




National Rural Electric Cooperative Association

A Touchstone Energy® Cooperative 

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November 20, 2002

Hon. Elaine L. Chao
Secretary
U.S. Department of Labor
c/o Office of Regulations and Interpretations
Pension and Welfare Benefits Administration
Room N-5669
200 Constitution Avenue, NW
Washington, DC 20210

ATTENTION: Blackout Notice Regulation – RIN 1210-AA90

Dear Madam Secretary:

I am writing on behalf of the National Rural Electric Cooperative Association (“NRECA”) with respect to a request by the U.S. Department of Labor (the “Department”) for comments on Interim Final Rules promulgated under new Section 101(i) of the Employee Retirement Income Security Act of 1974 (the “Act”), enacted last year by the Sarbanes-Oxley Act of 2002 (Pub. L. No. 107-204) (the “SOA”). These interim final rules generally require a 30-day advance, written notice to be provided to participants and beneficiaries of individual account plans of any “blackout period” during which their right to direct or diversify investments, obtain a loan or obtain a distribution under the plan may be temporarily suspended, limited, or restricted for any period of more than 3 consecutive business days.

NRECA is a trade association representing rural electric cooperatives throughout the United States and its territories. NRECA sponsors a defined contribution multiple-employer plan for its member cooperatives. That plan, the NRECA SelectRE Pension Plan (the “SelectRE Plan”), is a multiple-employer plan within the meaning of Section 413(c) of the Internal Revenue Code of 1986 (the “Code”). Approximately 900 rural electric cooperatives participate in the SelectRE Plan’s 401(k) feature, in which nearly 55,000 employees participate. The SelectRE Plan has several investment options for participants, ranging from money-market options to a self-directed brokerage account. It is important to note, however, that neither NRECA nor any of its members are “issuers” of securities for purposes of these interim final rules, as defined by section 2(a)(7) of the SOA.

In developing the SOA, Congress recognized the somewhat unique nature of NRECA's multiple-employer plan. For example, unlike most defined contribution plan sponsors, NRECA's SelectRE Plan is self-administered, and, therefore, not subject to one of the most prevalent reasons for instituting a blackout period – a change in plan administrators. NRECA and its members are, however, particularly affected when a single-employer plan merges into, or withdraws from, the NRECA SelectRE Plan.

While the SOA generally mandates that the administrator of a qualified defined contribution plan provide a 30-day advance notice to all affected participants and beneficiaries before instituting a "blackout period," both the Congress and the Department have recognized some of the inherent difficulties in providing such advance notice of a blackout to participants and beneficiaries when the blackout occurs in connection with becoming or ceasing to be a participant or beneficiary under a plan by reason of merger, acquisition, divestiture, or similar transaction. NRECA thanks both the Congress and the Department for recognizing the unique issues presented by a multiple-employer plan like NRECA's SelectRE Plan by including Section 306(b)(1) of the SOA, and, paragraph (b)(2)(ii)(C) and (b)(2)(iii) of the Interim Final Rules, respectively. It is within this context that we submit our formal comments on the Blackout Notice Regulation below on the contents of the Notice.

Contents of Notice

Paragraph (b)(1)(iv) of the Interim Final Rules provides that the notice required under the regulation must include a statement that the participant or beneficiary should evaluate the appropriateness of their current investment decisions in light of their inability to direct or diversify assets in their accounts during the blackout period, and, that a notice including the advisory statement contained in paragraph 4 of the model notice in paragraph (e)(2) of the Interim Final Rules will satisfy this requirement.

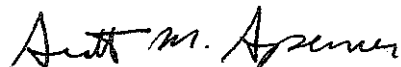
In regard to any notice initiated under the "plan merger" exception in paragraph (b)(2)(ii)(C) of the Interim Final Rules, NRECA believes that including paragraph 4 of the model notice in paragraph (e)(2) would not provide any benefit to participants or beneficiaries, as the notice in this case could be received after the institution of the blackout. NRECA believes that plan sponsors issuing notices under paragraph (b)(2)(ii)(C) should be able to eliminate paragraph 4 of the model notice, while still satisfying paragraph (b)(1) if all other requirements are met. NRECA appreciates the Department recognizing this issue by not requiring inclusion of paragraph 5 of the model notice when the notice is furnished pursuant to paragraph (b)(2)(ii)(C) of the Interim Final Rules.

Conclusion

NRECA again thanks the Department for recognizing the unique issues presented by a multiple-employer plan by including paragraphs (b)(2)(ii)(C) and (b)(2)(iii) in its Interim Final Rules, which clearly provides an exception to the 30-day notice requirement when the blackout period applies only to one or more participants or beneficiaries solely in connection with their becoming, or ceasing to be, participants or beneficiaries of the SelectRE Pension Plan as a result of a merger, acquisition, divestiture, or similar transaction involving the plan or plan sponsor. Without this exception, NRECA believes it would be difficult if not impossible to comply with the SOA when NRECA institutes a blackout period in these instances.

We hope you find these comments helpful, and look forward to working with the Department on this issue in the near future. Should you have any questions, please feel free to contact us anytime at 703-907-6020.

Sincerely,



Scott M. Spencer
Senior Vice President,
Insurance & Financial Services
(Administrator, SelectRE Pension Plan)