

**U.S. Department of Labor**

Pension and Welfare Benefits Administration  
Washington, D.C. 20210



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89-02  
Sec.  
514

Mr. Rodney A. Currin  
Ward and Smith, P.A.  
1001 College Court  
Post Office Box 867  
New Bern, North Carolina 28560

Dear Mr. Currin:

This is in response to your request, on behalf of First-Citizens Bank & Trust Company, for an advisory opinion concerning the applicability of title I of the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, you have requested an opinion as to whether the claims procedures requirements of section 503 of ERISA apply to a denial of a claim for an in-service hardship distribution.

Your letter contains the following facts and representations relating to your request. First-Citizens Bank & Trust Company (the Company) established the First-Citizens Bank & Trust Company Capital Accumulation Plan (CAP) (the Plan), a profit sharing plan in accordance with section 401(k) of the Internal Revenue Code, in 1984.<sup>1</sup> According to the plan document enclosed with your letter, the primary purpose of the plan is to provide retirement income to participants. However, under the terms of the plan an in-service withdrawal is permitted in the event of hardship. A hardship is deemed to exist under the Plan if "the distribution is necessary in light of immediate and heavy financial needs ... and if funds to alleviate such financial needs are not reasonably available from other resources ...." The Committee, composed of several Company officials and other occasional appointments by the Company's Board of Directors, has the sole discretion to determine if such a hardship exists and has the power to make any rules or regulations necessary to properly carry out the provisions and intent of the hardship distribution provision. The provision does not provide any procedure for a participant to protest a denial of a claim for a hardship distribution. The Plan does contain a claims procedures provision which pertains to claims for the benefits provided under the Plan. The provision includes procedures for filing a claim for benefits, notification to the claimant of the Committee's decision, review of denied claims, and the Committee's decision on review. The Committee must notify the claimant of a denial in writing setting forth the specific reasons for the denial and an explanation of the Plan's claims review procedure. The claimant may appeal the denial by filing an application for review. The Committee reviews appealed decisions and issues a decision setting forth the specific reasons for the decision. This decision is final and conclusive. In the present case, an employee submitted a request for a hardship withdrawal, citing the need to improve his primary residence as his hardship. The claim was denied upon a determination that no hardship existed.

Section 503 of ERISA provides, in relevant part, that "every employee benefit plan shall ... afford a reasonable opportunity to any participant, whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim." In regulations issued by the Department of Labor (the Department) at 29 C.F.R. 2560.503-1(d), a

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<sup>1</sup> We are assuming for the purposes of this letter that the plan would be an employee benefit plan within the meaning of section 3(3) of ERISA.

claim was defined for the purposes of this section as "a request for a plan benefit by a participant or beneficiary."

Based on the information you provided, the in-service hardship distribution is a distribution under the terms of the plan of an employee's vested accrued benefit prior to retirement or termination of covered employment, based on a finding of hardship. Thus, it would appear that the distribution is a benefit provided under an employee benefit plan subject to title I of ERISA and that, in a situation where a participant's claim to such benefit is denied, the procedures required by section 503 of ERISA, and the Department's regulations thereunder, would apply.

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

Sincerely,

Robert J. Doyle  
Director of Regulations and Interpretations