

U.S. Department of Labor

Labor-Management Services Administration
Washington, D.C. 20216



Reply to the Attention of:

OPINION 80-32A
104(b)(1)

MAY 23 1980

Mr. David Durfee
Corporate Trust Officer
Exchange National Bank of Tampa
P.O. Box 1469
Tampa, Florida 33601

Dear Mr. Durfee:

This is in response to your letter of November 23, 1979, in which you requested an advisory opinion on whether a document providing notification of a plan trustee's change in name must be furnished to plan participants and beneficiaries in accordance with section 104(b)(1) of the Employee Retirement Income Security Act of 1974 (ERISA) and 29 C.F.R. §2520.104b-3. We regret the delay in responding to your request.

You represented that effective December 1, 1979, the Exchange National Bank of Tampa, operating under a national charter, and the Exchange Bank of Temple Terrace, a state chartered bank, would merge and function under the name of Exchange Bank and Trust Company of Florida as a state chartered bank. You, therefore, inquire whether a document providing notification of the name change with respect to the Exchange National Bank of Tampa must be furnished to the participants and beneficiaries of the pension plans for which the bank serves as trustee.

Section 2520.104b-3, concerning material modifications and changes in information required to be included in the summary plan description, provides, in relevant part, that:

- (a) The administrator of an employee benefit plan subject to the provisions of Part 1 of Title I of the Act shall, ... , furnish a summary description of any material modification to the plan and any change in the information required by section 102(b) of the Act and §2520.102-3 of these regulations to be included in the summary plan description to each participant covered under the plan and each beneficiary receiving benefits under the plan. (emphasis added)

Section 2520.102-3, referenced above, sets forth that information required to be contained in the summary plan description (SPD). As indicated in your letter, one of the items of information

required to be included in the SPD, pursuant to subparagraph (h) of that section, and section 102(b) of ERISA, is the name of each trustee of the plan. Thus, the change in name of the Exchange National Bank of Tampa is a change which requires the distribution and filing of documents providing notification of the change.

These documents are required to be distributed to participants and beneficiaries in accordance with 29 C.F.R. §2520.104b-1 and filed with the Department of Labor in accordance with 29 C.F.R. §2520.104a-7 within 210 days after the close of the plan year in which the change or modification was adopted.

Your letters suggest that you are under the impression that summaries of the name change must be distributed by certified mail. In this connection, you should be aware that 29 C.F.R. §2520.104b-1(b)(1) requires that the material “be sent by a method or methods of delivery likely to result in full distribution.” That section specifically provides that material distributed through the mail may be sent by first-class mail, or even second or third class mail if return and forwarding postage is guaranteed and address correction is requested. Any material sent by second or third-class mail which is returned with an address correction must be sent again by first-class mail or personally delivered to the participant at his or her worksite. Section 2520.104b-1(b)(1) also provides examples of other means of distribution that are acceptable. For your convenience, we are enclosing herewith a copy of §2520.104b-1. You should note that paragraph (b)(1) of that section deals with the manner in which material generally required to be furnished to all plan participants and beneficiaries, such as summary descriptions of changes in SPD information, must be distributed.

This letter constitutes an advisory opinion under ERISA Procedure 76-1. Accordingly, this letter is issued subject to the provisions of the procedure, including section 10 thereof relating to the effect of advisory opinions.

Sincerely,

Ian D. Lanoff
Administrator
Pension and Welfare Benefit Programs

Enclosure