

ERISA Technical Release 91-1, 05/08/1991

The purpose of this release is to alert the public to recent amendments of Title I of the Employee Retirement Income Security Act (ERISA) which, among other things, require that advance notification be provided to the Secretary of Labor and the Secretary of the Treasury, as well as other persons, of an intended transfer of excess pension assets from a defined benefit plan to a retiree health benefit account, described in section 401(h) of the Internal Revenue Code (the Code), which is part of such plan.

General

The requirements relating to advance notification of transfers to retiree health benefit accounts are contained in section 101(e), added to ERISA as part of Omnibus Budget Reconciliation Act of 1990 (OBRA '90, Pub. L. 101-508). Section 101(e)(1) describes the plan administrator's obligation to provide advance written notification of transfers to participants and beneficiaries. Section 101(e)(2)(A) describes the employer's obligation to provide advance written notification to the Secretaries of Labor and Treasury, as well as to the administrator and each employee organization representing participants in the plan, and section 101(e)(2)(B) describes the information required to be contained in the notification. OBRA '90 also added a new section 420 to the Code which sets forth the conditions under which transfers (referred to as "qualified transfers") can be made after December 31, 1990 from a defined benefit plan to a retiree health benefit account.

Section 101(e) requires that advance notifications must be provided not later than 60 days before the date of a qualified transfer. Administrators and employers who fail to satisfy the advance notification requirements of section 101(e) may, in the discretion of the court, be liable in an amount of up to \$100 a day from the date of such failure (See: Sections 502(c)(1) and 502(c)(3), as amended by OBRA '90).

The Department of Labor is considering whether there are any issues regarding the notice requirements of section 101(e) which should be clarified by means of regulatory guidance.

Notifications Furnished to Participants and Beneficiaries

Section 101(e) requires that advance notifications provided to participants and beneficiaries contain the following: (1) the amount of excess pension assets; (2) the portion to be transferred; (3) the amount of health benefits liabilities expected to be provided with the assets transferred; and (4) the amount of pension benefits of the participant which will be nonforfeitable immediately after the transfer. [NOTE: 29 C.F.R. § 2520.104b-1 describes the manner in which disclosures required under Part 1 of Title I of ERISA must be furnished to

participants and beneficiaries. These requirements would apply to notifications under section 101(e) in the absence of regulations providing otherwise.]

Notifications Filed with the Secretaries

In accordance with the provisions of section 3004 of ERISA, relating to the coordinating of functions between the Secretary of Labor and the Secretary of the Treasury, the filing of the advance notification described in section 101(e)(2) of ERISA with the Secretary of Labor shall also constitute a filing of that notice with the Secretary of the Treasury. The Department of Labor will forward to the Internal Revenue Service copies of the required notifications or the information contained therein.

Pursuant to section 101(e)(2)(B) advance notifications are required to contain the following: 1) identification of the plan from which the transfer is made [NOTE: for identification and processing purposes, notifications should contain the name, address and EIN of the employer and the name, EIN and PN of plan]; 2) the amount of the transfer; 3) a detailed accounting of assets projected to be held by the plan immediately before and after the transfer; and 4) the current liabilities under the plan at the time of transfer. Notifications should include the filing date and the date on which the transfer is intended to take place. Notifications required to be filed with the Secretaries pursuant to section 101(e)(2) must be sent to:

Section 101(e)(2) Notice
Room N5644
Division of Reports, PWBA
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

All notices under section 101(e)(2) filed with the Department of Labor will be available for public inspection in the Public Documents Room, N5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.