of March 23, 2009.

On the afternoon of January 20, consistent with a practice dating to the Reagan Administration, one of the first acts of the Obama White House was to issue a [memorandum](#) to federal departments and agencies effectively suspending any unpublished proposed or final regulations and requesting that the effective date for any published final regulations not yet in effect be delayed for 60 days with the notice-and-comment period reopened for 30 days. It is reported that career DOL officials gave immediate attention to the White House directive and determined that it was not possible to withdraw the investment advice regulation before publication in the Federal Register, while noting that the regulation was not yet in effect — perhaps presaging further reconsideration at DOL when Obama political appointees are confirmed there.

Further clouding the status of the regulation, Representative George Miller (chair of the House Committee on Education and Labor, which has jurisdiction over ERISA) and Representative Robert Andrews, in a [joint statement](#), were highly critical of the Bush Administration's promulgation of the regulation in its final days and announced that they would undertake to block its implementation. In a competing [statement](#), House Minority Leader John Boehner applauded the regulation.

Accordingly:

- The timing of the regulation inevitably means that the political establishment will continue to compete over this issue;
- Business plans to expand investment advice offerings to plan participants and IRA beneficiaries that are contingent on the PPA exemptions almost certainly will remain on hold until that political competition is resolved; and
- The status quo, which nearly all agree is less than optimal, will continue to prevail at a time — of historically atypical volatility in the capital markets in general and underperformance of the equity markets over a 10-year period in particular, including a second significant bear market in less than a decade — when the need for professional investment advice to assist the long-term retirement savings goals of plan participants and IRA beneficiaries could not be clearer.

## Final Regulations

The final regulations materially change the form of the proposed guidance, merging the proposed administrative class exemption for certain transactions into the final regulation. The administrative exemption expands the statutory relief, subject to additional conditions, to:

- Arrangements that satisfy the level fee requirement as to the individual employee, agent or representative who provides investment advice, but not as to the fiduciary adviser entity; and
- “Off-model” individualized advice, generally in a computer model environment.

**Statutory Exemption.** The substance of the statutory prohibited transaction relief, which is described in detail in the chart beginning on page 7, largely follows the proposal with certain modifications and clarifications, including the following:

- *Effect of Exemptions.* Investment advice arrangements for participants are not obligatory for plans or plan fiduciaries, nor do the PPA exemptions (as stated in FAB 2007-1) supersede any other available guidance or relief for investment advice arrangements.
- *Scope.* Transactions in connection with the provision of investment advice, for which relief is provided by these exemptions, includes otherwise permissible transactions necessary for the efficient execution and settlement of trades, including credit extensions in connection with settlements. Advice concerning the selection of an investment manager to manage some or all of the participant's account also is within the scope of the exemptions. The rebalancing of an account to an asset allocation strategy authorized by the participant, including a dynamic rebalancing approved by the participant through a conventional negative consent process, can rely on the exemptions provided that the particular investments are known to the participant at the time of authorization. DOL opined, however, that these exemptions are not available for a recommendation to take a distribution from the plan and roll it over to an IRA managed by the fiduciary adviser.

- *Factors to Be Considered.* The rules for both level fee and computer model arrangements were revised (1) to require consideration of investment management and other fees and expenses attendant to the recommended investments and (2) to recognize that the adviser will not always be provided or have access to the personal variables about the participant enumerated in the statute and regulation (which also were modified in part to refer to “time horizons” rather than retirement age or life expectancy).
- *Level Fee Arrangements.* DOL reiterated and defended its conclusion that the level fee requirement attaches only to the fiduciary adviser, and not to its affiliates of the fiduciary adviser. In this regard, DOL commented that bonus arrangements based on the overall profitability of the organization might be consistent with that requirement if the investment advice arrangements were excluded from or constituted a “negligible portion” of that profitability, depending on the details, which would be a subject for the annual compliance audit, under the exemption.
- *Computer Model Arrangements.* While computer models need not provide recommendations with respect to employer securities, they must take those holdings into account in generating their advice, unless the participant elects otherwise. Similarly, investment options that inherently manage to time horizon or risk objectives of the participant (e.g., target date funds) or in-plan annuity options need not be included in the advice, provided that the participant receives a description of those investments contemporaneously with the advice. DOL allowed IRA computer models to limit “buy” advice to investments that can be purchased through the IRA (even where the model can handle hold or sell recommendations for other investments), provided that limitation is made clear to the IRA beneficiary. DOL again declined to describe (much less proscribe) the credentials for the eligible investment expert who must certify the computer model.
- *Authorization by Plan Fiduciary.* An adviser may act as the authorizing fiduciary for its own plan provided that (1) the same advice arrangement is offered to unaffiliated plans in the ordinary course of business and (2) the selection of the affiliated adviser does not violate ERISA § 408(b) (which may require that any fee for the advice not exceed the adviser’s direct costs). Plan-sponsor fiduciaries may provide the authorization even if the plan makes available employer securities. The authorizing fiduciary may rely on the fiduciary adviser’s representations as to compliance with the exemption, unless that reliance is inconsistent with a reasonable and prudent review process.
- *Annual Audit.* The selection of the independent auditor, as of the certifying eligible investment expert, is a fiduciary function on the part of the fiduciary adviser; the audit itself generally is not a fiduciary function. The independent auditor may not limit its audit based on internal audits the fiduciary adviser may conduct, but may assist the fiduciary adviser in developing compliance policies and procedures. For any audits required to be completed before the effective date of the regulations, the auditor may take into account good faith compliance with the statute. DOL declined to relax the audit requirement for small advisers or the requirement that all audit reports identifying instances of noncompliance affecting IRAs be filed with DOL.
- *Disclosure.* The required disclosure, which is identical for the statutory exemption and the class exemption, was modified in certain respects, including to report compensation and fees earned in connection with the rollover of assets or the reinvestment of distributed plan funds. The disclosure may be made through materials prepared to comply with securities laws or otherwise, so long as the PPA disclosures are not compromised by that approach.

**Class Exemption.** The final guidance merges the proposed administrative class exemption, which expands the statutory relief in certain respects, into the final regulation. The class exemption extends the scope of the level fee relief by limiting the level fee requirement to the individual adviser, and not applying it to the fiduciary adviser employing the individual adviser. This is helpful to financial service business

structures where the investment advice function and the investment product manufacturing function must be integrated into a single corporate entity.

The class exemption also allows a fiduciary adviser to provide “off-model” advice — i.e., advice that is not provided by a computer model that either has been certified or is developed and maintained by a person independent of the fiduciary adviser (in which case the certification requirement does not apply). More specifically, the adviser may provide individualized investment advice following the furnishing of:

- Recommendations generated by such a computer model, or
- Certain investment education materials, in the case of (1) IRAs where the fiduciary adviser determines that computer modeling is not feasible in light of the number and types of investment choices available, or (2) plan brokerage windows, self-directed brokerage accounts or similar arrangements.

The class exemption is subject to the following conditions:

- The class exemption generally incorporates the conditions applicable to the statutory exemptions;
- The fiduciary adviser must adopt and follow written compliance policies and procedures, and the auditor is to examine the adviser’s observation of those policies and procedures;
- The investment advice may not recommend investment options that may generate greater income than other options of the same asset class for the fiduciary adviser or certain other persons, unless the fiduciary adviser prudently concludes that the recommendation is in the best interest of the participant, and explains that conclusion and its basis to the participant; and
- The advice is documented within 30 days, including (as applicable) how the advice relates to recommendations generated by computer model and how advice that would generate such greater income is in the participant’s best interest.

In changes from the proposal, (1) the third and fourth conditions apply to the level fee class exemption as well as the off-model class exemption, and (2) the class exemption takes effect 60 days (not 90 days) after publication, along with the rest of the regulation.

**Noncompliance.** The position in the proposed class exemption as to the effect of noncompliance was extended to the statutory exemption as well. Thus, under the final regulation, each of the exemptions is unavailable not only with respect to particular investment advice where the conditions for relief were not satisfied, but also for otherwise compliant advice during a period where there was a “pattern or practice” of noncompliance with *any* of the conditions of the applicable exemption. DOL suggested that “isolated, unrelated or accidental” violations would not constitute such a pattern or practice, but that “intentional, regular, deliberate practices involving more than isolated events or individuals, or institutionalized practices will almost always constitute a pattern or practice.”



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Statutory Exemptions	Level Fee	Computer Model
<b>Scope</b>		
<b>Plans covered</b>	ERISA plans and IRAs (including Archer MSAs, HSAs and Coverdell educational savings accounts) that: <ul style="list-style-type: none"> <li>Are individual account plans, and</li> <li>Permit participants<sup>4</sup> to direct investments of assets in their individual accounts.</li> </ul>	
<b>Transactions exempted (per ERISA §408(b)(14) and IRC §4975(d)(17))</b>	<ul style="list-style-type: none"> <li>Provision of investment advice to a participant with respect to a security or other property available as plan investment.</li> <li>Acquisition, holding or sale of a security or other property pursuant to the investment advice.<sup>5</sup></li> <li>Direct/indirect receipt of fees or other compensation by the “fiduciary adviser”<sup>6</sup> or an “affiliate” (or their employees, agents or “registered representatives”) in connection with the investment advice or investment activity pursuant to the advice.</li> </ul>	
<b>Scope of exemption</b>	From ERISA § 406 and IRC § 4975. No apparent limitation on the scope of §406(b) relief.	
<b>Conditions</b>		
<b>Fiduciary adviser</b>	Advice is provided by a fiduciary adviser pursuant to level fee or computer model arrangement.	
<b>Level fee</b>	<p>Fees or other compensation for investment advice or investment activity received</p> <ul style="list-style-type: none"> <li>Directly or indirectly by an employee, agent or registered representative who provides advice on behalf of fiduciary adviser; or</li> <li>By the fiduciary adviser</li> </ul> <p>may not vary depending on the investment option selected by participant.</p> <p>Level fee requirement does not extend to affiliates of the fiduciary adviser.</p> <p>Incentive compensation or bonuses to such employee, agent or registered representative reflecting the overall success of the fiduciary adviser, as opposed to the selection of particular investment options, may be permissible, depending on the details.</p>	

<sup>4</sup> References to participants generally include beneficiaries as well.

<sup>5</sup> For convenience, this summary refers to these transactions as “investment activity.”

<sup>6</sup> See “Definitions” below, for a summary of this and selected other defined terms used in the regulation.

Statutory Exemptions	Level Fee	Computer Model
<p><b>Investment advice</b></p>	<p>Must be based on (level fee)/designed and operated to apply/utilize (computer model) generally accepted investment theories that take account of historic returns of different asset classes over defined time periods.</p> <p>Must take account of:</p> <ul style="list-style-type: none"> <li>▪ Fees and expenses attendant to the recommended investments; and</li> <li>▪ Information, to the extent furnished by participant, relating to age, time horizons, risk tolerance, current investments in designated investment options, other assets or sources of income, and investment preferences.</li> </ul> <p>May also take account of additional investment/participant information.</p>	
<p><b>Additional investment advice requirements for computer model</b></p>		<p>Must be designed and operated to utilize “appropriate objective criteria” in providing asset allocation portfolios composed of plan investment options, and to avoid recommendations that “inappropriately” favor options:</p> <ul style="list-style-type: none"> <li>▪ Offered by fiduciary adviser, or person with material affiliation/contractual relationship with fiduciary adviser; or</li> <li>▪ That may generate greater income for fiduciary adviser, or person with material affiliation/contractual relationship with fiduciary adviser.</li> </ul> <p>Plan may offer only proprietary options.</p> <p>Must take into account all “designated investment options” available under the plan without giving “inappropriate” weight to any option. May exclude from recommendations an option primarily invested in qualifying employer securities, or that allocates assets on the basis of a defined time horizon or risk level, or that is an in-plan annuity option if that limitation is disclosed to participants and (except for employer securities) the participant receives a general description of that option contemporaneously with the advice.</p>
<p><b>Certification of computer model</b></p>		<p>Prior to utilization of the model, the fiduciary adviser obtains a certification from an “eligible investment expert” with the technical training/experience and proficiency to analyze and certify compliance of the model with the foregoing conditions. The eligible investment expert may not have a material affiliation/contractual relationship with:</p> <ul style="list-style-type: none"> <li>▪ The fiduciary adviser;</li> <li>▪ Any person with a material affiliation/contractual relationship with the fiduciary adviser; or</li> <li>▪ Any employee, agent or registered representative of the foregoing.</li> </ul> <p>No other academic or other credentials are specified.</p> <p>Written certification must include:</p> <ul style="list-style-type: none"> <li>▪ Identification of the methodology used to determine compliance;</li> </ul>

Statutory Exemptions	Level Fee	Computer Model
		<ul style="list-style-type: none"> <li>▪ Explanation of how that methodology demonstrated compliance;</li> <li>▪ Description of any limitations imposed by any person on the selection or application of the methodology;</li> <li>▪ Representation that the methodology was applied by person(s) with educational background, technical training or experience necessary to analyze and determine compliance;</li> <li>▪ Certification that the model complies; and</li> <li>▪ Signature of the eligible investment expert.</li> </ul> <p>No particular methodology is specified.</p> <p>New certification must be obtained before any model modification that may affect compliance is utilized.</p> <p>Selection of eligible investment expert is an ERISA fiduciary function for which the fiduciary adviser is responsible.</p>
<b>Authorization</b>	<p>Investment advice arrangement must be “expressly” authorized in advance by a plan fiduciary or IRA beneficiary other than:</p> <ul style="list-style-type: none"> <li>▪ The person offering the advice arrangement;</li> <li>▪ Any person providing a designated investment option. The plan sponsor is not treated as such a person solely because employer securities are an investment option under the plan; or</li> <li>▪ Affiliates of the foregoing. For this purpose, an IRA beneficiary is not treated as an affiliate solely by reason of being an employee of the foregoing (i.e., employees of the fiduciary adviser can authorize advice arrangement for their own IRAs).</li> </ul> <p>The form and timing of the authorization is not otherwise specified.</p> <p>Plan sponsor of a fiduciary adviser’s plan may provide authorization for that plan if the same advice arrangement is offered to unaffiliated plans in the ordinary course of business.</p>	
<b>Annual independent audit</b>	<p>Fiduciary adviser at least annually must engage an independent auditor with appropriate technical training/experience and proficiency to conduct compliance audit.</p> <ul style="list-style-type: none"> <li>▪ Auditor must so represent in writing to the fiduciary adviser.</li> <li>▪ Auditor is independent if it has no material affiliation/contractual relationship with a person offering the advice arrangement or any designated investment option. It appears allowable for the auditor to be providing audit or other services to the fiduciary adviser or the plan if those services do not rise to the level of a material contractual relationship.</li> </ul> <p>Auditor is to review sufficient information to formulate an opinion whether the advice arrangement, as well as the advice provided pursuant to the arrangement, was in compliance with the regulation. Sampling techniques reasonably determined by the auditor are permissible. Audit of every investment advice arrangement or all the advice provided under the exemption is not required. Otherwise, the scope and methodology for the audit is left to the auditor.</p> <p>Auditor must issue a written report:</p> <ul style="list-style-type: none"> <li>▪ To the fiduciary adviser and each authorizing plan fiduciary within 60 days of completion of the audit; and</li> <li>▪ Within 30 days of receipt, the fiduciary adviser must furnish the report to or post the report on its Web site for IRA beneficiaries. If the report identifies noncompliance, the fiduciary adviser must submit a copy to DOL within 30 days of receipt (applies only if the exemption is being relied on</li> </ul>	

Statutory Exemptions	Level Fee	Computer Model
	<p>for IRAs).</p> <p>The form and manner of delivering the report is not otherwise specified.</p> <p>Selection of the auditor is an ERISA fiduciary function for which the fiduciary adviser is responsible.</p>	
<p><b>Disclosure to participants</b></p>		<p>Prior to the initial investment advice and at the other times discussed below, the fiduciary adviser must provide to participants without charge a written notification (which may be in electronic form in accordance with existing DOL rules) describing:</p> <ul style="list-style-type: none"> <li>▪ The role of any party with a material affiliation/contractual relationship with the fiduciary adviser in the development of the advice program and the selection of investment options available under the plan;</li> <li>▪ Past performance and historical rates of return of designated investment options, if not otherwise provided;</li> <li>▪ All fees or other compensation (including any from third parties) to be received by the fiduciary adviser or an affiliate in connection with the advice or investment activity or any rollover of plan assets or investment of plan distributions;</li> <li>▪ Any material affiliation/contractual relationship of the fiduciary adviser or affiliates in the security or other property;</li> <li>▪ The manner and circumstances in which participant information provided under the arrangement will be used;</li> <li>▪ The types of services provided by the fiduciary adviser in connection with the investment advice, including any limitations on the ability of a computer model to consider options primarily invested in employer securities;</li> <li>▪ That the adviser is acting as a fiduciary to the plan in providing the advice;</li> <li>▪ That the recipient of the advice may separately arrange for advice from another adviser that may not have a material affiliation with, or receive fees or compensation in connection with, the security or property; and</li> <li>▪ If the exemption is being relied on for IRAs, the purpose of the audit report and how and where to locate it.</li> </ul> <p>Notification must be written in a clear and conspicuous manner calculated to be understood by the average participant, must be sufficiently accurate and comprehensive to reasonably apprise participants of requisite information, and may be provided in written or specified electronic form (including in disclosure materials prepared for other purposes provided that the foregoing disclosures are not compromised).</p> <p>A model form of disclosure is provided but not required.</p> <p>During the term of the advice arrangement, the fiduciary adviser must:</p> <ul style="list-style-type: none"> <li>▪ Maintain the required information in accurate form; and</li> <li>▪ Provide, without charge, accurate information to the participant at least annually or on request or reasonably contemporaneously on any material change.</li> </ul>
<p><b>Other conditions</b></p>		<ul style="list-style-type: none"> <li>▪ The fiduciary adviser must provide appropriate disclosure in connection with investment activity in accordance with applicable securities laws.</li> <li>▪ The investment activity occurs solely at the direction of the recipient of the advice.</li> <li>▪ The compensation to the fiduciary adviser or affiliates in connection with investment activity is reasonable.</li> <li>▪ The terms of investment activity is at least as favorable to the plan as an arm's-length transaction.</li> </ul>

Statutory Exemptions	Level Fee	Computer Model
<b>Recordkeeping</b>	The fiduciary adviser must maintain records necessary to determine whether the applicable requirements of the regulation have been met for 6 years after the provision of advice pursuant to the arrangement, unless the records are lost or destroyed due to circumstances beyond the fiduciary's control.	
<b>Definitions</b>		
<b>Fiduciary adviser</b>	<p>A fiduciary to the plan by reason of providing ERISA § 3(21)(A)(ii) investment advice to a participant and who is:</p> <ul style="list-style-type: none"> <li>▪ An investment adviser registered under the Investment Advisers Act or the laws of the state in which it maintains its principal office and place of business;</li> <li>▪ A bank or similar financial institution or savings association as defined in certain statutes, if the advice is provided through a trust department or similar financial institution or savings association is subject to periodic examination and review by federal or state banking authorities;</li> <li>▪ An insurance company qualified to do business under the laws of a state;</li> <li>▪ A registered broker-dealer; or</li> <li>▪ An affiliate of any of the foregoing.</li> </ul> <p>Includes employees, agents (a term intended broadly to encompass persons acting for the fiduciary adviser) or registered representatives of any of the above entities who:</p> <ul style="list-style-type: none"> <li>▪ Provide advice in such capacity; and</li> <li>▪ Satisfy applicable requirements of insurance, banking or securities law.</li> </ul> <p>For a computer model program, any person who develops the computer model, or markets the computer model or investment advice program, is treated as an ERISA fiduciary and a fiduciary adviser, subject to an election to designate one such person as the sole fiduciary adviser treated as a fiduciary for this reason.</p>	
<b>Registered representative</b>	Includes investment adviser representatives (IARs).	
<b>Affiliate</b>	Adapted from Investment Company Act § 2(a)(3); differs from the usual ERISA PTE "affiliate" definition.	
<b>Material affiliation with another person</b>	<ul style="list-style-type: none"> <li>▪ Any affiliate of such other person.</li> <li>▪ Any person directly or indirectly owning, controlling, or holding 5% or more of the interests of such other person.</li> <li>▪ Any person 5% or more of whose interests are directly or indirectly owned, controlled or held by such other person.</li> </ul> <p>"Interest" means:</p> <ul style="list-style-type: none"> <li>▪ In a corporation, the combined voting power of all stock classes entitled to vote or the total value of the shares of all classes of stock;</li> <li>▪ If a partnership, the capital interest or the profits interest; or</li> <li>▪ If a trust or unincorporated enterprise, the beneficial interest.</li> </ul>	
<b>Material contractual relationship</b>	Payments made by one person to the other person pursuant to written contracts or agreements between the persons exceed 10% of the gross revenue on an annual basis of such other person.	
<b>Designated investment option</b>	Any option designated by the plan into which participants may direct investments, other than brokerage windows, self-directed brokerage accounts and similar arrangements.	