

THE ERISA INDUSTRY COMMITTEE

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Advocating the Employee Benefit and Compensation Interests of America's Major Employers

TO:

Robert Doyle

Director, Office of Regulations and Interpretations

U.S. Department of Labor

Washington, D.C.

by electronic transmission – December 8, 2006

Dear Bob:

On behalf of The ERISA Industry Committee ("ERIC"), I want to thank you, your colleagues at the Labor Department, and your Treasury Department counterparts for providing prompt guidance in Notice 2006-107 regarding the PPA's diversification requirements. Given the tight time schedule that you were working under, it was a great achievement.

However, we have a significant concern that requires your immediate attention. Our concern relates to the diversification notice required by ERISA § 101(m), which must be sent no later than 30 days before the first date on which an individual is eligible to exercise the right to diversify employer stock in accordance with ERISA § 204(j).

A number of our members sponsor plans that *already allow* participants to diversify out of employer stock under rules that are at least as favorable to participants as the rules that ERISA § 204(j) will require when § 204(j) becomes effective. In most cases, the plan allows participants to diversify *daily* -- far surpassing the quarterly opportunity required by § 204(j). Since the employees who participate in these plans already have diversification rights that meet or exceed the requirements imposed by § 204(j), and have already been informed of those rights and of the importance of diversification, these companies are concerned that sending current plan participants another notice will confuse participants rather than help them.

Section 101(m) requires the notice to (1) set forth the diversification rights under § 204(j) of ERISA and (2) describe the importance of diversifying the investment of retirement account assets. The administrators of the plans that already meet the § 204(j) standards have already communicated this information to plan participants: they have sent notices - - usually multiple notices -- that describe participants' diversification rights and stress the importance of diversification. In our view, these companies have already met the § 101(m) notice requirement.

The notice requirement is obviously designed to educate participants who are being granted *new* diversification rights. That is why § 101(m) requires the notice to be sent at

least 30 days before the *first date* on which a participant is entitled to exercise the diversification rights mandated by § 204(j). Plans should not be required to incur substantial costs -- which generally will be passed on to plan participants and will reduce their retirement savings -- to furnish information that has already been conveyed to them and that is more likely to confuse them than it is to enlighten them.

The Department might address this issue in one of three ways:

The alternative that makes the most sense to us is for the Department to announce that § 101(m) does not require a notice to be sent to participants who already have diversification rights that meet the standards imposed by § 204(j) and who have already been informed of their diversification rights and of the importance of diversification in notices that would have met the requirements of § 101(m) if § 101(m) had been in effect when the notices were furnished. In such circumstances, the plan administrator has *already complied with § 101(m)*.

Alternatively, because § 204(j) requires only *quarterly* opportunities to diversify, the Department could announce that the deadline for the notice occurs 30 days before the end of the first quarter to which the diversification requirement applies (for example, March 1st in the case of a calendar year plan). This approach would allow a plan to enclose its § 101(m) notice with other communications that are being sent to participants in the normal course and to avoid incurring unnecessary distribution costs.

Another alternative would be for the Department to announce that a plan administrator meets the requirements of § 101(m) if it provides the notice as part of (or together with) the first benefit statement that the plan administrator sends to participants at least 30 days after the beginning of the first plan year to which § 204(j) applies.

We support the Department's efforts to implement the diversification requirements. Our comments are designed (1) to assure that the diversification notices help participants rather than confuse them and (2) to prevent plans from incurring unnecessary costs -- which will be borne by plan participants in most, if not all, cases.

Time is of the essence. In order to be useful, any guidance that Department can provide must be provided quickly.

We very much appreciate your attention to this issue. If additional information would be helpful to you, please let me know.

With best regards,

Janice

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