

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 20 May 2010

CASE NO.: 2009-RIS-00018

In the Matter of:

U.S. DEPARTMENT OF LABOR,
EMPLOYEE BENEFITS SECURITY ADMINISTRATION,
Complainant,

vs.

LFC GROUP EMPLOYEES RETIREMENT PLAN,
Plan Administrator,
Case No.: 08-0099D,
Respondent.

Appearances: Stephen Silverman, Esq.
For the Complainant

Dale R. Peterson, Esq.
For the Respondent

Before: Jennifer Gee
Administrative Law Judge

**DECISION AND ORDER GRANTING COMPLAINANT'S
MOTION FOR SUMMARY DECISION**

This proceeding involves penalty assessments made by the U.S. Department of Labor Employee Benefits Security Administration ("EBSA"), the Complainant, against the Plan Administrator for the LFC Group Employees Retirement Plan, the Respondent, pursuant to the provisions of the Employment Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001, *et seq.* ("ERISA"). The implementing regulations particularly at issue in this proceeding are published at 29 CFR Part 2520, which are the rules for reporting and disclosure, and at 29 CFR Part 2570, which include the procedures for assessment of civil penalties.

Procedural Background Before OALJ

This proceeding was initiated before the Office of Administrative Law Judges ("OALJ") on October 31, 2008, when Respondent challenged the penalties assessed against it and asked for

a hearing before the OALJ. This case was set for hearing on August 11, 2009, in Long Beach, California.

The hearing was continued to October 7, 2009, at the request of the Respondent on July 10, 2009, after the Respondent filed an unopposed motion for a continuance stating that it believed the case could be settled after an audit by an independent qualified public accountant was submitted and that it had hired an independent qualified public accountant who had been unable to begin the audit because of illness.

The October 7, 2009, hearing was continued after Respondent filed an unopposed motion asking for another continuance, stating that its auditor was having difficulty tracking down records needed to complete the audit because the records were more than three years old. The hearing was continued to January 25, 2010. The hearing date was then changed to January 26, 2010, due to a conflict that arose in my schedule.

On January 15, 2010, Respondent again filed a motion to continue the hearing, stating that Respondent's counsel had a scheduling conflict and was not available on January 26, 2010, and that its accountant was still working on the audit report which had been delayed because of difficulty obtaining all the records but estimated the report would be completed by mid-April 2010. On January 20, 2010, EBSA's counsel filed a "Non-Objection to Continuance of Trial Date" stating that he did not object to the request for a continuance solely because of the scheduling conflict. On January 21, 2010, I granted the motion for a continuance and continued the hearing to May 4, 2010.

On April 15, 2010, EBSA filed Motion for Summary Decision which is the subject of this Order asking for a summary decision in its favor affirming the penalty assessed against the Respondent. On April 20, 2010, I vacated the scheduled hearing and ordered Respondent to respond to the motion by May 7, 2010. Respondent filed an opposition to the Motion for Summary Decision on May 10, 2010.

Standard of Review for Summary Decision Motion

Under Title 29, Part 18 of the Code of Federal Regulations and the Federal Rules of Civil Procedure, an administrative law judge may enter summary judgment for a party if the pleadings, affidavits, material obtained by discovery, or other materials show that there is no genuine issue of material fact. 29 C.F.R. § 18.40; Fed. R. Civ. P. 56(c). An issue is genuine if sufficient evidence exists on each side so that a rational trier of fact could resolve the issue either way, and an issue of fact is material if under the substantive law, it is essential to the proper disposition of the claim. *Alder v. Wal-Mart Stores, Inc.*, 144 F.3d 664, 670 (10th Cir. 1998). The mere existence of some factual dispute will not defeat an otherwise properly supported motion for summary judgment because the factual dispute must be material. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986).

The party moving for summary judgment has the burden of establishing the absence of evidence to support the non-moving party's case. *Id.* at 325. Once the moving party meets its initial burden, the nonmoving party must go beyond the pleadings and by affidavits, depositions, answers to interrogatories, and admissions on file, and come forth with specific facts to show

that a genuine issue of material fact exists and that a reasonable jury could return a verdict for the nonmoving party. *Reynolds v. County of San Diego*, 84 F.3d 1162, 1166 (9th Cir. 1996). Section 18.40(c) provides that “[w]hen a motion for summary decision is made and supported” by the appropriate evidence, the “party opposing the motion may not rest upon the mere allegations or denials of such pleading[, but] must set forth specific facts showing that there is a genuine issue of fact for the hearing.” 29 C.F.R. § 18.40(c); *see also Carmen v. San Francisco Unified School Dist.*, 237 F. 3d 1026, 1031 (9th Cir. 2001). The non-moving party cannot rest on ignorance of facts, on speculation, or on suspicion, and may not escape summary judgment in the mere hope that something will turn up at trial. *See Conaway v. Smith*, 853 F.2d 789 (10th Cir. 1988). In reviewing a request for summary decision, evidence and inferences must be viewed in the light most favorable to the nonmoving party. *Anderson v. Liberty Lobby*, 477 U.S. at 262; *Lopez v. Smith*, 203 F.3d 1122, 1131 (9th Cir. 2000).

EBSA’s Summary Decision Motion

EBSA filed a Statement of Undisputed Facts In Support of Motion for Summary Decision, along with numerous supporting exhibits¹ in support of its motion. EBSA asserts that there is no material issue of fact in dispute in this case, so summary judgment should be entered in its favor affirming the \$50,000 penalty that it assessed against the Respondent for failing to comply with the ERISA reporting requirements.

As mentioned above, as the nonmoving party, the Respondent has the burden of coming forth with affidavits, depositions, answers to interrogatories, or admissions on file with specific facts to show that a genuine issue of material fact exists and that a decision could be rendered in its favor. The Respondent filed a Memorandum and Declaration in Opposition to Complainant’s Motion for Summary Decision (“Opposition”) which included only a declaration from its attorney stating that except for the statements that were made on information and belief, he believed all the statements in the Opposition were true.

Respondent stated in the Opposition that the “lack of any response to any allegation, statement, or portion thereof contained in the [Complainant’s] Motion, Complainant’s Memorandum in support thereof, or Complainant’s Statement of Undisputed Facts, dated April 14, 2010, should not be interpreted, construed, considered, or deemed unnecessarily as an agreement or admission therewith or thereto by Respondent.” Respondent did challenge the alleged undisputed facts listed in item 22 of the Statement of Undisputed Facts that “Respondent has not, as of the date of this filing ... provided EBSA with any indication that it is close to obtaining [the required IQPA opinion],” arguing that that allegation is false. Respondent is correct that that allegation is inaccurate because Respondent has provided EBSA, indirectly through the January 15, 2010, motion for a continuance with information that its accountant expected the required IQPA report to be completed by mid April 2010.²

¹ I will refer to the exhibits as “EBSA EX.”

² I note, though, that the Opposition was filed on May 10, 2010, and does not assert that the amended annual report and IQPA report have been filed.

Respondent also argued that EBSA's Motion for Summary Decision was filed in bad faith because its counsel and EBSA's original counsel³ had reached a verbal agreement to settle this case without trial and without a motion for summary decision by Respondent's filing of a IQPA report. However, Respondent did not assert that there is a material issue of fact that needs to be resolved or challenge any of the other alleged undisputed facts listed by EBSA in its Statement of Undisputed Facts.

Factual Background⁴

LFC Corporate Services, Inc., is the plan sponsor for the LFC Group Employees' Retirement Plan ("LFC Group").⁵ EBSA EX 1. On or about March 29, 2007, the LFC Group filed a Form 5500, Annual Return/Report of Employee Benefit Plan for the fiscal plan year from July 1, 2005, and ending June 30, 2006 ("2005 Form 5500"). This report indicated that there were six plan participants at the beginning of the plan year and five plan participants at the end of the plan year. It also indicated that its plan assets at the end of the year totaled \$4,846,609. (EBSA EX 1.)

Under ERISA, the plan administrator for an employee benefit plan is required to file an annual report, with any necessary attachments, with the Federal government within 210 days after the end of the plan year. 29 U.S.C. § 1024(a)(1). Under ERISA, a plan with less than 100 participants at the beginning of the plan year, such as Respondent, may be exempt from the general requirement to include with the annual report annual audit of the plan performed by an independent qualified public accountant ("IQPA") if certain requirements are met. 29 U.S.C. § 1023; 29 C.F.R. § 2520.104-46. This exemption is referred to as the "Small Plan Waiver".

The Small Plan Waiver requires that as of the last day of the preceding plan year, at least 95% of a small plan's assets be "qualifying plan assets" or, if less than 95% of the assets are qualifying plan assets, then any person who handles assets of a plan that do not constitute "qualifying plan assets" must be bonded in an amount that is at least equal to the value of the "non-qualifying assets." 29 C.F.R. § 2520.104-46(b)(1)(i)(A). If neither of these conditions are met, then the Plan must include an IQPA report with the annual report.

The LFC Group's 2005 Form 5500 showed that its total assets at the end of the 2005 plan year were valued at \$4,846,609, and Schedule I of the Form 5500 showed the assets included \$2,198,270 in real estate (other than employer real property) and \$1,600,000 in loans (other than to participants). The Form 5500 also indicated that the LFC Group had a fidelity bond in the amount of \$500,000. (EBSA EX 1.)

Qualifying assets which establish eligibility for the Small Plan Waiver are defined in 29 C.F.R. § 2520.104-46(b)(1)(ii). Real estate is not listed as a qualifying asset, and not all loans

³ EBSA was originally represented by Gail Perry. Stephen Silverman, the current counsel, was substituted in on January 19, 2010.

⁴ The following findings are made from EBSA'S Statement of Undisputed Facts, as corroborated by the exhibits submitted with the Motion for Summary Decision.

⁵ EBSA states in its Statement of Undisputed Facts that LFC Group is the plan administrator for the LFC Group Employees' Retirement Plan, citing EBSA Ex 1, but I see no reference in EBSA Ex1 to an entity identified as LFC Group being the plan administrator. The plan sponsor is identified as LFC Corporate Services in EBSA Ex 1. I will refer to LFC Group as the Retirement Plan.

are considered qualifying assets. Only loans that meet the requirements of section 408(b)(1) of ERISA, 29 U.S.C. § 1108(b)(1), which requires that they be loans to participants or beneficiaries of participants, are qualifying assets. 29 C.F.R. § 2520.104-46(b)(1)(ii)(B). Because the loans reported on the Respondent's Form 5500 Schedule I were identified as loans "other than to participants," they do not constitute qualifying assets.

Though the real estate and loan assets are not explicit qualifying assets under 29 C.F.R. § 2520.104-46(b)(1)(ii), they can be deemed qualifying assets if they are held by one of the institutions listed in 29 C.F.R. § 2520.104-46(b)(1)(ii)(C).

Respondent was notified by a November 5, 2007, letter from Ketrin Oravec, a Reporting Compliance Specialist with the Office of the Chief Accountant for EBSA, that the assets listed in its Schedule I might not be qualifying assets and advised Respondent that it might be required to file an IQPA report with its annual report. (EBSA EX 2.) Richard Bennett sent Ms. Oravec an e-mail message on December 5, 2007, on behalf of the Respondent asking if it could be exempted from being required to file an audit report due to the high cost of a bond or an audit because the non-qualifying assets were for the owners and trustees of the plan, who were also the beneficiaries. (EBSA EX 4.) On December 17, 2007, Mr. Bennett sent Ms. Oravec e-mail message acknowledging that he had received a phone call from Ms. Oravec informing him that an audit was required and asked how to find an IQPA. (EBSA EX 4.)

On January 14, 2008, Respondent informed Ms. Oravec that it had a bond and submitted documentation showing that it had a \$500,000 bond for ERISA coverage from March 15, 2004, through March 15, 2008. (EBSA EX 5.) In a January 18, 2008, Notice of Rejection ("NOR"), Ms. Oravec informed Respondent that the 2005 Form 5500 was rejected because the non-qualifying assets exceeded the limit permitted for a waiver and the bond was inadequate. Ms. Oravec informed Respondent that it was required to file an IQPA report within 45 days of the date of the Notice of Rejection and that failure to do so would subject Respondent to a civil penalty of up to \$1,100 per day from the date the annual report was due. (EBSA EX 7.)

On March 14, 2008, Ms. Oravec issued a First Amended Notice of Rejection⁶ ("Amended NOR") which advised the Respondent, again, that its Form 5500 was rejected because it did not meet the requirements for a Small Plan Waiver and was deficient because it did not include an IQPA audit report. This letter gave Respondent 45 days from March 14, 2008, to submit an amended report that corrected the deficiency. (EBSA EX 8.)

In an April 28, 2008, letter to Ms. Oravec, Dale Peterson, Respondent's counsel, stated⁷ that Respondent was eligible for a waiver from the audit report requirement because except for a portion held by Wells Fargo Bank and Oppenheimer Funds, the real estate assets listed in the Schedule I were held by Charles Schwab, a registered broker-dealer under the Securities

⁶ EBSA stated in the Statement of Undisputed Facts that the Amended NOR was issued because the first one was sent by certified mail, but it could not confirm receipt of the initial NOR. Receipt of the Amended NOR, which was sent by Federal Express, was confirmed.

⁷ For some unknown reason, even though EBSA had rejected the 2005 Form 5500 report, Mr. Peterson's letter provides information concerning the 2004 Form 5500 report.

Exchange Act of 1934.⁸ Mr. Peterson stated that since the real estate assets were qualifying assets, the Small Plan Waiver applied and an audit report was not required. He included with his letter page 1 from a Charles Schwab account statement for the period from July 1, 2005, to July 31, 2005, for brokerage trust account number 5580-0841 held for LFC Group Emp Retirement Plan, and a document identified as a July 31, 2005, account statement for “Non-Signature Trading Account No. 6270-0519.” The second document had no identifier associating it with Charles Schwab. (EBSA EX 9a.)

Mr. Bennett informed Ms. Oravec by e-mail on May 19, 2008, of Respondent’s intention to obtain a \$3,800,000 bond in 2008 that would be effective retroactive to prior years. (EBSA EX 9b.) In a letter dated May 22, 2008, Mr. Peterson provided Ms. Oravec with a statement showing that for the quarter ending June 30, 2008, the real estate assets were held by Fiserv Trust Company, which he said made them qualifying assets under 29 C.F.R. § 2520.104-46(b)(1)(ii)(C)(1) and (4). (EBSA EX 9c.)

On July 21, 2008, EBSA’s Chief Accountant, Ian Dingwall, issued a Notice of Intent to Assess a Penalty (“Notice of Intent”) informing Respondent that because Respondent did not meet the audit waiver conditions under 29 C.F.R. § 2520.104-46 to exempt it from filing an IQPA report and it had not submitted a revised, satisfactory filing within 45-days after the Amended NOR was issued, EBSA was assessing a \$50,000 penalty against Respondent. The Notice of Intent advised Respondent that it could file a Statement of Reasonable Cause within 30 days stating that it had complied with the reporting requirements or state mitigating circumstances regarding the degree or willfulness of the noncompliance and set forth the alleged facts as to why the penalty should be reduced. (EBSA EX 10.)

Respondent filed a Statement of Reasonable Cause dated August 20, 2008, asserting that it was exempt from the IQPA report requirement because the non-qualifying assets were held by Charles Schwab, making them qualifying assets. Respondent stated that if it was not able to satisfy EBSA that the assets were qualifying assets, it was willing to obtain a bond retroactive to the plan year, or, alternatively, that it would obtain and file an IQPA report. Respondent also stated that it understood that if a bond was obtained or an IQPA report was filed, no notice of determination adverse to it would be issued and no penalty would be imposed by EBSA. (EBSA EX 11.)

The EBSA Reasonable Cause Committee decided to impose the full penalty on September 17, 2008, and on September 22, 2008, Mr. Dingwell issued a Notice of Determination on Statement of Reasonable Cause (“Notice of Determination”) assessing a penalty of \$50,000 against Respondent for failing to submit an IQPA report and an amended Form 5500. (EBSA EX 12; EBSA EX 13.) The Notice of Determination informed Respondent of its right to ask for a hearing before the OALJ. Respondent filed a timely request for hearing before the OALJ on October 27, 2008.

⁸ Assets held by such organizations are defined as “qualifying assets” under 29 C.F.R. § 2520.104-46(b)(1)(ii)(C)(3).

EBSA subpoenaed records pertaining to the Respondent's accounts from Charles Schwab on or about March 25, 2010.⁹ The subpoenaed records do not include the July 31, 2005, account statement for "Non-Signature Trading Account No. 6270-0519 that was offered as evidence that the real estate assets were held by Charles Schwab. (EBSA EX 18.) Moreover, Genevieve Trombley, an authorized representative for Charles Schwab, signed a declaration under penalty of perjury on March 30, 2010, stating that Charles Schwab, as of July 31, 2005, or in the month preceding or following, had no account fitting the description of "Non-signature Trading Account No. 6270-0519" or any account for the Respondent fitting the description of "Non-signature Trading Account No. 62370-0519." (EBSA EX 17.)

As of April 14, 2010, Respondent still had not filed an amended Form 5500 report with an IQPA report.

Purpose of ERISA

The purpose of ERISA, at 29 U.S.C. §§ 1001 *et seq.*, is to protect the integrity of employee benefit plans maintained by employers. *U.S. Department of Labor (PWBA) v. Sociedad Para Asistencia Legal Money Purchase Plan*, 1994-RIS-62 (ALJ, Mar. 29, 1995.) In line with its purpose, the Act contains extensive reporting and disclosure requirements. *Id.* Specifically, when an employee benefit plan holds non-qualifying assets, the plan administrator must either ensure that they are sufficiently bonded or that they submit in IQPA report with the annual report required under the Act. If the plan administrator fails to comply with these requirements, penalties may be assessed at the discretion of the Secretary. *Id.*

Under 29 U.S.C. §§ 1021(b) and 1024(a)(1) it is the responsibility of the plan administrator to ensure that the annual report and any required IQPA report are completed properly and timely filed. The required annual report and all required attachments, *i.e.* an IQPA report, are due 210 days after the end of the applicable plan year. 29 U.S.C. § 1024(a)(1). The Secretary has the discretion to reject any annual report that does not comply with the statutory requirements. 29 U.S.C. § 1024(a)(4). If the Secretary does so, and a compliant report is not submitted within 45 days of her rejection, she may take any action authorized by Title I of ERISA. 29 U.S.C. § 1024(a)(5). Among those authorized actions are the imposition of civil penalties pursuant to 29 U.S.C. § 1132(c)(2). That section authorizes a civil penalty of up to \$1,100.00 per day for a failure to file a timely annual report.

Standard of Review

The standard of review in 29 C.F.R. § 502(c)(2) penalty proceedings, such as this, is *de novo*. *U.S. Department of Labor, PWBA*¹⁰ *v. Spaulding & Evenflo Companies, Inc.*, No. 92-RIS-

⁹ EBSA asserts in its Statement of Undisputed Facts that Ms. Oravec attempted to obtain evidence from Respondent as to the authenticity of the Charles Schwab "Non-Signature Trading Account" statement that was submitted earlier from April 29, 2008, until at least July 9, 2008, and offered EBSA EX 14 to support this alleged undisputed fact. These predominantly hand-written notes, which EBSA claims are Ms. Oravec's notes, are unsigned and were not authenticated by Ms. Oravec. I decline to consider them.

¹⁰ At the time of the *Spaulding & Evenflo* decision and the *Northwestern Institute of Psychiatry* decision cited later in this paragraph, the Complainant operated as the Pension and Welfare Benefits Administration ("PWBA"). In the mid-1990s, the Secretary of Labor, who reviews all ALJ decisions in 29 C.F.R. § 502(c)(2) proceedings, delegated the appellant responsibility to a PWBA senior policy advisor. At present, the senior policy advisor's decisions

19, slip op. at 7 (PWBA Nov. 18, 1994); *U.S. Department of Labor, EBSA v. Plan Administrator, Team Laurino 401(k) Plan*, 2008-RIS-00050, slip op. at 4 (ALJ, Dec. 9, 2008); *see also U.S. Department of Labor, PWBA v. Northwestern Institute of Psychiatry*, 93-RIS-23, slip op., at 10 (PWBA July 26, 1995.) However, the ALJ is bound by the governing statute and regulations and cannot set aside the Complainant's method of calculating the penalty, except to the extent the ALJ finds them to be invalid. *See Spaulding*, slip op. at 7.

Discussion

Respondent does not qualify for the Small Plan Waiver. Its real estate and loan assets do not come under the list of qualifying assets enumerated in 29 C.F.R. § 2520.104-46(b)(ii), and at the end of the plan year, they were not held by any of the institutions listed in 29 C.F.R. § 2520.104-46(b)(ii)(C). Thus, Respondent was required to file an IQPA report with its 2005 Form 5500. Despite repeated opportunities to file the required report and its representation that the report would be completed by mid-April 2010, there is no indication that the Respondent has filed the required report. It has offered no explanation for its failure to meet its own mid-April 2010 filing goal.

Moreover, I find it disturbing that in its effort to prove the real estate and loans were qualifying assets, the Respondent appears to have falsely represented to EBSA that the non-qualifying assets were held by Charles Schwab at the end of the 2005 plan year. It has been over two years since Mr. Bennett's e-mail message to Ms. Oracecz acknowledging that Respondent had to submit an IQPA report, and no report has been forthcoming. If the IQPA had been hired in December 2007 when Mr. Bennett acknowledged being notified that an IQPA report had to be filed, there might not have been the apparent delays caused by the difficulty in locating old records.

The civil penalty assessed against the Respondent was calculated in accordance with the EBSA regulations, and Respondent has not asserted that the calculation is incorrect. The only argument Respondent presents in opposition to the Motion for Summary Decision is that EBSA's counsel has acted in bad faith by not giving Respondent an opportunity to file the required report before filing the Motion for Summary Decision.

Respondent wants me to order EBSA's counsel to allow Respondent to complete and file an acceptable IQPA report and to avoid the penalty. This argument does not address the question of whether or not there is a material issue of fact in dispute. In fact, there are no materials issues of act in dispute. More importantly, Respondent's counsel, himself, represented in his January 2010 motion for a continuance that the required IQPA report would be completed by mid-April. The Motion for Summary Decision was filed mid-April, on April 15, 2010, when Respondent said the report would be completed. However, the filing of the Motion for Summary Decision did not preclude Respondent from filing the requisite report. Certainly, if it had done so by mid-April as promised in the January request for a continuance, its argument for a reduction of the penalty would have been strengthened.

constitute the entire body of administrative-appellate authority on ERISA adjudications within the Department of Labor. The senior policy advisor's decisions are the functional equivalent of decisions rendered by the Secretary of Labor. Also, the PWBA's responsibilities now rest with the EBSA.

However, there is no evidence that an amended report was filed even as late as May 10, 2010, when Respondent filed its opposition to the Motion for Summary Decision. Certainly if the report had been filed, Respondent's counsel would have said so, especially in response to EBSA's inaccurate statement that Respondent had not provided EBSA with an estimated date for completion of the report. I also note that even if the real estate assets had been held by Charles Schwab and could be considered qualifying assets, the qualifying assets of the LFC Group still would have been less than 95% of the total assets since almost one third of the assets were in the form of non-qualifying loans. The assets were valued at \$4,846,609, and \$1,600,000 of it was in non-qualifying loans.

I find there is no material issue of fact in dispute in this case. Less than 95% of the LFC Group's assets were qualifying assets, the bond in effect at the end of the plan year did not cover the value of the non-qualifying assets as required by the EBSA regulations, the requisite IQPA report has not been filed, and the penalty was properly calculated.

EBSA's Motion for Summary Decision is GRANTED, and the penalty against the Respondent is AFFIRMED.

ORDER

It is hereby ORDERED that Respondent, the Plan Administrator for LFC Group Employees Retirement Plan, shall pay to the U.S. Department of Labor a civil penalty in the amount of \$50,000 within 45 days of the date of this Decision and Order. Any portion of this penalty that is not paid by that date shall be subject to such penalties and interest as ERISA and its implementing regulations have provided.

A

JENNIFER GEE
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: Pursuant to 29 C.F.R. § 2570.69, a notice of appeal must be filed with the Secretary of Labor within 20 days of the date of issuance of this Decision and Order or this decision will become the final agency action within the meaning of 5 U.S.C. § 704. A notice of appeal should be filed with

**Director of the Office of Policy and Research
Employee Benefits Security Administration
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Washington, DC 20210**

See Secretary's Order 6-2009, 74 Fed. Reg. 21524-01, 2009 WL 1227622 (signed Apr. 30, 2009) (delegation of review authority to the Assistant Secretary for Employee Benefits Security). A

notice of appeal must state, with specificity, the issue or issues on which the party is seeking review. The notice of appeal must be served on all parties of record.