

July 2, 1975

Dear :

Your letter of June 3, 1975, addressed to has been referred to this office for reply.

In your letter you inquired whether an attached draft plan amendment would meet the requirements of section 410(a) of the Employee Retirement Income Security Act of 1974. You stated that the draft amendment is designed to bring a pension plan into compliance with section 410(a) of the Act until extensive permanent revisions of the plan are made.

Section 410(a) of the Act reads as follows:

Except as provided in section 405(b) (1) and 405(d), any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part shall be void as against public policy.

Section 410(a) is self-executing. Any provisions contrary to section 410(a) in documents relating to an employee benefit plan subject to Part 4 of Title I of the Act automatically become void when the plan becomes subject to section 410(a). Amendments such as the draft attached to your letter are unnecessary even though a plan may contain provisions contrary to section 410(a). Although it would be preferable if provisions invalidated by section 410(a) were removed from plan instruments as soon as possible, since these invalid provisions may mislead plan fiduciaries, participants, beneficiaries and other interested persons, such amendments need not be made as soon as section 410(a) becomes applicable to the plan, but may be deferred until other amendments necessitated by the Act are made. In the interim before such amendments are made, a plan may be amended to include language nullifying exculpatory clauses, even though such language is superfluous; however, this office will not render opinions as to the appropriateness of such language.

Sincerely,