

under the plan. However, the Department also recognizes the difficulty of projecting specific beginning and ending dates thirty or more days in advance of a blackout period and that there may be significant costs to providing updated notices, most or all of which will be charged to the individual accounts of the plans' participants.

The Department is persuaded that allowing a limited range of dates for purposes of defining the beginning and ending dates for a blackout period in the required notice will serve to provide participants and beneficiaries with adequate pre-blackout period planning information, provided that they also have access during such dates to information to determine whether the blackout period has begun or ended. In addition, the Department is persuaded that such an approach will help to reduce plan administrative costs that might otherwise result from multiple notices; thereby preserving assets for the retirement security of plan participants and beneficiaries.

As amended, paragraph (b)(1)(iii) permits the notice to describe the length of the blackout period by reference to either: (A) The expected beginning date and ending date of the blackout period; or (B) the calendar week during which the blackout period is expected to begin and end, provided that during such weeks information as to whether the blackout period has begun or ended is readily available, without charge, to affected participants and beneficiaries, such as via a toll-free number or access to a specific web site, and the notice describes how to access the information.

The Department decided to permit reference to "the calendar week" because, unlike 3 or 5 or 7 day, plus or minus, ranges, it provides both the flexibility for plan administrators and a clearer degree of certainty for plan participants and beneficiaries. As reflected in the description of the change, specific information must be readily available, without charge, to participants and beneficiaries during the identified "week of _____" as to whether the blackout has begun or ended. The regulation provides examples as how this requirement can be satisfied, namely via a toll-free number or access to a specific web site. "Calendar week" is defined in the regulation, at paragraph (d)(5) to mean "a seven day period beginning on Sunday and ending on Saturday."

For example, in the case of a plan that expects to have a four week blackout period beginning February 10, 2003 and ending March 7, 2003, the notice of the blackout period could, in accordance

with the final rule, indicate that the blackout period for the plan will begin "the week of February 9, 2003 and end the week of March 2, 2003." The notice also would have to indicate the means by which participants and beneficiaries can determine, during the weeks of February 9 and March 2, whether the blackout period has begun or ended. It is the view of the Department that, given the benefits to affected participants and beneficiaries of specific beginning and ending dates, the regulation should not be construed to preclude the use of a specific beginning date and a "week of _____" ending date, or the converse.

The Department notes that, in the case of a plan that permits participants to exercise their rights up to the commencement of the blackout period (e.g., as might be the case where participants are permitted to trade daily), the timing of the advance notice must be calculated back from the earliest possible beginning date identified in the notice. For example, in the case of a plan identifying the blackout period as beginning the "week of February 9," February 9 will be the beginning of the blackout period for purposes of applying the timing rule of the regulation.

The Department has modified paragraph 3 of the model notice (at paragraph (e)(2) of the final rule) to reflect the availability of alternative approaches to describing the length of the blackout period.

Finally, some commenters noted that blackout periods often affect certain rights longer than others (e.g., a 20 day blackout for loans and a 10 day blackout for distributions and investment changes) and requested clarification that one notice describing the different blackout periods is permitted under the regulation. There is nothing in the regulation that is intended to limit the ability of plan administrators to use a single notice to describe different blackout periods, provided that the advance notice and other requirements of the regulation can be satisfied with respect to such blackout periods.

Paragraph (b)(1)(iv) of the final rule, like the interim final rule, requires the inclusion of a statement advising participants and beneficiaries to review their current investments in light of their inability to direct or diversify their assets during the blackout period and provides that use of the advisory statement contained in paragraph 4 of the model notice (at paragraph (e)(2)) will satisfy this content requirement for the notice.

With regard to paragraph 4 of the model, commenters requested a clarification that the sentences relating

to the risks of investments in individual securities are not required in those instances where a plan does not permit investments in such securities.

Paragraph 4 of the model in the final rule, therefore, has been modified to clarify that the last two sentences are required only where the plan permits investments in individual securities.

Section 101(i)(2)(A)(v) of the Act provides that the notice shall contain "such other matters as the Secretary may require by regulation." In this regard, the Department added, for purposes of the interim final rule, two informational items.

First, given the importance of adequate advance notice of blackout periods to plan participants and beneficiaries, paragraph (b)(1)(v) of the interim final rule provided that, where notices are furnished less than 30 days in advance of the last date on which affected participants and beneficiaries could exercise affected rights immediately before the commencement of the blackout period, the notice must contain a general statement concerning the Federal law requirement of 30 days advance notice and an explanation as to why such notice could not be furnished. The requirement for a general statement in paragraph (b)(1)(v)(A) would be satisfied if the notice contains the general statement appearing in paragraph 5(A) of the model notice (at paragraph (e)(2)). Paragraph (b)(1)(v) would not apply to the exceptions in paragraph (b)(2)(ii)(C) involving blackout periods in connection with mergers, acquisitions, divestitures, or similar transactions inasmuch as notices of such blackout periods are required to be furnished as soon as reasonably possible. (See ERISA section 101(i)(3).) The Department received no comments on paragraph (b)(1)(v) and is adopting the provision without change in the final rule.

Second, the Department had determined that the notice should contain the name, address and telephone number of a person who can answer questions concerning the blackout period. Specifically, paragraph (b)(1)(vi) provided that the notice must contain the name, address and telephone number of the plan administrator or other person responsible for answering questions regarding the blackout period. The Department received one comment on this provision requesting a clarification that the contact person is not required to be an individual and could be the department employing the individual who would be answering questions (such as the benefits department). The regulation is not intended to require the