

September 18, 1975

Gentlemen:

This is in response to your letter dated June 3, 1975, to the Secretary of Labor in which you ask whether an enclosed written instrument is sufficient to comply with the Employee Retirement Income Security Act of 1974 (ERISA). You also ask how to obtain any rules and regulations, including reporting forms, adopted under the Act.

Regarding the written instruments, it appears that you are asking whether it satisfies the requirement of ERISA section 402(a)(1) that an employee benefit plan be established and maintained pursuant to a written instrument. This section of the Act does not specify who must establish the written instrument and what formality is necessary in its establishment. However, section 402 says that "Such instrument shall provide for one or more named fiduciaries who jointly or severally shall have authority to control and manage the operation and administration of the plan."

Also, the Conference Report on the Act says, on page 297, the following:

A written plan is to be required in order that every employee may, on examining the plan documents, determine exactly what his rights and obligations are under the plan. Also, a written plan is required so the employees may know who is responsible for operating the plan. Therefore, the plan document is to provide for the "named fiduciaries" who have authority to control and manage the plan operations and administration.

Based on the above references to section 402 and the Conference Report, a written instrument under section 402 must be established by a person or entity which has authority to designate a "named fiduciary" and to describe the rights and obligations of persons covered by the plan. A cross-reference, or incorporation by

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reference, to another plan document would be permissible if the other document serves to fulfill the purposes of section 402(a)(1). For example, where rights to plan benefits are governed by the terms of an insurance contract, a reference to the contract would be appropriate.

Regarding the formality in establishing the written instrument, section 402(a)(1) and the Conference Report indicate that the instrument must have the status of an official document of the plan. Execution of the instrument by the plan sponsor, acting as such, would serve this purpose.

Due to the limited resources of this office, we are not able to review plan documents upon request for the purpose of determining whether they meet all requirements of the law. However, I hope that the information provided will be helpful in understanding some basic aspects of the written instrument requirement.

Copies of issuances and reporting forms implementing ERISA may be obtained by contacting the Information Office of the Labor-Management Services Administration, U. S. Department of Labor, Washington, D. C. 20216 (phone number (202) 523-7408). For your convenience, I am enclosing a copy of recently issued regulations on the reporting and disclosure requirements and a copy of Plan Description Form EBS-1.

Sincerely,