

**U.S. Department of Labor**

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



Reply to the Attention of:

OPINION NO. 82-3A  
Sec. 110

JAN 12 1982

Mr. James M. Thomas  
Assistant Vice President  
Woburn Five Cents Savings Bank  
19 Pleasant Street  
Woburn, MA 01801

Dear Mr. Thomas:

This is in response to your letter concerning the requirements of 29 CFR §2520.104-49 which prescribes an alternative method of compliance with the reporting and disclosure requirements of the Employee Retirement Income Security Act of 1974 (ERISA) for certain non-Model simplified employee pensions (SEPs). We regret that the volume of correspondence concerning ERISA has resulted in a delay in responding to you.

You indicate in your letter that, with regard to the non-Model SEP in question, the terms of the SEP require all eligible employees to establish their individual retirement account (IRA) with the Woburn Five Cents Savings Bank (the Bank). In establishing an IRA, the Bank uses IRS Form 5305, which contains no restriction on withdrawal and has added no withdrawal restriction in provisions added under Article IX of Form 5305. Investments under the plan are at the direction of the participant, and not under the control of any other person. Through its IRAs, the Bank offers various investment options, including regular savings, term certificates and "special notice accounts", to participants. You indicate that neither the regular savings or term certificates impose any restriction on withdrawal by the participant; however, "special notice accounts" do not allow withdrawal of funds held on deposit for less than 90 days.

As you note in your letter, the alternative method of compliance under section 2520.104-49 does not apply to a SEP in connection with which the employer who establishes or maintains the SEP selects, recommends or otherwise influences its employees to choose IRAs into which employer contributions will be made and such IRAs are subject to provisions which prohibit withdrawal of funds by participants for any period of time. Accordingly, you inquire whether an employer who sponsors a non-Model SEP, as described in your letter, would be adversely affected, in terms of using the alternative method of compliance, if a participant directs the Bank to invest his/her funds in the "special notice account" which restricts withdrawal, despite the availability of other investment options which do not have such a restriction.

With regard to your inquiry, it is the view of the Department that if an employer, in connection with sponsoring a non-Model SEP, selects the IRAs into which employer contributions will be made and such IRAs make available to participants an option which imposes a restriction on withdrawals, the administrator for that SEP would not be precluded from using the alternative method of compliance under §2520.104-49, provided that other meaningful investment options which do not restrict withdrawals are available to participants, the employer does not select, recommend or otherwise influence any participant's choice of an available investment option under the IRAs and all other conditions of the regulation are satisfied.

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

Sincerely,

Jeffrey N. Clayton  
Administrator  
Pension and Welfare Benefit Programs