

(ii) If the issuer establishes that it did not know, and in the exercise of reasonable care could not have known, that a disqualification existed under paragraph (c)(1) of this section.

*Instruction to paragraph (c)(2)(ii).* An issuer will not be able to establish that it has exercised reasonable care unless it has made factual inquiry into whether any disqualifications exist. The nature and scope of the requisite inquiry will vary based on the circumstances of the issuer and the other offering participants.

(3) For purposes of paragraph (c)(1) of this section, events relating to any affiliated issuer that occurred before the affiliation arose will be not considered disqualifying if the affiliated entity is not:

(i) In control of the issuer; or

(ii) Under common control with the issuer by a third party that was in control of the affiliated entity at the time of such events.

#### **PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933**

4. The general authority citation for Part 239 continues to read in part as follows:

**Authority:** 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u-5, 78w(a), 78ll, 78mm, 80a-2(a), 80a-3, 80a-8, 80a-9, 80a-10, 80a-13, 80a-24, 80a-26, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

\* \* \* \* \*

5. Amend Form D (referenced in § 239.500) by revising the third paragraph under the heading “Terms of Submission” in the “Signature and Submission” section following Item 16 to read as follows:

**Note:** The text of Form D does not, and the amendments will not, appear in the Code of Federal Regulations.

#### **Form D**

\* \* \* \* \*

• Certifying that, if the issuer is claiming an exemption under Rule 505 or Rule 506, the issuer is not disqualified from relying on such rule for one of the reasons stated in paragraph (b)(2)(iii) of Rule 505 or paragraph (c)(1) of Rule 506 (as the case may be).

\* \* \* \* \*

By the Commission.

Dated: May 25, 2011.

**Elizabeth M. Murphy,**  
Secretary.

[FR Doc. 2011-13370 Filed 5-31-11; 8:45 am]

**BILLING CODE 8011-01-P**

## **DEPARTMENT OF THE TREASURY**

### **Internal Revenue Service**

#### **26 CFR Part 1**

[REG-118761-09]

RIN 1545-BI92

#### **Controlled Groups; Deferral of Losses; Hearing**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of public hearing on proposed rulemaking.

**SUMMARY:** This document provides notice of public hearing on a notice of proposed rulemaking providing guidance concerning the time for taking into account deferred losses on the sale or exchange of property between members of a controlled group.

**DATES:** The public hearing is being held on Wednesday, August 3, 2011, at 10 a.m. The IRS must receive outlines of the topics to be discussed at the hearing by Thursday, July 21, 2011.

**ADDRESSES:** The public hearing is being held in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Send submissions to: CC: PA: LPD: PR (REG-118761-09), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC: PA: LPD: PR (REG-118761-09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic outlines of oral comments via the Federal eRulemaking Portal at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Bruce A. Decker at (202) 622-7790; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Richard A. Hurst at [Richard.A.Hurst@irscounsel.treas.gov](mailto:Richard.A.Hurst@irscounsel.treas.gov) or (202) 622-7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:** The subject of the public hearing is the notice of proposed rulemaking (REG-118761-09) that was published in the **Federal Register** on Thursday, April 21, 2011 (76 FR 22336).

Persons who wish to present oral comments at the hearing that submitted written comments, must submit an outline of the topics to be discussed and the amount of time to be devoted to

each topic (signed original and eight (8) copies) by Thursday, July 21, 2011.

A period of 10 minutes is allotted to each person for presenting oral comments. After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing or in the Freedom of Information Reading Room (FOIA RR) (Room 1621) which is located at the 11th and Pennsylvania Avenue, NW, entrance, 1111 Constitution Avenue, NW., Washington, DC.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

**LaNita Van Dyke,**

Chief, Publications and Regulations Branch,  
Legal Processing Division, Associate Chief  
Counsel, Procedure and Administration.

[FR Doc. 2011-13407 Filed 5-31-11; 8:45 am]

**BILLING CODE 4830-01-P**

## **DEPARTMENT OF THE TREASURY**

### **Internal Revenue Service**

#### **26 CFR Part 301**

[REG-153338-09]

RIN 1545-BJ19

#### **Disclosure of Returns and Return Information to Designee of Taxpayer; Hearing Cancellation**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Cancellation of a notice of public hearing on a proposed rulemaking.

**SUMMARY:** This document cancels a public hearing on a proposed rulemaking pertaining to the period for submission to the IRS of taxpayer authorizations permitting disclosure of returns and return information.

**DATES:** The public hearing, originally scheduled for June 9, 2011 at 10 a.m. is cancelled.

**FOR FURTHER INFORMATION CONTACT:** Funmi Taylor of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration) at (202) 622-7180 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking and a notice of

public hearing that appeared in the **Federal Register** on Friday, March 18, 2011 (76 FR 14827) announced that a public hearing was scheduled for June 9, 2011, at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is under section 6103 of the Internal Revenue Code.

The public comment period for the proposed rulemaking expired on May 17, 2011. The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit an outline of the topics to be addressed. As of May 23, 2011, no one has requested to speak. Therefore, the public hearing scheduled for June 9, 2011, is cancelled.

**LaNita VanDyke,**

*Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, Procedure and Administration.*

[FR Doc. 2011-13408 Filed 5-31-11; 8:45 am]

**BILLING CODE 4830-01-P**

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## DEPARTMENT OF LABOR

### Employee Benefits Security Administration

#### 29 CFR Part 2550

RIN 1210-AB08

#### Requirements for Fee Disclosure to Plan Fiduciaries and Participants—Applicability Dates

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

**ACTION:** Notice of proposed extension of applicability dates.

**SUMMARY:** This document proposes to extend specified applicability dates of the Department's interim final rule concerning fiduciary-level fee disclosure (29 CFR 2550.408b-2(c), RIN 1210-AB08) and final rule concerning participant-level fee disclosure (29 CFR 2550.404a-5, RIN 1210-AB07). These rules were published in the **Federal Register** on July 16, 2010 and October 20, 2010, respectively. Extending these dates will more closely align the application of the two rules and ensure that parties have sufficient time to comply with the requirements of the rules.

**DATES:** Comments on the proposal to extend the applicability dates for the Department's fee disclosure rules should be submitted to the Department on or before June 15, 2011.

**FOR FURTHER INFORMATION CONTACT:** Michael Del Conte, Office of Regulations

and Interpretations, Employee Benefits Security Administration, (202) 693-8500. This is not a toll-free number.

**ADDRESSES:** To facilitate the receipt and processing of comments, EBSA encourages interested persons to submit their comments electronically to [e-ORI@dol.gov](mailto:e-ORI@dol.gov), or by using the Federal eRulemaking portal <http://www.regulations.gov> (following instructions for submission of comments). Persons submitting comments electronically are encouraged not to submit paper copies. Persons interested in submitting comments on paper should send or deliver their comments (preferably three copies) to: Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N-5655, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Fee Disclosure Applicability. All comments will be available to the public, without charge, online at <http://www.regulations.gov> and <http://www.dol.gov/ebsa>, and at the Public Disclosure Room, Employee Benefits Security Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, NW., Washington, DC 20210.

**SUPPLEMENTARY INFORMATION:** On July 16, 2010, the Department published in the **Federal Register** an interim final rule enhancing required disclosure from certain pension plan service providers to plan fiduciaries as part of a "reasonable" contract or arrangement for services under ERISA section 408(b)(2) (75 FR 41600) (the "408(b)(2) regulation"). 29 CFR 2550.408b-2(c). The Department subsequently published in the **Federal Register**, on October 20, 2010, a final rule concerning the disclosure of plan fee and expense information by plan administrators to plan participants and beneficiaries (75 FR 64910) (the "participant-level disclosure regulation"). 29 CFR 2550.404a-5. The participant-level disclosure regulation includes modifications to the disclosure requirements in the Department's regulation under ERISA section 404(c), at 29 CFR 2550.404c-1 (the "404(c) regulation"), in order to avoid duplication and integrate its requirements with those of the new participant-level disclosure regulation.<sup>1</sup>

Unless extended, the effective date for the interim final 408(b)(2) regulation will be on July 16, 2011 as to both new,

<sup>1</sup> The amendments to the Department's 404(c) regulation apply for plan years beginning on or after November 1, 2011. The proposals contained in this document would have no effect on the applicability of these amendments.

and pre-existing, contracts or arrangements between covered plans and covered service providers. The Department has received many requests that this effective date be extended. A significant number of parties have argued that more time is essential to update systems and procedures for information collection and disclosure. Pointing out that the Department has not yet published a final rule, parties have explained that, if the Department modifies the current interim final rule, service providers will need additional time to make further changes. Based on these concerns, the Department believes that an extension of the rule's effective date would lead to fuller and timelier compliance by plans and service providers, and thus would be in the interests of participants and beneficiaries. Moreover, as discussed below, an extension will enable the Department to align the effective date for this regulation with the applicability date of the participant-level disclosure regulation. Accordingly, in February 2011, the Department announced its intention to extend the 408(b)(2) regulation's effective date until January 1, 2012.<sup>2</sup> The Department has not received any negative comments on this announcement. The amendments proposed in this notice, if finalized, would effectuate this announcement.

Although the final participant-level disclosure regulation was effective on December 20, 2010, its requirements only begin to apply for plan years beginning on or after November 1, 2011. The regulation also includes a transitional rule, in paragraph (j)(3)(i), for furnishing disclosures required on or before the date on which a participant or beneficiary can first direct his or her investment. For participants or beneficiaries who, as of their plan's applicability date, had the right to direct the investment of their individual accounts, the plan must furnish these initial disclosures no later than 60 days after the applicability date. As with the 408(b)(2) regulation, the Department has continued to receive requests that additional time be provided in order for parties to comply. Further, because the Department announced its intention to extend the 408(b)(2) regulation's effective date to January 1, 2012, parties argue that it would be preferable to extend application of the participant-level disclosure regulation until after the effective date of the 408(b)(2) regulation. Specifically, these parties point to the provision in the 408(b)(2) interim final regulation which requires

<sup>2</sup> See <http://www.dol.gov/ebsa/newsroom/2011/ebsa021111.html>.