

U.S. Department of Labor

Office of Pension and Welfare Benefit Programs
Washington, D.C. 20210



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85-05A
Sec. 102(a) & (b)

Mr. Lewis A. Siegel
Laiken, Siegel & Co.
71 Union Avenue
Rutherford, New Jersey 07070

Dear Mr. Siegel:

This is in response to your letter requesting guidance in complying with certain disclosure provisions under the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you ask whether the summary plan description (SPD) required under section 102 of ERISA must contain vesting provisions which have been adopted, but which will not take effect unless the plan becomes top-heavy.

Pursuant to section 101(a) of ERISA, the administrator of each employee benefit plan must furnish to each participant covered under the plan, and each beneficiary receiving benefits under a pension plan, an SPD. Section 102(a)(1) specifies that the SPD ". . . shall be sufficiently accurate and comprehensive to reasonably apprise . . . participants and beneficiaries of their rights and obligations under the plan." Among other information required under section 102(b) of ERISA to be included in the SPD is "a description of the provisions providing for nonforfeitable pension benefits." Regulation section 2520.102-3(n), issued thereunder, requires that the SPD contain for employee pension benefit plans "a description and explanation of the plan provisions for . . . vesting . . ." The regulation also provides that the "description shall state the service required to accrue full benefits . . ."

In the Department's view, a plan must include in its SPD a description of all provisions, even those that are contingent, which it has adopted regarding vesting in order to comply with the requirement of section 102(a)(1) of ERISA that the SPD be "sufficiently accurate and comprehensive to reasonably apprise . . . participants and beneficiaries of their rights and obligations under the plan" and the requirement in the Department's regulations that the SPD provide a description and explanation of the plan's vesting provisions.

Accordingly, it is the Department's view that if a plan has adopted provisions with respect to vesting which will take effect in the event that the plan becomes top-heavy, then those provisions must be summarized in the plan's SPD (or in a summary of material modifications) in a manner conforming to the requirements of ERISA and of the regulations issued thereunder.

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

Sincerely,

Elliot I. Daniel
Acting Assistant Administrator for Regulations and Interpretations

Enclosure