

One commenter suggested that paragraph 4 of the model not be required when notice is furnished as soon as reasonably possible under the circumstances, but after the date on which affected participants and beneficiaries can take action in anticipation of the blackout period. The Department agrees that including paragraph 4 of the model in a notice furnished after the date on which participants and beneficiaries can effectuate changes in anticipation of the blackout period will be of no value to participants and beneficiaries and, accordingly, may be deleted.

One commenter suggested that the model advise participants of the tax consequences relating to net unrealized appreciation of employer securities upon distribution from a plan. The Department believes that, while such information may be useful to participant, the information goes beyond the scope of the intended blackout notice. The Department notes, however, that there is nothing in the regulation which precludes the furnishing information with the blackout period notice that may be helpful to plan participants and beneficiaries.

9. Effective Date § 2520.101-3(f)

Paragraph (f) of § 2520.101-3 sets forth the effective date of the final rule. Like the interim final rule, paragraph (f) provides that the rule is effective on January 26, 2003, the effective date of the SOA section 306 amendments to ERISA. Paragraph (f) provides that the notice requirements shall apply to blackout periods commencing on or after January 26, 2003, and that, for blackout periods beginning between January 26, 2003 and February 25, 2003, plan administrators shall furnish notice as soon as reasonably possible. This provision is intended to ensure that a statutorily required notice be provided with respect to blackout periods which commence before February 26, 2003. In no event, however, is a blackout notice required to be furnished under the regulation prior to the January 26 effective date. Pursuant to section 553(c) of the Administrative Procedure Act, the Department finds good cause for this rule to be effective less than 30 days after publication. The Department believes that having the rule effective on the effective date of the underlying statutory provisions will avoid confusion for plan administrators. Moreover, the limited extent of the differences between the instant rule and the interim rules will minimize any difficulties in complying with the rule by the effective date.

C. Regulatory Impact Analysis

Summary

The costs associated with this final rule arise primarily from the statutory requirement to prepare and distribute advance notices of the imposition of blackout periods. The aggregate costs for plans required to provide this notice are estimated to be \$13.9 million per year. The benefits afforded participants and beneficiaries and plan administrators by the statute and final rule cannot be quantified, but are expected to be substantial. These requirements will ensure that notices are always provided, are timely, and have appropriate content. Economic benefits will accrue to participants or beneficiaries as a result of their enhanced ability to exercise control over their retirement plan assets with adequate information to inform their decisions. The assurance of receiving advance notice of events that may be critical to participant decisionmaking will increase confidence in the security of retirement assets and promote plan participation. The statute and this guidance will also assist plan administrators in their efforts to fulfill their obligations to participants and beneficiaries.

Benefits and Costs

The SOA amendments to ERISA and this implementing guidance will have several important benefits. First, while commenters on the interim final rule confirm that many plan administrators currently provide disclosures similar to those required by the statute and interim final rule, these new requirements will ensure that appropriate information is provided in a consistent and timely manner.

This advance knowledge will have economic value and increase confidence in the security of retirement savings. Timely notice and an understanding of the reasons for and expected duration of a blackout period will benefit participants and beneficiaries economically by offering them ample opportunity to assess their current investment decisions, and to adjust their exposure to loss if they wish to do so, to the extent possible within the existing options available under the plan. Advance notice of blackout periods cannot eliminate fluctuations of market value during a period when existing investment instructions cannot be modified. However, notice will allow affected participants and beneficiaries to maximize their exercise of control as they deem appropriate in their individual circumstances.

Assurance of the opportunity to exercise control with adequate

knowledge, in advance of events that will affect their ability to exercise control, will increase participant and beneficiary confidence that the plan is being operated appropriately. Participants frequently express concern when significant changes are made to plan options, or when rights previously available are temporarily limited. Assuring that they will have knowledge of the timing and reasons for such changes should serve to promote confidence in the security of retirement savings and support continued growth in participation in the retirement plans offered by plan sponsors.

Second, guidance on the statutory notice requirement will benefit plan sponsors and administrators by clarifying the manner in which they may discharge their obligation to ensure that participants and beneficiaries have access to information necessary to make informed and meaningful investment decisions. Blackout periods occur for a variety of reasons. Their occurrence and timing are often, but not always, within the control of the plan administrator. The most common reasons for imposition of a blackout period include changes in investment alternatives or recordkeepers, and corporate mergers, acquisitions, and spin-offs that impact the pension coverage of groups of participants. Plan administrators will wish to ensure that proper accounting and record transfer is accomplished as timely and accurately as possible, while at the same time advising participants about important matters affecting their rights under the plan.

The value of these benefits cannot be specifically quantified. However, the conclusion that advance notice of blackout periods produces economic benefits is consistent with mainstream economic theory and corroborated by evidence. For example, theory posits that financial market prices respond quickly to new information. Delays in executing trades have been shown to be costly. Advance notice of a blackout in trading enables affected participants to adjust their positions to manage their exposure to such costs. The benefits are expected to outweigh the costs of the statute and the final rule.

Administrators of about 85,150 affected plans are estimated to incur costs of approximately \$13.9 million each year to prepare and distribute blackout notices to 12 million covered participants. This total consists of about \$8 million per year for 295,000 small plans (an average of about \$110 per plan), and \$5.8 million per year for 45,000 large plans (an average of about \$510 per plan). These costs are primarily attributable to the effect of the